



STATE OF NEW JERSEY

In the Matter of John Dadura,
Wildwood City, Department of Public
Safety and Public Affairs

CSC Docket Nos. 2022-1148 and
2022-1150
OAL Docket Nos. CSV 09818-21 and
CSV 09819-21
(Consolidated)

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: AUGUST 23, 2022

The appeals of John Dadura, Police Officer, Wildwood City, Department of Public Safety and Public Affairs, seven working day suspension¹ and 60 working day suspension on charges, were heard by Administrative Law Judge Catherine A. Tuohy (ALJ), who rendered her initial decision on July 24, 2023. Exceptions were filed on behalf of the appointing authority and a reply to exceptions 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 and reply filed by the parties, the Civil Service Commission (Commission), at its meeting on August 23, 2023, adopted the ALJ's Findings of Fact and Conclusions as contained in the initial decision. However, it did not adopt her recommendation to modify the 60 working day suspension to a 30 working day suspension. Rather, the Commission upheld the 60 working day suspension.

The Commission makes the following comments. The question in this matter is penalty. The Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior

¹ The ALJ noted that the seven working day suspension was modified to a five working day suspension by the appointing authority, thereby, taking it out of the purview of the Commission to review. As such, it will not be further addressed herein.

record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. It is settled that the theory of progressive discipline is not a “fixed and immutable rule to be followed without question.” See *Carter v. Bordentown*, 191 N.J. 474 (2007). In this regard, the Commission emphasizes that a Police 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).

The Commission agrees that the misconduct supports a significant disciplinary suspension in this matter. In her decision, the ALJ stated:

Officer Dadura has five FNDA's contained in his file, including the one at issue in this case for a sixty-day suspension, dated October 25, 2021; the seven-day suspension that was amended to a five-day suspension before this hearing started, dated October 25, 2021; a five-day suspension, dated October 25, 2021; a three-day suspension, dated October 25, 2021; and a ten-day suspension dated March 9, 2016. (R-18.) Therefore, prior to this case, Officer Dadura had four disciplinary charges, three of them minor and only one major discipline from 2016. There was also an “Employee Performance Notice”, dated March 26, 2018, for counselling contained in Officer Dadura's discipline file.

Although I have sustained all of the charges against Officer Dadura, I am not inclined to impose a sixty-working-day suspension penalty based on theories of progressive discipline since this discipline arose before Officer Dadura could receive the training anticipated to be conducted pursuant to the Personnel Order, dated March 22, 2021. This incident occurred on March 28, 2021, and resulted in the Chief ordering Officer Dadura to complete the entire Cape May Police Academy to ensure he is trained properly. The chief had testified that Officer Dadura had not initially attended the Cape May County Police Academy, and this was the way to make sure he was trained properly by their instructors.

Upon its review, the Commission disagrees with the reduction in penalty. The appellant's misconduct in this matter was troubling, especially given the fact that he has had prior disciplines for similar misconduct regarding the use of a taser, and the potential impact on public safety. While the appellant's prior disciplinary suspensions were of a lesser degree, given the repetitive nature of the misconduct, the 60 working day suspension in this matter is appropriate and should impress upon the appellant the inappropriate nature of his misconduct and serve as a warning that any future misconduct will be met with more severe discipline, up to and including removal from employment. Finally, the Commission highly recommends that the appointing authority, if it has not already done so, send the appellant to a Conductive

Energy Device training course.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore upholds the 60 working day suspension and dismisses the appeal of John Dadura.

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 23RD DAY OF AUGUST, 2023



Allison Chris Myers
Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 09818-21
and CSV 09819-21
AGENCY DKT. NOS. 2022-1148
and 2022-1150
CONSOLIDATED

**IN THE MATTER OF JOHN DADURA,
CITY OF WILDWOOD, DEPARTMENT
OF PUBLIC SAFETY AND PUBLIC AFFAIRS.**

Christopher Ross, Esq., for appellant John Dadura (The Vigilante Law Firm, P.C.,
attorneys)

Alicia D'Anella, Esq., for respondent City of Wildwood, Department of Public
Safety and Public Affairs (Parker McCay, P.A., attorneys)

Record Closed: June 20, 2023

Decided: July 24, 2023

BEFORE CATHERINE A. TUOHY, ALJ:

STATEMENT OF THE CASE

Final Notice of Disciplinary Action (FNDA) (31-B)ity of Wildwood, appeals the
imposition of a sixty working-day suspension effective October 27, 2021, pursuant to a

Final Notice of Disciplinary Action (FNDA) (31-B), dated October 25, 2021, for violations of 1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency of failure to perform duty; 2. N.J.A.C. 4A:2-2.3(a)(3) Inability to perform duties; 3. N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; 4. N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause, being various violations of the Wildwood Police Department Rules and Regulations including 1. 3:1.1 Standards of Conduct; 2. 3:1.8 Neglect of duty; 3. 3:1.9 Performance of duty; 4. 3:3.11 Obedience to laws and regulations; 5. 3:3.16 Operation of motor vehicles; 5. Conduct unbecoming a police officer under common law of the State of New Jersey; and 6. Wildwood Police Department Rules/Regulations including 1. 3:1.1 Standards of Conduct; 2. 3:1.8 Neglect of duty; 3. 3:1.9 Performance of duty; 4. 3:3.11 Obedience to laws and regulations; and 5. 3:3.16 Operation of motor vehicles.

At issue is whether appellant is guilty of the charges presented, and if so, what is the appropriate penalty.

PROCEDURAL HISTORY

This matter initially involved two disciplinary matters against appellant which were consolidated by order, dated October 20, 2022. The appeal in CSV 09818-21 was of an FNDA for a seven-day suspension effective October 27, 2021, which FNDA was subsequently amended by respondent to a five-day suspension prior to the first day of hearing, thereby divesting the civil service commission and thus the OAL of jurisdiction. The sixty working day suspension in CSV 09819-21 is the current subject of this appeal.

On April 7, 2021, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against the appellant arising from a March 28, 2021, criminal mischief investigation and subsequent arrest of the individual involved, set forth in an internal affairs (IA) investigation, IA 2021-07. (R-2.) Appellant waived the departmental hearing, and the respondent issued a (FNDA) (31-B) on October 25, 2021, sustaining the charges in the preliminary notice and suspending appellant for sixty days beginning November 17, 2021, temporarily stopping while he attends and completes the requirements of the Cape May County Police Academy. (R-10.) Appellant filed an appeal on October 29, 2021, and the matter was transmitted by

the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law (OAL) where it was filed on December 1, 2021, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. A prehearing order was entered on October 21, 2022. An in-person hearing was conducted on April 4, 2023. The record remained opened to allow for post hearing submissions and closed following receipt of same on June 20, 2023.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Robert Regalbuto testified on behalf of the respondent. He has been employed by the City of Wildwood for thirty-five years and has served as chief of the police department since January of 2015. He knows Officer Dadura, who has been a police officer with the city since December 2013 and currently is at top pay with a salary of approximately \$99,000.

