



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 28<sup>TH</sup> DAY OF JUNE, 2023

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 05767-20

AGENCY DKT. NO. 2020-2589

**IN THE MATTER OF J.T., CITY OF  
TRENTON POLICE DEPARTMENT.**

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**Stuart A. Tucker, Esq.**, for appellant J.T. (Szaferman, Lakind, Blumstein & Blader,  
P.C., attorneys)

**Charles R.G. Simmons, Esq.**, for respondent Trenton Police Department  
(Simmons Law, L.L.C., attorneys)

Record Closed: March 1, 2023

Decided: May 25, 2023

**BEFORE JUDITH LIEBERMAN, ALJ:**

**STATEMENT OF THE CASE**

Appellant, J.T., was removed from the Police Academy after a background check and psychological evaluation conducted on behalf of respondent Trenton Police Department (Department or respondent) determined that he was not suited to serve as a law enforcement officer. Appellant challenges the removal.

**BACKGROUND AND PROCEDURAL HISTORY**

Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA), removing him from the Mercer County Police Academy, on February 21, 2020. He did not request a departmental hearing. On April 15, 2020, a Final Notice of Disciplinary Action (FNDA) was issued, terminating appellant's employment effective that day. The removal was based upon a determination that he violated N.J.S.A. 40A:14-147 and N.J.A.C. 4A:2-2.3(a)(3), inability to perform his duties, N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and Departmental rules and regulations. Appellant filed a timely appeal, and the matter was transmitted to the Office of Administrative Law (OAL) on June 23, 2020, for hearing as a contested case.

The first status conference call was scheduled for August 11, 2020. Appellant's counsel did not appear for that call. During the next scheduled status conference, September 3, 2020, the parties advised that discovery, which they anticipated would include expert reports, had not been exchanged. They were instructed to commence discovery immediately. The third status conference was scheduled for October 27, 2020. During that conference, both parties advised that discovery had not been finalized. Counsel represented that they would complete discovery and be prepared to proceed with the hearing in March 2021. Based upon counsel's representations, the hearing was scheduled for March 8 and March 10, 2021.

During a January 26, 2021, pre-hearing status conference, respondent advised it had not received responses to its November 10, 2020, discovery requests and appellant had not propounded discovery requests. Appellant advised that discovery could not be completed without the assistance of a staff member who was quarantined due to COVID-19. Neither party requested an adjournment of the scheduled hearing dates.

On February 3, 2021, a letter order, concerning the procedures specific to hearings conducted by way of remote video technology, was issued to the parties. Among other procedures, it required that the parties deliver all exhibits they intended to rely upon during the hearing to the OAL no later than seven business days prior to the first scheduled

hearing date. They were to also provide, by email, a list of all witnesses and their email addresses, no later than five business days prior to the first hearing date.

On February 24, 2021, eight business days prior to the March 8, 2021, hearing date, respondent delivered to the OAL and served upon appellant its exhibits and identified the witnesses it intended to present during the hearing. On March 3, 2021, respondent advised that appellant did not provide respondent with the exhibits and witness list for the upcoming hearing. Respondent also advised that appellant did not respond to its November 10, 2020, discovery requests or issue discovery requests of its own. Respondent requested that appellant be barred from submitting any evidence during the hearing, given appellant's failure to provide discovery, and that the matter be heard as a summary decision motion.

On March 3, 2021, appellant requested an adjournment of the scheduled hearing dates to permit him to obtain an expert report. He advised that his expert was unable to complete an evaluation, and, thus, prepare a report, because appellant contracted COVID-19.

A status conference was convened on March 5, 2021. During the conference, appellant acknowledged that his responses to respondent's discovery were "delinquent." He represented that he was unable to fully respond to respondent's discovery requests without his expert's report and that the expert would be able to conduct the overdue evaluation on March 16, 2021. He further represented that the report and all other outstanding discovery would be issued no later than April 19, 2021, which was forty-five days after March 5, 2021.

During the March 5, 2021, status conference, I issued an oral order that was reduced to writing in a March 18, 2021, letter order, which provided:

I **ORDER** that the discovery deadline established in this matter has been extended to permit appellant to respond to respondent's discovery requests. Appellant shall produce all outstanding discovery, including any and all expert reports, no

later than April 19, 2021. No further extensions will be granted and appellant will be subject to sanctions pursuant to N.J.A.C. 1:1-10.5 for failure to comply with this Order. The status of appellant's compliance with [the Order will] be evaluated during an April 27, 2021, status conference. If appellant has produced discovery, respondent will be afforded time to respond to that discovery.

A status conference was conducted on April 27, 2021. Appellant advised that he responded to respondent's discovery requests by email that day. However, he had not produced his expert's report because the expert needed more time. The specific date by which it would be produced was not known at the time of the status conference. Appellant also advised for the first time that he needed to request additional documents from respondent. He asked that discovery be reopened to permit him to request these materials. Respondent advised that appellant's discovery responses were received that morning and that appellant had not previously requested the documents that he indicated he needed.

At the close of the April 27, 2021, status conference, appellant was directed to submit a letter detailing the basis for his request to reopen discovery and providing an explanation for his failure to comply with the March 5, 2020, order. His submission was due by May 4, 2021. Respondent was permitted to submit a response by May 11, 2021.

Appellant did not submit a letter or otherwise communicate with the OAL by May 4, 2021. On May 6, 2021, he submitted a letter which provided "written confirmation" of his request to reopen discovery to permit submission of his expert report and to allow him to request additional discovery from respondent. In support of his request, he asserted that he anticipated receiving his expert's report "within the next several weeks" and reasserted his need for documents referenced by a witness in a previously produced document. He requested an additional thirty days for the "completion of discovery." On May 12, 2021, respondent replied, objecting to appellant's request for leave to conduct additional discovery and produce an expert report. Respondent noted that appellant's responses to respondent's November 10, 2020, discovery request, which were produced on April 27, 2021, were incomplete.

On May 13, 2021, I ordered that, as a result of appellant's failure to comply with requests and orders for discovery, no further extensions of the deadline for submission of appellant's expert report or additional discovery requests would be permitted. As such, no further discovery was permitted to be requested or exchanged and the matter was to proceed to a hearing.

The hearing was conducted on October 18, 2022, October 21, 2022, and November 2, 2022. The record remained open for the parties to submit post-hearing briefs. All briefs were received by March 1, 2023<sup>1</sup>, and the record closed that day. An extension of time for this initial decision was granted on April 5, 2023.

### **FACTUAL DISCUSSION AND FINDINGS**

The following is undisputed. I therefore **FIND** it as **FACT**:

1. Appellant was a Mercer County Police Academy (Academy) recruit in 2018. At that time, he was subject to a screening process that included a September 2018 background check that was conducted by Department personnel, and a psychological evaluation that was conducted by Dr. Rachel Safran on September 7, 2018.
2. On October 23, 2018, appellant was advised in writing that he failed to complete a physical training session and that this was the sixteenth time he failed to fully participate in physical training session. Appellant received and signed the written notice. R-7.
3. Appellant was unable to complete the Academy training program because he did not fully participate in eighty percent of the physical training sessions. R-8.

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<sup>1</sup> Appellant sought and received an extension of time to file his brief.

4. On October 23, 2018, the Department of Law and Public Safety, Division of Criminal Justice, Police Training Commission, issued a Dismissal Notice, given appellant's failure to satisfy training requirements. Petitioner received but refused to sign the dismissal notice. Ibid.
5. Petitioner was suspended without pay indefinitely and, on October 26, 2018, a PNDA, seeking his removal pursuant to N.J.A.C. 4A;2-2.3(a)3, inability to perform duties and conduct unbecoming a public employee, was filed. R-9, R-10.
6. A hearing was conducted, and the matter was ultimately settled.<sup>2</sup>
7. Petitioner was permitted to reapply to the Academy. He was required to reapply as a new recruit to the Academy. R-12. Appellant withdrew an appeal that was pending before the OAL. Ibid.
8. On February 11, 2020, Detective Porsche Ames conducted an Internal Affairs background investigation of appellant. Det. Ames recommended that appellant should be disqualified from eligibility for appointment as a police officer. R-14.
9. Guillermo Gallegos, Ph.D., of the Institute of Forensic Psychology (IFP), conducted a psychological examination of petitioner and issued a February 13, 2020, report. R-15. Dr. Gallegos identified concerns about appellant's integrity and judgment and wrote that he "demonstrated that he is unreliable and untrustworthy." Id. at 8. Test results indicated that petitioner was ill suited to serve as a police officer. Dr. Gallegos wrote that, based upon the

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<sup>2</sup> At the close of the hearing, the parties agreed to stipulate to the settlement in order to flesh out the procedural history predating this matter. The settlement agreement was not offered into evidence during the hearing and is not part of the record. Exhibit R-11, an audio recording of a November 7, 2018, departmental hearing concerning the disciplinary charge against appellant and of a settlement agreement, was not entered into evidence, nor was R-13, correspondence between counsel concerning the agreement. In their briefs, the parties referenced the post-hearing exchange of a document setting forth the terms of the settlement agreement. They appear to disagree about the status of their exchange. Appellant objects to the inclusion of the terms of the agreement in the record. As a stipulation has not been submitted, the terms of the settlement agreement have not been produced and are not included in the record.



concerns he enumerated in his report, petitioner “is not recommended for appointment as a police officer.” Id. at 9.

10. On April 15, 2020, respondent issued a FNDA in which it removed appellant from his position of police recruit based upon the following violations:

- Charges one and three: N.J.S.A. 40A:14-147, incapacity, N.J.A.C. 4A:2-2.3(a)3, inability to perform duties, and Department Rule 3:1.16, physical and mental fitness for duty, because he “failed to pass and complete the required Police Training Commission physical fitness requirement and was dismissed from the Mercer County Police Academy, rendering him ineligible to work as a police officer.” R-1.
- Charges two and four: N.J.S.A. 40A:14-147, incapacity, N.J.A.C. 4A:2-2.3(a)3, inability to perform duties, and Department Rule 3:1.16, physical and mental fitness for duty, because he was found, after a psychological evaluation, to not be fit for duty. Ibid.
- Charge five: N.J.S.A. 40A:14-147, misconduct, N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee and Department Rule 3:13:5, truthfulness, because, “[i]n the course of the pre-evaluation paperwork and during the [psychological] evaluation, [he] did not meet his duty of truthfulness when he failed to disclose material information concerning his employment background and legal/criminal background.” Ibid. This charge applied to information appellant failed to disclose to Dr. Gallegos and Dr. Safran and was further based upon a finding that he provided inconsistent information to the two doctors. Ibid.

11. Appellant had not requested a Departmental hearing to contest these charges. Ibid.

## Testimony

The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence that I found relevant to the above-described issues.

### For respondent

**Detective Porsche Ames** has been a detective with the Trenton Police Department since 2013 and has been assigned to its Internal Affairs Unit for five years. By February 2020, she had conducted approximately 100 background check investigations. It is standard policy that an additional background check must be conducted if time has passed since the original check was conducted. This is because new facts could have developed during that time, such as financial troubles or arrests. This policy is applied to officers who successfully passed the Police Academy and worked for another police department. If the officer later wanted to work as an officer for the Trenton Police Department, a new background check investigation would be required.

Det. Ames initiates her investigation by reviewing the candidate's application and meeting with him or her. She contacts the local and neighboring jurisdictions for domestic, financial, criminal, juvenile, motor vehicle and related records and questions the applicant about any discovered information. Failure to report any of this information on an application results in automatic disqualification. She also contacts an applicant's prior employers to gather information about their prior jobs and work history. A urine test and physical and psychological examinations are conducted. If the candidate passes all of these steps, he or she will be interviewed by the Police Director and a panel of captains and lieutenants. This process must be completed before the candidate can enter the Police Academy, at which time candidate becomes a police officer recruit employee of the Trenton Police Department.