Chief Regalbuto is aware of an IA complaint involving Officer Dadura arising out of an incident that occurred on March 28, 2021. As chief, he is aware of all IA complaints that are commenced and when the investigation is completed, he reviews all of the documents. On March 31, 2021, Officer Dadura was advised that he was the subject of an IA complaint alleging violations of department rules and regulations that reportedly occurred on March 28, 2021. (R-1.) After the IA investigation was completed, the preliminary notice of discipline was prepared outlining the specifications and violations of either the rules and regulations or Title 4 charges and also sets forth the recommended discipline. This is a civil service form. (R-2.) The specifications were set forth in the April 7, 2021, report from Detective Lieutenant (Lt.) Ken Gallagher, the internal affairs officer for the Wildwood Police Department. (R-2.) The Chief reviewed this document before the PNDA was served on Officer Dadura. On March 30, 2021, an officer's report by Lt. Shawn Yuhas, Officer Dadura's shift commander, was forwarded to Lt. Gallagher, based on Lt. Yuhas' review of Officer Dadura's body camera footage. (R-3.) Lt. Yuhas brought up several areas of officer safety and concerns he had with Officer Dadura's actions and presented them to the IA investigator. This is what started the IA investigation. Once

Officer Dadura was served with the target letter (R-1), he was directed by his shift commander to complete a report. (R-4.)

Officer Dadura completed a Wildwood Police Department investigation report for the criminal mischief, resisting and obstruction charges against the accused, as he was the primary officer assigned to the case. (R-5.) A supplemental report was also completed by Officer Jason Carter, the back-up officer, regarding the same incident and reporting what actions he took and what he observed during the incident. (R-5.) The Arrest Report includes the personal information of the person arrested and brought into police headquarters, the charges, and the arresting officer. The last two pages of the document are the complaint summons completed after the suspect has been fingerprinted and then the criminal charges are served on the accused. (R-5.) The chief reviewed all of these documents.

A Use of Force Report in the CAD system was filed by Officer Dadura and reviewed by Lt. Yuhas. (R-6.) This form is required to be completed anytime force is used in an incident by any officer. Benchmark Analytics is a web-based program which mandates that all law enforcement upload the information on every use of force incident so that the incidents can be tracked. This helps law enforcement agencies determine if there is a problem with certain officers if they are involved in multiple incidents and to make sure there are no incidences of excessive force. All of these were part of the IA file which the chief reviewed. The Chief also reviewed Officer Dadura's body worn camera (BWC) video footage from Saturday, March 28, 2021, starting at approximately 2:32 p.m. The incident call was criminal mischief which occurred at 3610 New Jersey Avenue, Wildwood, New Jersey. (R-7.) The video was played, and the chief commented on what was being viewed.

At 2:32 p.m. Wildwood Police Department dispatch advised that a Hispanic male had just kicked a soccer ball through a window of a building located at Lincoln/New Jersey Avenue and was walking north on New Jersey Avenue. Officer Dadura responded from the 100 east block of Roberts Avenue and was making a right hand turn onto New Jersey Avenue which is controlled by a stop sign. Officer Dadura did not come to a complete stop at the stop sign. He was still looking southbound on New Jersey Avenue and the

chief presumed that there was no traffic and he continued to proceed through the stop sign. He was not driving fast, but he did not come to a complete stop and officers are required to stop at all traffic control devices. The chief explained that Officer Dadura, as the primary officer responding to the call, should be trying to locate the suspect. He has a description of the offender from dispatch, and they have a witness whose location is known.

Before Officer Dadura turned north on New Jersey Avenue, dispatch gave additional information that the suspect was walking behind the Pine Avenue Wawa. Dispatch gave an updated description of a Hispanic male wearing shorts and a red hat, a purple shirt, and had a green soccer ball. While enroute, Officer Dadura asks, "what was the window he broke what building?" Dispatch stated, "The building on Lincoln and New Jersey, he said it's the old Charles Harvey Furniture." When dispatch gave this out, Dadura was pulling up to Oak/New Jersey Avenues at a red light. Officer Dadura began to make a U-turn when Officer Carter radioed that he was going to pull around to see if there was any damage. Officer Dadura acknowledged this, saying "10-4, let me know. I'm going to look for him." At the time, Officer Dadura was facing northbound waiting at a red light at Oak/New Jersey Avenues. Officer Carter then radioed that it looked like one of the first-floor windows was broken. Dadura then waited at the Oak/New Jersey Avenue light for twenty-eight seconds before proceeding north to Pine/New Jersey Avenues. At Pine/New Jersey Avenues, Officer Dadura radioed that he was going to swing around and get photographs "and stuff." While Officer Dadura was enroute back to the Charles Harvey building, Officer Carter radioed that he was out in the area of the Wawa. Officer Dadura then stopped in front of the Charles Harvey building and took photographs.

The chief explained that the order of priority would be to look for the suspect. They had a description of the offender. There are not too many people walking around wearing shorts, a red hat, and a purple shirt with a green basketball. He was last seen walking behind the Pine Avenue Wawa and Officer Dadura was right across the street from the Pine Avenue Wawa. He should have entered the parking lot and looked for the suspect. Officer Carter had already said that he saw the damage to the building, which was an abandoned building at the time, so there was no emergency to try and photograph the

damage. The primary goal is to locate the offender. The longer you take to initiate the search the odds are you are not going to locate the suspect.

Officer Dadura then left the building to speak with the caller at the Pine Avenue Wawa.

Officer Dadura then left Wawa and traveled west on Wildwood Avenue, making a right turn on Trains Lane Alley to the 100-west block of Pine Avenue, where he spotted the suspect and said, "Yo boy, get over here." This was improper. Officer Dadura should have given him commands to stop, using an authoritative voice and making a constructive presence of an officer trying to stop a suspect.

The suspect took off running west on Pine Avenue towards Park Boulevard. Officer Dadura then drove to New York Avenue and made a left turn on Maple Avenue, heading to Park Boulevard. The Chief explained that you can hear from the sound of the engine the speed of the vehicle increasing as he heads towards the area the suspect was running. The intersection of Maple and New York is controlled by a stop sign and although Officer Dadura slows down for the stop sign, he does not come to a complete stop and proceeds through the intersection.