Then-Sergeant Ponticiello assigned Det. Ames to conduct appellant's background check investigation. Lieutenant Peter Szpakowski was, at that time, the Internal Affairs Lieutenant. Det. Ames reviewed appellant's 2018 background check report, which was

prepared by Det. Jason Snyder, when she conducted her investigation. R-26. Protocol required her to reference the prior report in her report.

Det. Ames examined appellant's credit report to determine if he owed any debts. She discovered judgements against appellant, which were related to a civil suit. They were relevant evidence of his financial circumstances. R-14 at 2. An adverse financial report would not necessarily disqualify an applicant but could "knock you down a tier if you have a large amount of debt." T2 58:6-7. The judgements against appellant were not included in the 2018 background investigation report. Rather, Det. Snyder wrote only about \$74,000 of debt, most of which was college loans. R-26 at 5.

Appellant had been in the pretrial intervention program (PTI). The Mercer County Probation Office advised Det. Ames that appellant did not satisfy the terms of his PTI. His PTI was still pending because "it was an unsuccessful discharge due to him not finish[ing] paying the amount of money that was owed to the victim for restitution." T2 46:17-19. This information was not included in the 2018 background investigation report. It was relevant that appellant was still considered to be on probation and had a probation officer. Trenton Police Hiring Standards prohibit hiring anyone who is currently on probation.

The 2018 report also did not reference an August 23, 2017, incident that was reported by the Morrisville, Pennsylvania Police Department. The police were involved in an altercation between appellant and a convenience store attendant because appellant refused to pay for lottery tickets. Similarly, the 2018 report did not reference an August 3, 2018, verbal altercation that was reported to Det. Ames by the Ewing Police Department. R-26.

With respect to driving history, it is relevant if a candidate has two or more moving violations within a five-year period. Using appellant's driver's abstract, Det. Ames found that he had more than two violations in a five-year period. Also, his license was suspended seven times. This is relevant because the Department "would like to see if [a candidate] can maintain a decent driver record because . . . the majority of the time [they]

will be operating a police vehicle.” T2 56:14–18. Appellant’s driving record did not automatically lead to disqualification but impacted his overall rating.

Det. Ames highlighted that appellant was arrested three times, May 6, 2009, September 3, 2009 and April 1, 2011. The latter involved issuance of a “hand summons” which the Trenton Police Department considers an arrest even if it does not involve being booked and processed at the police station. Det. Ames noted that arrests are relevant because they could lead to indictments and “could end up being felony charges[.]” T2 61:8–9. However, arrests alone are not disqualifying. Appellant’s arrests were not considered to have involved criminal acts; this is why the report indicates that he had no criminal history. The report referenced an indictment for the criminal charge of receiving stolen property, which occurred on September 3, 2009, and for which appellant received PTI. R-14 at 8. The indictment was not referenced in the 2018 background investigation report. R-26 at 3.

Det. Ames concluded that appellant was disqualified from eligibility. She cited the following:

- Seven suspensions of his driver’s license.<sup>3</sup>
- Failure to satisfy the court-ordered terms of his PTI.
- Appellant did not document his college or institution information on his 2020 application but did so on his 2018 application.
- Appellant did not disclose that he had a motorcycle license on his 2020 application; however, on his 2018 application, he stated that he had a motorcycle license that would expire October 30, 2020.
- For the two applications, he provided different reasons for having been denied insurance.
- Appellant did not list any references on his 2020 application.

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<sup>3</sup> She wrote in her report that Trenton Police Department Hiring Standards for police officers, Section VI, Subsection A2b, provided that “more than two driver license suspensions occurring beyond the two years will be cause for disqualification.” R-14 at 8.

- Appellant did not document his employment with Residential Family Support, from which he was terminated in August 2014. He disclosed this on his 2018 application.
- Appellant represented that he was never discharged or terminated from his employment.
- Appellant did not disclose any of his debts.
- Appellant represented that he had never been arrested, detailed or charged with any crimes including traffic tickets.

[R-14 at 7–8.]

Det. Ames spoke with appellant over the phone and questioned him about some of the discrepancies she identified. He denied some and stated that he did not believe he needed to complete the terms of his PTI, including restitution, because the woman involved had died.

On cross-examination, Det. Ames acknowledged that all of the reports of appellant's interactions with police departments that she listed in her report occurred prior to the date of Det. Snyder's 2018 report. This information should have been available to Det. Snyder, who communicated with the same municipalities as she did. Det. Ames considered the information to be equivalent to a "new event" because it was not reported earlier. She also acknowledged that she and Det. Snyder concluded that appellant did not have a criminal history. She further acknowledged that she did not reference a September 3, 2009, motorcycle crash for which appellant received a summons for careless driving. This was included in Det. Snyder's report. She did not know why it was omitted from her report.

Det. Ames was asked to explain the Department's policy concerning motor vehicle suspensions. She referenced her report in which she wrote that a candidate will be disqualified if he or she has more than two suspensions "occurring beyond the two years[.]" This meant during the years preceding two years prior to the investigation, which in her case was February 2018. Appellant's driver's license was suspended seven times

prior to February 2018. R-14 at 6. At the time of her investigation, his license was in good standing.

Det. Ames agreed that most of the incidents she reported occurred prior to the time of Det. Snyder's report and, also, that Det. Snyder reported on the events that led to appellant entering PTI. However, he should have noted appellant's active PTI. However, Det. Ames discovered that appellant had not completed PTI and his status in PTI remained current. She clarified that "no criminal history" means that he had no felonies. It does not mean that he was not arrested, charged or in PTI. Also, Det. Snyder did not report on the August 2017, encounter with Morrisville, Pennsylvania police.

Det. Ames clarified that she was required to review appellant's entire background when she conducted her investigation. She did not limit her search to only the period beginning September 2018. She was required to make her assessment based upon all of the information she gathered.