Officer Dadura then saw the suspect on the sidewalk area of Park Boulevard, and attempted to get out of his vehicle, but the suspect turned around and ran south towards Pine Avenue. The suspect then turned onto the 100-east block of Pine Avenue, running east along the sidewalk area on the north side of the street.

Officer Dadura, while driving, reached with his right hand and unholstered his controlled electronic devise (CED) taser and switched it to his left hand and held it out his driver's side window. The chief explained that officers are taught to hold the taser as they would a firearm, that is, straight and not in a canted position. Officer Dadura is holding the taser horizontally out of his driver's side window in his left hand as he is driving his vehicle down Pine Avenue.

The video shows that Officer Dadura pointed his taser at the suspect and yelled at him, "Yo yo, I don't mind, I'll tase your ass. Stop dude, don't make me tase you." Officer Dadura then holstered the weapon after eleven seconds. Officer Dadura then told the suspect that he is not running and that he has all day.

The suspect then jumped the front wall to his property, at which time Officer Dadura exited his vehicle and yelled to the suspect that he was under arrest and that he was to come to him. Officer Dadura ultimately made contact with the suspect in the front yard of the property and ordered him to turn around three times; however, the suspect failed to comply. Officer Dadura tried to gain control of the suspect; however, the suspect physically resisted by pulling his arms away. Officer Dadura grabbed the suspect by the wrist, at which time the suspect suddenly moved backwards into Officer Dadura, bumping into his BWC, and turning it off.

When Officer Carter arrived on the scene, his BWC captured Officer Dadura on the ground with the suspect. Officer Dadura is seen struggling to place him in handcuffs. Officer Carter assisted in placing the cuffs on the suspect and walked the suspect to a patrol unit, where he is ultimately transported to headquarters.

As a result of the IA investigation, Lt. Gallagher identified three areas of concern regarding Officer Dadura's actions in this case that needed to be addressed specific to officer safety and the operating procedures followed by the department: 1. Patrol Vehicle Operation; 2. Response to the Incident Location; and 3. Police Officer's Actions. (R-2.)

Regarding Patrol Vehicle Operation, Lt Gallagher indicated that during the initial response to the call for service, Officer Dadura approached the intersection of Roberts and New Jersey Avenues and failed to make the appropriate stop at the stop sign. Additionally, during the contact with the individual involved in the reported incident, Officer Dadura decided to reinitiate contact with the individual after he decided to run. "Patrolman Dadura utilized the 100 west block of Maple Avenue in order to access a direct route to Park Boulevard. In doing so, Patrolman Dadura failed to make the appropriate stop at the intersection of Maple and New York which is controlled by a standard stop sign." The chief observed both of these incidents in the video – Officer Dadura's failure to stop at the

stop sign on Roberts and New Jersey Avenues and failing to stop at the stop sign at Maple and New York Avenues and he shared Lt. Gallagher's concerns.

The chief explained that it is permissible for an officer to go through a stop sign if they are responding to an emergency, a fire, a motor vehicle accident, an explosion, but you would have to activate your emergency lights as well as use your vehicle's audible siren and air horn. This was not an emergency.

Lt Gallagher's report continued, "During the secondary contact with the individual, Patrolman Dadura's police vehicle was in motion when he removed his conducted energy device, taser, from his holster, points the device/weapon in the direction of the individual. As a result, Patrolman Dadura attempted to maintain target acquisition while attempting to maintain control of his moving patrol unit in what is considered a narrow roadway." The chief had the same concerns. Pine Avenue is a predominantly residential, narrow street with parking on both sides. He is not at an excessive speed, but he is still driving at a considerable amount of speed, and he is trying to deploy a taser, switching from his right hand to his left and holding the taser out the window while he is operating a motor vehicle for a call for property damage. Officer Dadura should be driving his motor vehicle and operating his taser while he is driving takes his attention away from operating his vehicle in a safe manner. Lt. Gallagher further noted that "It should be noted that Officer Dadura is currently assigned to the Cape May County Police Academy in the capacity of instructor. Officer Dadura's area of instruction is identified as vehicle operations responsible for training recruits in vehicle operation. In furtherance this type of negative driving history has been documented in a prior internal affairs investigation." (R-2.)

Instructors at the police academy are to train recruits primarily on how to drive responsibly and safely. They also learn evasive maneuvers and driving at higher speeds, but they always do it with both hands on the steering wheel. If a police officer is dispatched to a call and they are not driving properly they can be involved in a motor vehicle accident and then that officer is no good to the person, they were responding to offer aid. The type of driving the chief viewed from the BWC video of Officer Dadura is not what is expected of a driving instructor.

The Cape May Prosecutor's Office has a program approved by the attorney general office in which officers are trained by police certified instructors on how to carry and deploy a taser if necessary, as either constructive authority or as a use of force. Officers are not trained to deploy a taser from a moving vehicle because it poses a risk to the officer and the public for the officer not to have both hands on the steering wheel and concentrating on driving properly and safely. It is not proper to ever deploy a taser from a moving vehicle or to unholster a taser if there is no reason to use it.

Lt. Gallagher's report sets forth at section "2. Response to the incident location: As Ptlm. Dadura arrived on scene, he received updated relevant information regarding the location of an eyewitness and a possible last know direction of travel of the individual responsible for the property damage. It was at that time Ptlm. Carter arrived on-scene and confirmed that there was recent property damage to the property. Ptlm. Carter then immediately responded to the last known location where the individual responsible was last seen. At this point, Ptlm. Dadura's vehicle was situated in a stationary position close to the last known location of the individual and the eyewitness, who had provided the relevant information specific to the totality of the circumstances. Consequently, Ptlm. Dadura made a conscious decision to effect a U-turn in the roadway and traveled back to the incident location, which is three blocks from his present location and the last known position of the individual responsible for the damage. Consequently, in doing so Ptlm. Carter was now the only patrol officer left to search for the individual and if located the only officer available to stop and detain him without a secondary back-up officer to assist." The chief shared in the concerns raised by Lt. Gallagher.

Officer Dadura's response to this incident was improper. He was responding to a call for a broken window. It did not appear that there was broken glass on the street so there was no harm or danger to the public. Officer Dadura was half a block away from where the suspect was last seen, and he did not go look for the suspect. He decides to return to the scene to take a picture of the window, which could have been done much later. If he was unable to locate the suspect and after he spoke to the witness he could have returned and taken whatever photographs he needed, but there was no urgency to get back to take a picture of a broken window. Officer Dadura had a good description and luckily, after the long delay of the several U-turns and going back to take pictures and

to talk to the witness, he still ends up locating the suspect, but he does not use his command voice or presence in order to tell the subject to stop. Also, the police do not talk to individuals on the street by saying "Yo, boy." They also do not threaten to tase individuals while they are driving a moving vehicle. While on patrol, the police do everything in their power to make sure that they operate their patrol vehicles in a safe and efficient manner. They stop at stop signs and red lights. If there is an emergent need they are authorized to activate their emergency lights and audible warning device to proceed through a red traffic light or a stop sign, but it has to be something emergent, and a broken window is not emergent.

Lt. Gallagher's report continued at paragraph 3, "Police Officer's Actions: During the initial contact, Ptlm. Dadura encountered the individual matching the description of the person responsible for the property damage. During the contact, Ptlm. Dadura neglects to utilize direct, clear, concise instructions throughout the entirety of the first, second and third interactions with the individual. Additionally, Ptlm. Dadura's lack of command presence and being assertive/self-confident during the totality of the circumstances was evident. It is my opinion that a firm and proactive method would have undoubtedly created a more successful outcome. At the conclusion of the internal affairs investigation, it was determined that Ptlm. Dadura violated the Wildwood Police Department Rules/Regulations. After review of the audio/video recordings, reports, and statements of those concerned, I have determined that the matter involving Ptlm. Dadura should be resolved as sustained, and he should receive the appropriate progressive discipline. The following is a list of appropriate charges filed in connection to the incident." (R-2, page 6.)

The chief explained that Officer Dadura could have stated, "Stop" then raised his voice. He could have continued to drive past the individual and pull into the first driveway, then he would have been right in front of him and could have ordered him to "stop." When he turns to run away, he could have pursued him at that time. Officer Dadura recognized the individual as a juvenile. It was not a major incident, but the officer's lack of command authority and presence made this incident bigger than it should have been. There was no need to get to the point where he had to pull a taser out and point it out the window while driving. A broken window is minor property damage amounting to approximately a

couple of hundred dollars. The police do not deploy their tasers in the course of investigations for property damage. They do not deploy their tasers to someone they recognize as being a juvenile and they surely do not do so while driving their vehicles.

The chief agreed with Lt. Gallagher's conclusions.

Chapter Three of The Rules and Regulations for the Wildwood City Police Department were reviewed. (R-9.)

Section 3:1.1 concerns standards of conduct and provides, "Members and employees shall conduct their private and professional lives in such a manner as to avoid bringing the department disrepute." Officer Dadura's actions, as shown on the body camera footage reviewed, violated 3:1.1 because police officers are held to a higher standard and are scrutinized every day in the public eye. Officer Dadura's actions in the video reflect a poor image of their agency. The failure of Officer Dadura to act professionally by addressing the individual as, "Yo boy, get over here" or come over here is absolutely demeaning regardless of the individual's race. There was no sense of urgency in his response. He had a very laissez-faire attitude. If the suspect was treated with respect and Officer Dadura maintained a command presence, he could have gotten the individual to stop and talk to him and maybe the individual would not have run away.

The City of Wildwood is a municipality that generates its revenue from tourism and visitors to the beach and boardwalk. They want to provide a safe community that people would want to visit on vacation. It allows the police department to get better equipment, hire more officers, buy vehicles and it is all based on revenue generated which is why the Wildwood Police Department wishes to maintain a professional image as best it can.

The actual individual involved in this incident, although believed to be a juvenile by Officer Dadura, was later found to be twenty-three years old.

Section 3:1.8 states that "Officers may be charged with neglect of duty for any act or omission in violation of the law, police orders, procedures or rules and regulations." The Chief believed Officer Dadura was guilty of neglect of duty in this incident because

he failed to stop at stop signs in a non-emergency. Officer Dadura failed to immediately locate the suspect, which was his primary responsibility. He could have taken the photographs later. Officer Dadura was a block and a half from the suspect's location behind the Pine Avenue Wawa when he decided to leave the area and drive three blocks in the opposite direction, when he could have proceeded across the street and try to locate the suspect.

Performance of duty, 3:1.9 states that "All members and employees shall perform their duties as required or directed by law, department rule, policy, or order or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as directed notwithstanding the general assignment of duties and responsibilities."

Officer Dadura's actions on March 28, 2021, violated the performance of duty regulations. One of the primary duties of an officer is to apprehend offenders. He made no initial effort to apprehend the offender, especially given his close proximity to the suspect's last known location and in fact drove away from the suspect's last known location. His primary responsibility was to locate and apprehend the offender. He could have spoken to the witness or have another officer speak to the witness and deal with the broken window and the property damage later.

"3:1.13 Obedience to laws and regulations – Members and employees shall observe and obey all laws and ordinances, all rules and regulations and orders of the department. No member shall induce or attempt to induce any other member to violate any section of this article." Officer Dadura also violated this section of the rules and regulations because this section includes the other rules regarding standard of conduct, neglect, and performance of duty. Officer Dadura's unholstering and displaying his CED also violated the use of force policies and procedures.

Section 3:3.16 regarding operation of motor vehicles provides "Members and employees when driving vehicles private or of the department shall not drive in a negligent manner or violate the traffic laws except cases of emergency and then only in conformity with the law regarding same. They shall set an example for other persons in the operation

of their vehicles.” Officer Dadura’s failure to stop at the two stop signs in the video violated this section.

The IA investigation also recommended that Officer Dadura be charged with N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency, or failure to perform duty; N.J.A.C. 4A:2-2.3(a)(3) Inability to perform duties; N.J.A.C. 4A:2-3(a)(7) Neglect of duty; 4A:2-2.3(a)(12) Other sufficient cause being violation of the Wildwood Police Department Rules and Regulations; and Conduct unbecoming a police officer under common law of the State of New Jersey. (R-2.) The chief agreed that Officer Dadura’s actions violated all of those code sections. The FNDA (R-10) set forth the same specifications set forth in the PNDA and IA investigation. (R-2.) The final recommended discipline was a sixty-day suspension. The chief recommended a sixty-day suspension because Officer Dadura had numerous incidents in 2020 and 2021 that resulted in preliminary notices and final notices of discipline being imposed that involved suspensions. It was a progressive discipline format, and this was Officer Dadura’s fourth incident in which a taser was involved and the chief thought it necessary to bring Officer Dadura back into compliance with the rules and regulations as well as the laws they are required to uphold. The chief saw grave safety issues that gave him concern not only in this incident but prior incidents that resulted in suspensions where his lack of officer safety is evident. Officer Dadura’s physical conditioning and how he handled suspects was drastically poor and the chief had great concern for Officer Dadura’s safety as well as the safety of other officers and felt he needed to remove Officer Dadura from the street and take his duty and off-duty weapons away. The chief felt his actions were egregious and he had to take an aggressive stance to protect the department and to get Officer Dadura to realize his actions were improper and he should never have handled the incident the way he did. The chief spoke to Officer Dadura when they were issuing the preliminary notice of discipline and he did take responsibility and demonstrated remorse, but the chief did not think Officer Dadura thought his actions were as egregious as the chief did.