**Lieutenant Gaetano Ponticiello** is the Internal Affairs Commander for the Trenton Police Department. He explained that background checks are conducted after breaks in service, even if the subject of the investigation previously served as a police officer. If a former Academy recruit was permitted to reapply to the Academy after a break in service, he would be subject to a background check conducted by a detective, in the same manner as any new Academy recruit. A new background check would be required even though he had been subjected to a background check as recently as six months prior. This is because new incidents, such as motor vehicle violations or criminal activity, could have occurred in the interim. This policy has been applied to a Department officer who left to work for a different police department and returned to the Department three months later. The new background check would include a urinalysis and psychological and physical evaluations. The original background check would be reviewed in conjunction with the new background check.

This policy was applied to appellant. He was required to undergo a new background check because his original background check was conducted in September 2018. A new background check was required eighteen months later because a "lot can

happen in a year” and, given the amount of time that passed, the 2018 background check was no longer “valid.” T1 35:22; T1 54:16–19.

Det. Ames conducted appellant’s background check and prepared a February 11, 2020, report. R-14. Lt. Ponticiello was Ames’ immediate supervisor, and he reviewed her report. He forwarded it to Lt. Szpakowski.

Based upon her background check findings, Ames recommended that petitioner was disqualified<sup>4</sup> from becoming a police officer. Lt. Ponticiello agreed with her finding because petitioner was enrolled in the PTI program but had not successfully completed the program; he did not disclose liens and judgements on his original application and his motor vehicle license had been suspended seven times. Appellant was ineligible to serve as an officer based upon the findings of Ames’ background check, regardless of the outcome of the psychological examination. Despite this, petitioner was referred for a psychological evaluation.

Dr. Gallegos’ report was sent to Lt. Ponticiello. R-15. Based on the report, petitioner was “disqualified from the background investigation” and the Department sought to remove him from employment. T1 45:13–14.

Lt. Ponticiello noted that a background investigation could possibly omit information. He also noted that Gallegos’ report stated that it was valid for one year from the date of examination. R-15. This was consistent with other IFP reports. Thus, appellant’s 2018 IFP report could not be relied upon in 2020.

On cross-examination, Lt. Ponticiello acknowledged that Detective Jason Snyder utilized the same process as Det. Ames when he conducted appellant’s September 2018, background investigation. Det. Snyder recommended appellant for employment as a police recruit and appellant passed the IFP examination.

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<sup>4</sup> “Category IV” indicated disqualification.

Referring to the 2020 background check report, Lt. Ponticiello explained that Det. Ames conducted a search using the Trenton Police Department's Computer Aid Dispatcher System (CAD), which reported all calls to the Department for service. Det. Ames also contacted sixteen neighboring municipalities, four of which had information concerning appellant. R-14 at 3. Det. Ames listed the following findings, which Det. Snyder should have identified in 2018:

- May 8, 2009, appellant was arrested.
- June 24, 2009, appellant was listed in a police information report regarding a house party for which he was hired to work as a security guard.
- A civil judgment was entered against appellant on January 29, 2014, and March 28, 2014.
- July 27, 2012, appellant was identified in connection with a party involving juveniles that did not have proper security.
- September 3, 2019, appellant was charged with motor vehicle offenses and receiving stolen property.
- January 21, 2010, appellant was indicted for receiving stolen property (following the above-referenced charge).
- After the indictment, appellant entered the PTI program and was required to pay all fines and restitution and serve community service. Because he did not pay full restitution, he did not satisfy the terms of PTI. The criminal charges were not discharged and are still pending, and appellant remains subject to a judgment for the unpaid restitution. Lt. Ponticiello explained that the underlying charges remain in place if PTI is not completed.
- April 1, 2011, appellant was issued a summons for excessive noise.
- March 8, 2016, a police department created a report concerning appellant allegedly harassing a former girlfriend.



- August 23, 2017, appellant was involved in a verbal dispute with a store attendant over lottery tickets.
- August 3, 2018, appellant was involved in a verbal altercation with a store attendant about the charge for items he purchased.

[R-14 at 2–4.]

Det. Ames reported that, as of the date of her report, appellant's New Jersey driver's license had been suspended seven times. All the suspensions occurred prior to the date of Det. Snyder's report and the last suspension ended September 26, 2013. Id. at 6. He, thus, should have also identified this information.

Det. Ames listed twenty-eight summonses for motor vehicle infractions between June 25, 2008, and January 23, 2020. All but two, which were issued on March 26, 2019, and January 23, 2020, were issued prior to the date of Det. Snyder's report. Id. at 5–6. Thus, this is the only new information that Det. Ames found with respect to motor vehicle activity.

**Dr. Guillermo Gallegos** is a clinical psychologist who worked for IFP as an independent contractor until he retired in January 2021. He worked for the company for twenty years, during which he evaluated candidates for law enforcement positions as well as appointed officers. Pre-employment candidate screening is intended to identify those individuals who are inappropriate for law enforcement positions.

Dr. Gallegos evaluated appellant on February 12, 2020, and prepared a report. R-15. He was provided a file which included Det. Ames' background investigation report.<sup>5</sup> His examination was intended to determine the "presence, if any, of emotional or intellectual characteristics that would detrimentally affect [appellant's] performance in the role of police officer." Id. at 1. The testing assessed his "intellectual level, judgment, motivation for the position sought, team orientation, acceptance of supervision, and the presence of psychological problems, if any." Id. at 2. He distinguished this review from

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<sup>5</sup> Handwritten notations on the report, with the exception of a numerical calculation on page six, are his. R-14.

that of fitness evaluations of appointed officers, which requires a determination whether the officer suffers from a physical or psychological condition that may interfere with the performance of his job. The report is valid for only one year from the date of examination because it has been determined generally that there could be changed circumstances that could warrant reexamination.

Dr. Gallegos administered the following tests:

- Candidate and Officer Personnel Survey – Revised (COPS-R) (R-19, R-20.)
- Personality Assessment Inventory (PAI) (R-21.)
- Speed Completion Form – Sentence Completion Test (R-22.)
- Biographical Summary Form (R-17.)
- Sexual History Questionnaire (SHQ) (R-18.)

[Ibid.]

Dr. Gallegos completed an Interviewer's Report Form after the testing and questionnaires were completed. R-16. He did not administer two cognitive tests, Wonderlic Personnel Test and Beta-4, which were administered in 2018 by Dr. Safran. Appellant scored below average on the former test and his score on the latter test was "indicative of low average intellectual functioning." Ibid. He determined that they were not necessary because "intelligence" is "more stable at that age" and the amount of time that had elapsed since the tests were administered was not long enough to warrant retesting. T1 116:19–20. He incorporated the results of the Wonderlic and Beta-4 tests that Dr. Safran administered.

Dr. Gallegos reviewed Dr. Safran's September 28, 2018, report of her pre-employment psychological evaluation of appellant. R-2. He did not recall if he had or reviewed appellant's entire 2018 file. He "probably" did not review appellant's 2018 biographical summary form. R-4.

Dr. Gallegos was required to reevaluate appellant due to the amount of time that had passed since Dr. Safran issued her report. Circumstances, such as arrests, terminations or significant life events, could have occurred in the interim and impacted appellant. He did not form an opinion concerning the correctness of Dr. Safran's findings and his evaluation was independent of hers. He did not have a predetermined, anticipated or desired outcome for his evaluation.

Dr. Gallegos wrote in his report that he had the benefit of the Department's background report and that it was "clear that Dr. Safran did not have the benefit of a complete background report from the Department." R-15 at 8. He noted that appellant's statements about the same event, which he made to Dr. Gallegos, Dr. Safran and the police investigator, were inconsistent. Dr. Gallegos noted the following in his report:

- While appellant wrote on his Biographical Summary Form that he was fired by two prior employers, he did not disclose one of the incidents when he was questioned about his work history. Id. at 3.
- Appellant reported only one termination to Dr. Safran. Both terminations occurred prior to her evaluation of appellant. Appellant provided inconsistent reasons for the termination to Dr. Safran and Dr. Gallegos. Id. at 3–4.
- Appellant told Dr. Gallegos, during his interview, that he was never arrested and that he completed PTI. When asked about a report that indicated he had not completed PTI, he replied, "That's not true." Id. at 4. He also did not disclose that he was arrested on May 6, 2009. Id. at 5.
- Appellant's explanation about the incident that led to him being charged with stolen property "greatly differs from that in the [Department] background investigation." Id. at 8.
- He provided inaccurate information about the number of judgements and liens against him as well as incidents that resulted in his name being included in a police report. Id. at 5.
- He told Dr. Gallegos that his motor vehicle license was suspended twice; however, he told Dr. Safran that his license had been suspended seven times. Id. at 6.

- He reported to Dr. Gallegos that he received five motor vehicle summons and told Dr. Safran that he received fewer than five summons. However, he was issued twenty-eight motor vehicle summons since 2008. Ibid.
- He told Dr. Gallegos that he attended college from 2006 through 2008 and earned sixteen credits. He told Dr. Safran that he earned thirty-seven credits from the same college and that he attended another college from 2007 through 2008. Id. at 7.
- He told Dr. Gallegos that he never had a serious illness or injury; however, he told Dr. Safran that he sustained a concussion in 2005 and had been prescribed medication for hypertension. Id. at 7–8.
- When asked about his financial status, appellant reported that he had a “decent” or “fair” credit rating but did not reference the judgments that were still pending against him. Id. at 8.

Appellant’s inconsistent explanations about his past terminations from employment were significant. While it is possible that he was merely mistaken, there were other areas in which he was not forthcoming. Dr. Gallegos wrote in his report:

Overall, this candidate has demonstrated that he is unreliable and untrustworthy. More specifically, in his evaluation with Dr. Safran in 2018, [he] reported having been fired only once (i.e., Triad House in 2013) and he asserted that this was for allowing a child into his office, which was against the agency's regulations. In the present examination, he asserted that the reason for termination was for attendance; he made no mention of his policy violation. Moreover, he did not report in his 2018 evaluation that he was fired from Clinton House for having an inmate escape during his watch. Likewise, his version of events that led him to be charged with possession of stolen property greatly differs from that in the background investigation. Other discrepancies were found between the candidate's background report in the current examination and prior sources of information. Furthermore, background states that there were also several discrepancies and omissions on his police candidate application when compared with his application in 2018; this included discrepancies about his job, history, legal history, motor vehicle record and college information.

[Ibid.]

The results of the tests administered by Dr. Gallegos did not support appellant's candidacy. On the COPS-R, which measured his "overall prediction for success as a public safety" officer, he scored sixty-five, which is a "high risk level." Id. at 9. He also scored in the "high risk level for having potential issues with relations with public," "rules compliance" and "acceptance of supervision." Ibid. He scored low in the categories of "success," "social adjustment," "motivation" and "self-discipline." Ibid. He scored high in the categories of "antisocial activities," "depression," "impulsivity," "lack of integrity," "poor life management," "negative work attitudes," "opinionated" and "paranoid orientation." Ibid. Other test results were also concerning:

- PAI: 90<sup>th</sup> percentile for "the probability of being rated a 'poorly suited' applicant by psychologists with expertise in public safety screening" and 93<sup>rd</sup> percentile for "the probability of having background problems related to anger management." Ibid.
- Aggression-Physical Aggression Subscale: "severe elevation." Ibid. This "suggests that he is (1) prone to physical displays of anger, including damage to property, physical fights and threats of violence, and (2) likely to

intimidate others around him with his temper and potential for violence when compared to the typical applicant for a similar public safety position.” Ibid.

Dr. Gallegos clarified that he relied upon the testing he conducted in 2020 and not the testing performed in 2018. Based upon these findings, Dr. Gallegos did not recommend appellant for appointment as a police officer. Ibid.

The inconsistencies and omissions, including not acknowledging all of his license suspensions and that he did not complete PTI, were relevant because they indicated a lesser degree of respect for the law and willingness to accept responsibility for his actions. Dr. Gallegos concluded that appellant “presented with derogatory information in every area of functioning; however, he either minimized or omitted information that he may have perceived as detrimental to his objective of becoming a police officer.” Ibid.