The chief signed a Personnel Order, dated March 22, 2021, which preceded this incident of March 28, 2021. (R-14.) This order assigned Officer Dadura to the police academy for training due to deficiencies noted in his past performance. (R-14.) This was as a result of another IA investigation that resulted in preliminary and final disciplinary

action in which Officer Dadura's handling of an intoxicated female suspect who was disorderly and resisting arrest showed that his physical conditioning and his inability to properly arrest a young, intoxicated female and take her into custody, warranted retraining. This was not disciplinary. It was to get Officer Dadura better familiar with control holds and other defensive tactics and techniques that all police officers are trained in during the police academy. The chief was not certain what type of training Officer Dadura had because he did not go through the Cape May County Police Academy. Several of their officers are defensive tactic instructors and they are also involved in jiu-jitsu so the chief believed the quality of their instructors would give Officer Dadura the opportunity to go back and get some additional training that would be beneficial for him and help him in the future. This personnel order had already been issued when this incident occurred.

Following this incident on March 28, 2021, and as a result of this incident, the chief signed Personnel Order 21-16, dated March 30, 2021, reassigning Officer Dadura and stated, "Above officer is reassigned to Administrative Duty working in Communications effective March 31, 2021, at 0700 hours. Any previous authorizations to carry off-duty weaponry is rescinded until further notice." (R-15.) The Chief felt this was necessary for Officer Dadura's safety as well as the safety of this fellow officers. His conduct was unsafe, and they decided to remove his weapons and his ability to carry while off-duty and to reassign him to administrative duty while they were preparing to put him into the Cape May County Police Academy and have him receive all of the training because he had so many different incidents, they could not just direct unarmed self-defense and taser training. They felt it was better to start at the very beginning and cover every functional area that every officer is trained to ensure that Officer Dadura was trained properly and effectively.

A Performance Improvement Plan for Officer Dadura, dated May 18, 2021, was implemented. (R-16.) Both the chief and Officer Dadura signed the plan. The document provided a history of the multiple incidents in which Officer Dadura's performance was called into question, the various suspensions he received and what corrective measures would be implemented to bring him back into compliance.

Personnel Order 22-02, dated January 4, 2022, stayed Officer Dadura's suspension so he could attend the Cape May County Police Academy with the new starting class for a basic course for police officers. (R-17.) He would still have been on suspension when the academy started so the chief thought it necessary to stay his suspension so he could start on day one of the academy. He would serve the balance of his suspension after he completed the academy. The police academy was six months, from January 25, 2022, to June 14, 2022, and Officer Dadura attended and completed the police academy. The documents attached to the personnel order are the police academy schedule of courses. (R-17.)

Officer Dadura was not working on the street as a police officer from the date of the first personnel order putting him on administrative duty effective March 30, 2021, (R-15) until June 2022 when he completed the police academy.

The chief is the custodian of discipline files. Officer Dadura has five final notices of disciplinary action contained in his file, including the one at issue in this case for a sixty-day suspension, dated October 25, 2021; the seven-day suspension that was amended to a five-day suspension before this hearing started, dated October 25, 2021; a five-day suspension, dated October 25, 2021; a three-day suspension, dated October 25, 2021; and a ten-day suspension dated March 9, 2016. (R-18.) Prior to this case, Officer Dadura had four disciplinary charges, three of them minor and one major discipline from 2016. There was also an "Employee Performance Notice," dated March 26, 2018, for counselling contained in Officer Dadura's discipline file.

The Performance Improvement Plan had to be followed by both Officer Dadura and the department. Officer Dadura completed the police academy and graduated on June 14, 2022. The plan also required Officer Dadura to complete a Field Training Officer (FTO) program after the academy, which he did. The plan further indicated that "following his successful completion of the FTO program, Ptlm. Dadura will be assigned to attend a Rifle Operator course and a Conducted Energy Device (CED) course." This has not occurred to date although the improvement plan by its terms says it was in force for one hundred eighty days and has now expired. (R-16.)

As far as the chief was concerned, Officer Dadura did not have to complete the physical portion of the academy. He had no knowledge that Officer Dadura did in fact have to complete the physical portion of the police academy.

At the time of this investigation (R-2), Lt. Gallagher was the only member of the IA unit. There is a mistake in his report regarding there being a red light at Roberts and New Jersey Avenues which is incorrect. That intersection is controlled by a stop sign as seen in the video footage. The report has not been corrected. When you stop at a red light, you have to stop and wait until it turns green. When you stop at a stop sign, you have to make sure it is clear to proceed. Officer Dadura was not going fast, he slowed down at the stop sign and then proceeded through. There is significantly less traffic in Wildwood in March, and it appeared that he did look for oncoming traffic before he proceeded. It is fair to characterize Officer Dadura's actions as having come to a rolling stop. He did not blow through the stop sign. Likewise, when he was pursuing the fleeing suspect and goes through the stop sign at New York and Maple Avenues, he slows down significantly and looks to make sure it is clear to proceed.

Officer Dadura's report indicates that "As Piccioni ran east on the 200 west block of Pine Avenue, I gave multiple commands for Piccioni to stop. I displayed my Taser in a use of constructive authority and again ordered Piccioni to stop. It should be noted the Taser was not activated or charged and my finger was indexed." (R-4.) Officer Dadura was never found for lack of candor and there is no reason to disbelieve anything that is in his statement. When Officer Dadura pointed his taser out of the window, it was not activated or charged. His finger was indexed, meaning it was alongside the barrel of the weapon and not on the trigger of the taser. He was paralleling the suspect in his vehicle as the suspect was running, so he could not go any faster than the suspect was running. Officer Dadura's investigation report indicates that "The first pane of a double-paned window was shattered and laying on the sidewalk." (R-5.) The chief initially believed the interior pane was shattered and there was no glass on the sidewalk, but now reviewing the investigation report it was actually the outer windowpane and there was glass on the sidewalk, and this is a public sidewalk. Since it is a public sidewalk there is some importance to taking pictures and making sure the scene remains the same as when the offense was committed.