Dr. Gallegos acknowledged that arrests are not the same as convictions. They are, however, still relevant. On cross-examination, he was asked whether he understood that appellant does not have a criminal history. He replied, “Well, that depends on how you understand that. To me, when somebody is found guilty of receiving stolen property, which is a crime, . . . that’s a criminal history.” T1 183:14–17. Dr. Gallegos also acknowledged that the incidents referenced Det. Ames’ background investigation report predated appellant having been hired by the Department in 2018. One incident, involving a motor vehicle summons, occurred after Dr. Safran’s report. However, appellant’s account of his history to the two doctors was significantly different.

#### Document Review

A review of Det. Snyder’s September 5, 2018, background investigation report revealed the following:

- Det. Snyder reported appellant was charged with receiving stolen property and that the matter was transferred to municipal court. However, he “could not find what [the charge] had been downgraded to” and the “only

information [he] could find is that [appellant] ultimately paid a fine of \$125." R-26 at 3. There is no reference to appellant's enrollment in PTI.

- The 2018 report did not reference the August 23, 2017, incident that was reported by the Morrisville, Pennsylvania Police Department, or the August 3, 2018, incident that was reported by the Ewing Police Department.
- Det. Snyder contacted appellant's former employers, Carrier Clinic, in an effort to interview staff there about appellant's employment history. He had not spoken with Carrier Clinic staff at the time he issued his report. Id. at 4-5.
- Det. Snyder reported that appellant worked for LifeTies Triad House, a youth crisis and guidance center, from January 2013 to September 2014. He did not provide information about appellant's performance there or why his employment ended.
- Under the heading "Credit History," there is no reference to outstanding restitution owed in conjunction with the terms of his PTI or civil judgments. Id. at 5.

Appellant completed Biographical Summary Forms in 2018, for Dr. Safran, and in 2020, for Dr. Gallegos. He was required to "list all employers," the dates of his employment and the reason he left the job, in addition to other information. R-4, R-17 (emphasis in original). He listed the following employers in 2018:

Carrier Clinic September 2013 – present

LifeTies Triad House March 2012–November 2013 Left for new job

Halfway House June 2010 – March 2011 Fired

[R-4.]

He listed the following employers in 2020:

Trenton Police Department September 2018–October 2018  
Dismissed

Carrier Clinic September 2013 – September 2018 Resigned

Triad House November 2011 – August 2013 Fired

Clinton House August 2010 – November 2012 Fired

Boys and Girls Club September 2009 – June 2010 School  
ended

Capitol Prep High School September 2009 – June 2010  
School ended

KB Toy Store October 2005 – June 2007 Closed down

[R-17.]

Appellant was asked to list all colleges, universities and graduate schools he attended, the dates he attended the schools, his major, grade point average and any degrees he earned. In 2018, he wrote that he attended Saint Paul's College from August 2006 to May 2007; he majored in criminal justice and earned a 2.7 grade point average. He also wrote that he attended Mercer College from August 2007 to May 2008, and that he majored in criminal justice and did not earn a grade point average. R-4. In 2020, he wrote that he attended Saint Paul's College and did not list the dates he attended. He wrote "criminal justice/2.75." R-17.

Dr. Safran wrote in her September 28, 2018, report that appellant told her that he was fired by LifeTies Triad House. R-2 at 3. He explained that he was fired because it was believed that he allowed child into the office, which he denied. Ibid. Dr. Safran noted that appellant worked for Carrier Clinic and Clinton House, she did not write about his performance at those jobs. She wrote that he was terminated only once. Id. at 5. She referenced his having purchased a stolen motorcycle in 2009 but nothing further concerning legal outcomes. Ibid.



Dr. Gallegos wrote that appellant told him that he was twice terminated from his employment: by Clinton House in 2012 after "an inmate escaped on his watch" and from Triad House in 2013 for "attendance issues." R-15 at 3.

### **Additional Factual Findings**

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "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." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. 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).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the witnesses during the hearing. Det. Ames testified clearly and professionally. She demonstrated a comprehensive understanding of her role as investigator and the goal to be accomplished by conducting background checks of police recruits. She was thoughtful and thorough as she explained the process she followed, her factual findings and her analysis of her findings. For all of these reasons, I find her testimony to be credible.

Lt. Ponticiello also testified clearly and professionally about the Department's procedures and policies governing background checks and how appellant's background check was conducted. I find his testimony to be credible.

With respect to Dr. Gallegos' testimony, it is well-settled that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation

omitted). In this regard, it is within the province of the finder of facts to determine the credibility, weight and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied, 127 N.J. 321 (1990); Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), modified on other grounds and remanded, 125 N.J. 421 (1991). "The testimonial and experiential weaknesses of the witness, such as (1) his status as a general practitioner, testifying as to a specialty, or (2) the fact that his conclusions are based largely on the subjective complaints of the patient or on a cursory examination, may be exposed by the usual methods of cross-examination." Angel v. Rand Exp. Lines, 66 N.J. Super. 77, 86 (App. Div. 1961). Other factors to consider include whether the expert's opinion finds support in the records from other physicians, and the information upon which the expert has based his conclusions. And the premises upon which the expert's observations are based, coupled with the expert's ultimate conclusions, may be contradicted by rebuttal experts and other evidence of the opposing party. Ibid.

Appellant argues that Dr. Gallegos issued a net opinion. Expert testimony shall be supported by a factual foundation. Vuocolo v. Diamond Shamrock Chemicals Co., 240 N.J. Super. 289, 300 (App. Div. 1990); Buckelew v. Grossbard, 87 N.J. 512, 524 (1981). The net opinion rule requires an expert witness to "give the why and wherefore of his expert opinion, not just a mere conclusion." State v. One Marlin Rifle, 319 N.J. Super. 359 (App. Div. 1999) (citation omitted). See also N.J.A.C. 1:1-15.9(b).

Dr. Gallegos thoroughly explained the facts and findings that were the foundation of his opinion. He detailed his analysis in his comprehensive report. In addition to referring to Det. Ames' report, he conducted an independent evaluation of appellant and administered multiple tests that generated objectively measurable results. He clearly explained why he relied upon two cognitive tests that Dr. Safran administered, notwithstanding his testimony that the psychological evaluations are valid for only one year.<sup>6</sup> I find that his opinion was supported by a factual foundation and not a net opinion and that he testified credibly.