The second page of the investigation report, second paragraph indicates, "I departed the Wawa and began to search the area for the Hispanic male. As I entered onto the 100 west block of Pine Avenue I observed a Hispanic male subject wearing a red hat, purple shirt and shorts while bouncing a green and gray basketball. I initially believed the male to be a juvenile due to the style of dress. I attempted to stop and speak with the male, but upon my exiting the patrol vehicle the male began to run towards the 200 west block of Pine Avenue." (R-5, page 2.) This was before the taser was displayed out the car window. The next paragraph in the investigation report reads, "I circled the block and located the Hispanic male traveling north on the 3100 block of Park Boulevard. I again attempted to stop the male, who I recognized from a prior contact see #21-07781 for this contact, identified as Zachary Piccioni." (R-5, page 2.) At this point when Officer Dadura recognizes him, he knows he is not a juvenile, so Officer Dadura did not draw his taser on a juvenile.

Officer Dadura wore his body camera in the center of his chest, from a review of the video, the body camera is facing the dashboard. Only Officer Dadura's left arm goes out the window. He is not leaning out of the car.

The chief heard Officer Dadura say "Yo, boy" and did not hear him say "Yo, bud." The video was played back, and the Chief again testified that he heard Officer Dadura to be saying "Yo, boy."

Although the chief disagreed with the order in which Officer Dadura went about his response to this incident, he admitted that the only eyewitness witness might not be waiting around for a long time and that there may be some urgency in speaking to the witness. Officer Dadura obtained additional information as to the suspect's location from speaking to the witness and then found the suspect. The suspect was fleeing from officers, so it was more than just a property damage case at that point and possibly arises to a fleeing from officers or a hindering charge. The obstruction charge was based on the suspect running away. The resisting charge is when the suspect becomes combative with Officer Dadura. This is still a disorderly person's offense and not indictable, but it becomes larger than a criminal mischief case.

When an officer is responding to any call, there is a heightened sense of urgency; however, you cannot ignore the traffic laws when it is not an emergency like a fire, or medical emergency. This was a broken window. Officer Dadura was designated the primary officer because his badge number was called out first by dispatch.

The PNDA, section one, patrol vehicle operation stated, "As a result Patrolman Dadura attempted to maintain target acquisition while attempting to maintain control of his moving patrol unit in what is considered a narrow roadway." (R-2.) From a review of Officer Dadura's statement, he was showing his taser as a show of constructive authority, which does not necessarily mean he was going to use the weapon. Constructive authority is the principle that the devices are shown to ensure compliance. The chief pointed out that a weapon should not be drawn unless you have target acquisition. You can hold the taser at low ready, pointed to the ground and not need target acquisition, but if you are about to fire at a high ready, you need target acquisition. However, you do not point your taser out a window of a moving vehicle. It is also not appropriate to unholster a taser or any other weapon in a use of constructive authority when someone is running away. The taser would have been ineffective as being too far away.

Although Officer Dadura did not comply with the traffic laws for failing to stop at the stop signs, he was not cited for any traffic violations.

Although the suspect was twenty-three years old and not a juvenile, he was autistic. (R-6.) In Officer Dadura's report to Lt. Yuhas he stated, "As Piccioni ran east on the 200 west block of Pine Avenue I gave multiple commands for Piccioni to stop. I displayed my taser in a use of constructive authority and again ordered Piccioni to stop." (R-4, page 2.) The chief, in watching the video, did not see that Officer Dadura gave Piccioni any commands to stop before pulling his taser. He did not give him multiple commands to stop.

In Officer Dadura's report to Lt. Yuhas, he indicated, "On Sunday, March 28, 2021, at approximately 1432 hours I, Ptlm. John Dadura, badge number 83 of the Wildwood Police Department Uniformed Patrol Division, responded to 3610 New Jersey Avenue the

former Charles Harvey furniture store for the report of criminal mischief. I initially passed the address, searching for a suspect, but turned around after Ptlm. John Carter #76 confirmed the broken window, to photograph the damage. When I turned around I was at a red traffic signal at New Jersey and Wildwood Avenue, and have no excuse for turning around, and not continuing the search for the suspect." (R-4, page 1.) This shows that Officer Dadura recognized that his primary obligation in responding to that call was to identify and search for the suspect.

As the primary officer, it was Officer Dadura's investigation, and he had an obligation to respond to where the damage occurred and an obligation to speak to the witness. After doing both of these things, he found the suspect.

Matthew Sicilia, testified on behalf of the respondent. He is a lieutenant with the Wildwood Police Department and was promoted in 2018. He has been with the department for approximately sixteen years. He is the county trainer for CED and handles the departmental recertifications for their department. He has been a trainer for the county since 2013. An officer gets certified by the county trainer following a two-day course. The course is given whenever the county chiefs decide they have officers that they need to go through training, so it could be every year or every two years. The recertifications are every year. The CED training first involves a New Jersey Learn on-line course that has to be completed before the class. You have to pass that course and bring that certification to the first day of class. On the first day of class there is a power point presentation provided by the State to the trainers to present to the class. There is also an Axon power point presentation. An overview of use of force is presented. Following the power points, you have to take a test and have to get an eighty percent on both the State test and on the Axon test. The next day they move on to hands-on scenarios including basic drills, unholstering, the spark display and how to deploy the weapon. The recertifications that Lt. Sicilia conducts for his department usually takes three hours and is a familiarization with everything covered in the initial training. They also are required to fire on a target at different ranges, five, ten, and fifteen feet, and make two out of the three shots. They break it down into different scenarios including one where there is a suicidal suspect, another when trying to de-escalate a subject and another when

the subject pulls out a firearm, they do not want the trainee pulling out a taser, they should draw their firearm.

Lt. Sicilia is familiar with an incident involving Officer Dadura unholstering his taser and he has reviewed the video footage from Officer Dadura's BWC of the incident. The video was played, and Lt. Sicilia described Officer Dadura holding the taser in his weak hand, canted outside the window. Canted being not up or down but holding it out to the side. Lt. Sicilia formed an opinion that this was an inappropriate unholstering and use of the taser by Officer Dadura.

Lt. Sicilia is familiar with the Attorney General guidelines as well as the Cape May County Prosecutor's guidelines on the use of force as it pertains to tasers. (R-12.) The guidelines were amended March 3, 2016. Section V. Authorization to Use Conducted Energy Devices states:

"1. An officer authorized to use a conducted energy device pursuant to this supplemental policy may fire and/or discharge the device during an actual operation only where:

- a.
 - i) the officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from causing death or serious bodily injury to him/herself, an officer, or any other person; or
 - ii) the person against whom the device is targeted is armed with an object that the officer reasonably believes could be used as a deadly weapon, and the person refuses the officer's command to put down or surrender the object after having been given a reasonable opportunity to so; or
 - iii) the officer believes such force is reasonably necessary to prevent the immediate flight of an individual whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily injury; or
 - iv) the person against whom the device is targeted resists a lawful arrest by using or threatening to use physical force or violence against the officer or another in a

manner and to a degree that the officer reasonably believes creates a substantial risk of causing bodily injury to the officer, a victim, or a bystander; and

- b. the individual will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force." (R-12, page 5.)

Section VI of the amended policy entitled "Unauthorized Uses of Conducted Energy Devices prohibits the following uses:

1. A conducted energy device shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment.
2. A conducted energy device shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle.
3. A conducted energy device shall not be fired or discharged for the sole purpose of preventing a person from committing property damage. (R-12, page 7.)

Lt. Sicilia explained that a conducted energy device is actually enhanced mechanical force and on the use of force scale, enhanced mechanical force is right under deadly force and you cannot use deadly force for property damage as that level of force is not justified being used against someone committing property damage.

Under Section VIII "Deployment Techniques" in the policy (R-12, page 10,) paragraph 3 states that an officer shall not unholster a conducted energy device during an actual operation unless the officer reasonably believes that it may be necessary for the officer to use the conducted energy device. An officer shall not exhibit a conducted energy device to a person or conduct a spark display during an actual operation unless the officer reasonably believes that display of the device and/or demonstration of its ability to discharge electricity as an exercise of constructive authority would help to establish or

maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety.

Paragraph 13 states that "While officers must at all times respect the seriousness and potential lethality of a conducted energy device, an officer should use particular care when considering whether to use a conducted energy device against an individual who is particularly vulnerable to due to age (either elderly or young) or due to a known or reasonably apparent medical condition (e.g., a pregnant female.)" (R-12, page 11.) Lt. Sicilia explained that a particularly vulnerable person would cover a juvenile as well as an autistic individual who would be considered an emotionally disturbed person.

The Cape May County Prosecutor's Office Use of Force guidelines dealing with conducted energy devices (R-11) mirror the attorney general guidelines and officers who are trained by Cape May County are made familiar with these guidelines as well.

R-13 is a section of the State's power point presentation used during training for CED use and recertification that deals with constructive authority. The taser can be used as a display of constructive authority only if the person is refusing to comply with commands and actual force may be necessary if the exercise of constructive authority is not successful.

Lt. Sicilia testified that they do not discuss in training unholstering, displaying or sparking the taser from a moving vehicle. They do not teach it because it is not a safe way to deploy a taser. While operating a motor vehicle, your attention should be on the road ahead. It would be difficult to do if you were trying to point a taser out the side of the window at the same time. Also, the taser discharge is up to twenty-five feet and Officer Dadura would have no way of knowing if anyone was in the cars parked on the street as he was driving with the taser held out the window. It is not a safe thing to do. It is not proper to use a taser as constructive authority to avoid having to run after a suspect. It is not appropriate when a suspect has not been accused of any crime involving death or serious bodily injury.

Based on the Attorney General's guidelines and after having watched the BWC footage, Officer Dadura did not have any reasonable belief that he would have to use the taser and according to the guidelines, it should not have been unholstered unless there was a reasonable belief that he would have to use it.

Officer Dadura has been trained and certified in the proper use of a taser/CED.

The taser that Officer Dadura was equipped with at the time was an X2 which has two cartridges that would allow you to fire it two times in a row before reloading the weapon. There is a safety switch that has to be activated before the weapon is fired and then it still requires a trigger pull to fire.

Officer Dadura's Officer's Report states that his taser was not activated or charged and his finger was indexed. (R-4.)

The 2016 amendment expanded police authority to use the taser. Lt Sicilia agreed that Section V of the policy did not apply to Officer Dadura because he did not discharge or activate his taser. Section VI prohibited conduct states that a CED shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment. Although Officer Dadura did threaten to use the taser on the suspect for running, which is improper, it was not to retaliate for past conduct or to impose punishment.

Section VIII of the guidelines contemplates the use of a taser for constructive authority. Under Section VIII "Deployment Techniques" in the policy, (R-12, page 10) paragraph 3 states that an officer shall not unholster a conducted energy device during an actual operation unless the officer reasonably believes that it may be necessary for the officer to use the conducted energy device. An officer shall not exhibit a conducted energy device to a person or conduct a spark display during an actual operation unless the officer reasonably believes that display of the device and/or demonstration of its ability to discharge electricity as an exercise of constructive authority would help to establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety.

Paragraph 4 of Section VIII is a standalone paragraph and states, "An officer may, through verbal commands, threaten to use a conducted energy device, so long as the officer's purpose is limited to creating an apprehension that the device will be used if necessary." (R-12, page 10.) Lt. Sicilia believed this may be ambiguous because the premise is that you do not unholster your taser unless you have a reasonable belief that it is going to be used.

A spark display and/or displaying the device is considered to be constructive authority. (R-13, page 1.) Displaying the device is constructive authority.

In Lt. Yuhas' report to Lt. Gallagher, dated March 30, 2021, he indicates, "When Ptl. Dadura unholstered his taser and stuck it out the window, he created an unsafe condition for both the suspect and himself. Ptl. Dadura was driving a motor vehicle with one hand while pointing the taser at the suspect for 11 seconds. When driving, Ptl. Dadura's attention was not fully on the road for pedestrians that could run out in front of him. In addition, any sudden movement or bump in the road could potentially have caused Pt. Dadura to inadvertently hit the trigger and discharge the device." (R-3, page 2.) Lt. Yuhas' conclusion was incorrect in that Officer Dadura's taser was not activated as the safety switch was still on and therefore the device could not be triggered. However, a bump in the road could have caused Officer Dadura to drop his taser in the street.

Using a taser when someone is running away from you is not appropriate. Lt. Sicilia said item 4 in section VIII which appears to allow unholstering the taser to create apprehension is not taught to trainees but rather they are taught that the taser should not be unholstered unless there is a reasonable belief that you would have to use it. All of the instructors follow this premise. No trainees are instructed that it is okay to threaten to use a taser from a moving vehicle.

Appellant did not testify or call any witnesses.

Discussion

Although Officer Dadura did not testify in this case, his report indicates that he 'displayed his taser in a use of constructive authority.' (R-4.) Both the chief and Lt. Sicilia testified convincingly that Officer Dadura's use of his taser in this case was improper pursuant to both the Attorney General Guidelines and the Cape May County Prosecutor's Office Guidelines regarding a CED (taser). Holding his taser out of his car window with his left hand and pointing it at the suspect at the same time while driving his patrol vehicle with his right hand was both an improper use of the taser as well as unsafe vehicle operation.

Chief Regalbuto testified that when he reviewed R-7, the BWC video of Officer Dadura, he heard Officer Dadura say, "Yo, boy get over here." However, upon my review of the video, when Officer Dadura first locates the suspect, Officer Dadura is heard to say "Yo, bud, get over here!" and the suspect begins to run. This does not have the same negative connotation as addressing a suspect as "boy."