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<sup>6</sup> Dr. Gallegos appeared to have difficulty hearing the questions asked of him. However, he took sufficient time to ensure that he understood the questions and counsel also ensured that he understood. Ultimately, it was clear that Dr. Gallegos understood and answered the questions asked of him.

Before making factual findings, I must address the admissibility of evidence concerning the status of appellant's PTI enrollment. Appellant contends that Det. Ames' testimony about his failure to complete PTI is hearsay because it was based solely upon information she received from an employee of the Mercer County Probation Department who did not testify. Because respondent did not offer documentary evidence to support this assertion, it is hearsay.

Hearsay evidence is admissible in the trial of contested cases and shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, while hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1971).

Det. Ames' report, however, is admissible pursuant to N.J.R.E. 803(c)(6), which provides:

A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy. (Emphasis added)

Det. Ames reported information reported to her by a person with access to the reported information and she recorded it in a report that she was required to prepare in the regular course of Department business. There is no evidence suggesting that the report is untrustworthy. Accordingly, the report and its contents are admissible.

Having considered the testimony and documentary evidence and having had an opportunity to observe the witnesses and to assess their credibility, I **FIND** the following as **FACT**:

Appellant was required to undergo a background check as part of the routine process for vetting police recruit candidates, given the amount of time that elapsed since his prior background check. This policy applies to all candidates and previously employed officers. There is no evidence in the record that suggests appellant was entitled to be treated as other than a new recruit. While the parties referenced a settlement agreement that apparently permitted him to reapply for admission to the Police Academy, there is neither testimony nor documentary evidence that indicates that the Department waived the background check requirement. There is also no evidence in the record indicating that the Department was limited to considering only new facts, events or incidents that arose after the first background check.

Psychological tests that were administered as part of the background check indicated that appellant was poorly suited to serve as a police officer. The tests indicated that appellant was at "high risk" of not succeeding as an officer and potentially having negative relations with members of the public. He also scored poorly with respect to compliance with rules, acceptance of supervision, motivation and self-discipline. The tests also indicated personality traits that were contrary to success as a police officer, including anger management; that he was prone to physical displays of anger and threats of violence; he was likely to intimidate others around him with his temper and potential for violence when compared to the typical applicant for a similar public safety position.

Appellant did not satisfy the terms of his PTI enrollment. Consequently, the criminal charges that were the subject of PTI remained in place and he still had a probation officer. Det. Snyder was unaware of this when he prepared his report.

Appellant did not consistently report his work history to the officers and psychologists who participated in the 2018 and 2020 background checks. Det. Snyder

did not communicate with appellant's employers prior to completing his report and did not report on the circumstances in which his prior jobs ended.

For the above reasons, appellant was deemed not fit to serve as a police officer. Because he was deemed to be not fit, he was ineligible to serve as a police officer.

### Parties' Arguments

Respondent argues that it correctly required appellant to undergo a second background check; that the second background check was more thorough than the first and that appellant's dismissal was appropriate because he failed that background check. It also argues that "both charges for inability to perform duties<sup>7</sup> should be sustained as [appellant] failed to meet the physical requirements of the Academy in 2018 and failed to pass the background investigation and psychological evaluation in 2020." Resp. Brf. at 9. Further, the charges of conduct unbecoming a public employee and misconduct are supported by the evidence that appellant "was untruthful either through affirmative statements or omissions during his background check investigation process." Id. at 10.

Appellant argues that the purpose of the second background check investigation was to determine if anything of concern occurred after the 2018 background check. He asserts that Det. Ames cited only information that was "available to and reviewed by" Det. Snyder. Thus, "there were no new events that occurred that would disqualify [appellant] for the position of police recruit." App. Brf. at 5. He also argues that there is no competent evidence that he did not complete the terms of his PTI, as respondent relies only upon hearsay evidence, and that Det. Snyder found instead that the underlying matter was "disposed of" when it was downgraded to municipal court. Id. at 7-8. He further questions the reliability of Det. Ames' findings and conclusions. Finally, he argues that Dr. Gallegos' report methodology was flawed and that he issued a net opinion because he relied upon two tests conducted by Dr. Safran, despite his assertion that a new psychological evaluation was required due to the passage of time, and because he relied upon Det. Ames' flawed report. Id. at 18.

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<sup>7</sup> As well as the charges of violation of section 3:1.16 of the Department's rules and regulations. Ibid.

## LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to N.J.S.A. 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. 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. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined are whether the employee is guilty of the charges and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

An appointing authority may discipline an employee for, among other causes, an inability to perform duties. N.J.A.C. 4A:2-2.3(a)(3). Respondent bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In this matter, respondent terminated appellant's employment predicated on his inability to perform duties, stemming from his failure to successfully complete the training course at the Academy, and thereafter, failing both the repeated psychological fitness examination and a background check.

As a law-enforcement officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). The Appellate Division addressed this in Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966):

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.

Charges One and Three

Appellant is charged with violating N.J.S.A. 40A:14-147, incapacity, N.J.A.C. 4A:2-2.3(a)3, inability to perform duties and Department Rule 3:1.16, physical and mental fitness for duty, because he failed to pass and complete the required Police Training Commission physical fitness requirement and was dismissed from the Mercer County Police Academy, rendering him ineligible to work as a police officer. These charges relate to appellant's 2018 dismissal from the Academy. While there is no dispute that appellant failed to satisfy physical training requirements while at the Academy, the record also indicates that appellant appealed the dismissal and that the matter was later settled. The terms of the settlement, other than that which permitted him to re-enroll in the Academy, are not in the record. It has, therefore, not been established that appellant may again be subject to disciplinary action based upon the events that were the subject of the settlement agreement. For this reason, I **CONCLUDE** that respondent has not proven the charges in counts one and three by a preponderance of the evidence and the charges are **DISMISSED**.

Charges Two and Four

Charges two and four assert that appellant violated N.J.S.A. 40A:14-147, incapacity, N.J.A.C. 4A:2-2.3(a)3, inability to perform duties and Department Rule 3:1.16, physical and mental fitness for duty, because he was found, after a psychological evaluation, to not be fit for duty.

N.J.S.A. 40A:14-147 provides:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein,

except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer.

The statutory scheme governing police training dictates that successful completion of a police training course at a PTC-approved school is a mandatory prerequisite to a permanent appointment as a police officer. N.J.S.A. 52:17B-68 instructs that "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." In other words, the training laws apply to all police officers and establish a classification of temporary or probationary employment for police officers until successful completion of the mandatory program of training. Borger v. Borough of Stone Harbor, 178 N.J. Super. 296, 301-02 (Ch. Div. 1981); see N.J.S.A. 52:17B-68, -69.

It is undisputed that a police recruit must undergo a psychological evaluation as a condition of employment. Appellant was fully aware of this requirement when he again pursued appointment with respondent. Here, appellant's psychological evaluation revealed objective test results that indicated he is significantly poorly suited for the position of police officer. Appellant offered no expert testimony or evidence to counter these findings. The evaluation also revealed that appellant was not forthcoming in the same manner with the two psychologists with whom he met. This further supports Dr. Gallegos' conclusion that appellant is not suited for the position of police officer. I therefore **CONCLUDE** that that the appointing authority has demonstrated by a preponderance of the competent, relevant and credible evidence that appellant is ineligible to serve as a police officer. Accordingly, I **CONCLUDE** that the charge of a violation of N.J.S.A. 40A:14-147, incapacity, must be and is hereby **AFFIRMED**. For the same reasons, I **CONCLUDE** that the charges of violation of N.J.A.C. 4A:2-2.3(a)3, inability to perform duties, and Department Rule 3:1.16, physical and mental fitness for duty, must be and are **AFFIRMED**.



Charge Five

Appellant is charged with violation of N.J.S.A. 40A:14-147, misconduct, N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee and Department Rule 3:13:5, truthfulness, because, in the course of the pre-evaluation paperwork and during the [psychological] evaluation, he did not meet his duty of truthfulness when he failed to disclose material information concerning his employment background and legal/criminal background. This charge applied to information appellant failed to disclose to Dr. Gallegos and Dr. Safran and was further based upon a finding that he provided inconsistent information to the two doctors. Ibid.

"Conduct unbecoming a public employee," pursuant to N.J.A.C. 4A:2-2.3(a)(6), is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of a governmental unit . . . [or] which has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (citing In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (citation omitted). 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)).

Here, appellant was obligated to participate in the psychological evaluation and background check investigation in an honest and forthright manner. However, he did not disclose material information about his prior employment and his current status as a PTI enrollee. Given the high standard to which law enforcement officers are held, this failure is significant. For this reason, I **CONCLUDE** that that the appointing authority has demonstrated by a preponderance of the competent, relevant, and credible evidence that appellant violated N.J.S.A. 40A:14-147, misconduct, N.J.A.C. 4A:2-2.3(a)6, conduct

unbecoming a public employee and Department Rule 3:13:5, truthfulness. Accordingly, I **CONCLUDE** that these charges must be and are hereby **AFFIRMED**.

### PENALTY

A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, 4A:2-2.3(a). This requires a de novo review of appellant's disciplinary action. In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983).

However, the concept of progressive discipline is not absolute. 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). 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). Further, "[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).

As noted, successful completion of a police training course at a PTC-approved school is a mandatory prerequisite to a permanent appointment as a police officer. Pursuant to N.J.S.A. 52:17B-68, "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." As appellant did not successfully complete the background check prerequisite for appointment as a police officer, his removal from the position of police recruit was appropriate and is, therefore, **AFFIRMED**.

**ORDER**

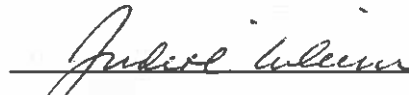
For the reasons stated above, it is hereby **ORDERED** that the action of respondent City of Trenton Police Department of dismissing appellant from his position as a Police Recruit is **AFFIRMED**.

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 25, 2023  
DATE

  
JUDITH LIEBERMAN, ALJ

Date Received at Agency: May 25, 2023

Date Mailed to Parties: May 25, 2023

JL/jm

**APPENDIX**

**WITNESSES**

**For appellant**

None

**For respondent**

Det. Porsche Ames  
Lt. Gaetano Ponticiello  
Dr. Guillermo Gallegos

**EXHIBITS**

**For appellant**

A-2 Letter, Tucker to Trimboli, September 5, 2019

**For respondent**

R-1 Final Notice of Disciplinary Action, April 15, 2020  
R-2 IFP Psychological Report, September 28, 2018  
R-3 IFP Standard Interviewer's Report Form, September 7, 2018  
R-4 Biographical Summary Form, September 7, 2018  
R-5 IFP SI-IQ Form, September 7, 2018  
R-6 IFP Informed Consent Agreement and Release, September 7, 2018  
R-7 Notice of Failure to Fully Participate, October 23, 2018  
R-8 Police Training Commission Dismissal Notice, October 23, 2018  
R-9 Preliminary Notice of Disciplinary Action, October 26, 2018  
R-10 Suspension Notice, October 25, 2018  
R-12 Notice of Academy Reinstatement, March 18, 2019  
R-14 PD Internal Affairs Background Investigation, February 11, 2020  
R-15 IFP Psychological Report, February 13, 2020  
R-16 IFP Standard Interviewer's Report Form, February 12, 2020  
R-17 Biographical Summary Form, February 12, 2020

- R-18 IFP SHQ Form, February 12, 2020
- R-19 COPS-R Personnel Report, February 12, 2020
- R-20 COPS-R Test Form, February 12, 2020
- R-21 PAI Test Form, February 12, 2020
- R-22 IFP Speed Completion Form, February 12, 2020
- R-23 IFP Informed Consent Agreement and Release, February 12, 2020
- R-24 PAI Police and Public Selection Report, February 12, 2020
- R-25 Professional Resume/CV of Dr. Guillermo Gallegos, PhD
- R-26 Background Investigation Report, September 5, 2018