Based upon due consideration of the testimonial, documentary and video evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

Officer Dadura has been a police officer with the City of Wildwood since December 2013. He did not attend the Cape May County Police Academy prior to becoming a Wildwood City police officer.

On March 28, 2021, at approximately 2:32 p.m., Officer Dadura responded to a criminal mischief call at 3610 New Jersey Avenue, Wildwood, New Jersey after dispatch had advised that a Hispanic male had just kicked a soccer ball through a window of a building located at Lincoln/New Jersey Avenue and was walking north on New Jersey Avenue. Officer Dadura responded from the 100-east block of Roberts Avenue and was making a right-hand turn onto New Jersey Avenue which is controlled by a stop sign. Officer Dadura did not come to a complete stop at the stop sign. He was still looking

southbound on New Jersey Avenue and continued to proceed through the stop sign. He was not driving fast, but he did not come to a complete stop and officers are required to stop at all traffic control devices. As the primary officer responding to the call, Officer Dadura should be trying to locate the suspect. He has a description of the offender from dispatch, and they have a witness whose location is known.

Before Officer Dadura turned north on New Jersey Avenue, dispatch gave additional information that the suspect was walking behind the Pine Avenue Wawa. Dispatch gave an updated description of a Hispanic male wearing shorts and a red hat, a purple shirt, and had a green soccer ball. While enroute, Officer Dadura asks, "what was the window he broke what building?" Dispatch stated, "The building on Lincoln and New Jersey, he said it's the old Charles Harvey Furniture." When dispatch gave this out, Dadura was pulling up to Oak/New Jersey Avenues at a red light. Officer Dadura began to make a U-turn when Officer Carter radioed that he was going to pull around to see if there was any damage. Officer Dadura acknowledged this, saying "10-4, let me know. I'm going to look for him." At the time, Officer Dadura was facing northbound waiting at a red light at Oak/New Jersey Avenues. Officer Carter then radioed that it looked like one of the first-floor windows was broken. Officer Dadura then waited at the Oak/New Jersey Avenue light for twenty-eight seconds before proceeding north to Pine/New Jersey Avenues. He does not proceed through the intersection by activating his emergency lights. Officer Dadura then makes a U-turn at Pine/New Jersey Avenues and radioed that he was going to swing around to get photographs and stuff instead of looking for the suspect. While Officer Dadura was enroute back to the Charles Harvey building, Officer Carter radioed that he was out in the area of the Wawa. Officer Dadura then stopped in front of the Charles Harvey building and took photographs.

Officer Dadura admits in his "Officer's Report" that he had no excuse for turning around and not continuing the search for the suspect. (R-4.)

While Officer Dadura is at the building taking photographs, Officer Carter is left by himself looking for a suspect. There were no other officers available that could back up Officer Carter, and this raised concerns in the area of officer safety.

Officer Dadura's priority should have been to look for the suspect. They had a description of the offender. There are not too many people walking around wearing shorts, a red hat, and a purple shirt with a green basketball. He was last seen walking behind the Pine Avenue Wawa and Officer Dadura was right across the street from the Pine Avenue Wawa. He should have entered the parking lot and looked for the suspect. Officer Carter had already said that he saw the damage to the building, which was an abandoned building at the time, so there was no emergency to try and photograph the damage. The primary goal is to locate the offender. The longer you take to initiate the search the odds are you are not going to locate the suspect.

Officer Dadura then left the building to speak with the caller at the Pine Avenue Wawa.

Officer Dadura then left Wawa and traveled west on Wildwood Avenue, making a right turn on Trains Lane Alley to the 100-west block of Pine Avenue, where he spotted the suspect and says, "Yo bud, get over here." This was improper. Officer Dadura should have given him commands to stop, using an authoritative voice and making a constructive presence of an officer trying to stop a suspect.

The suspect took off running west on Pine Avenue towards Park Boulevard. Officer Dadura then drove to New York Avenue and made a left turn on Maple Avenue, heading to Park Boulevard. The speed of the vehicle is increasing as he heads towards the area the suspect was running. The intersection of Maple and New York is controlled by a stop sign and although Officer Dadura slows down for the stop sign, he does not come to complete stop and proceeds through the intersection.

Officer Dadura then saw the suspect on the sidewalk area of Park Boulevard, and attempted to get out of his vehicle, but the suspect turned around and ran south towards Pine Avenue. The suspect then turned onto the 100-east block of Pine Avenue, running east along the sidewalk area on the north side of the street.

Officer Dadura, while driving, reaches with his right hand and unholstered his CED taser and switched it to his left hand and held it out his driver's side window. Officers are

taught to hold the taser as they would a firearm, that is, straight and not in a canted position. Officer Dadura is holding the taser horizontally out of his driver's side window in his left hand as he is driving his vehicle down Pine Avenue.

The video from the BWC flash drive of Officer Dadura (R-7) shows that when Officer Dadura first locates the suspect, Officer Dadura is heard to say, "Yo, Bud, get over here!" and the suspect begins to run. Officer Dadura while driving his vehicle, catches up with the suspect (14:41 on video), unholsters his taser and holds his taser out the car window with his left hand pointing it at the suspect, with his right hand on the steering wheel and says, "Yo. . . Yo. . . I don't mind, I'll tase your ass. Stop dude! Don't make me tase you!" (14:52 on video). Then Officer Dadura holsters his taser after eleven seconds and states, "I'm not running man. I got all day." The suspect starts to run again, while bouncing his basketball, as Officer Dadura follows him in his car. Officer Dadura states, "You want to stop now? Yeah?" (suspect says something to the effect that "I wasn't doing nothing", to which Officer Dadura replies, "Well, you were running." Officer Dadura exits his vehicle (15:25) as the suspect starts to run and jumps over a yellow brick wall and into his yard as Officer Dadura follows through a gate yelling, "You're under arrest, get over here! Turn around. Turn around. Turn around! (15:37) Are you fighting me? Turn around. Give me your f---ing hands." As he is trying to handcuff the suspect, the suspect physically resisted by pulling his arms away. Officer Dadura grabbed the suspect by the wrist, at which time the suspect suddenly moved backwards into Officer Dadura, bumping into his body camera and turning it off. The video ends at 15:49.

When Officer Carter arrived on the scene, his BWC captured Officer Dadura on the ground with the suspect. Officer Dadura is seen struggling to place him in handcuffs. Officer Carter assisted in placing the cuffs of the suspect and they walked the suspect to a patrol unit, where he was ultimately transported to headquarters.

The Chief had signed a Personnel Order, dated March 22, 2021, which preceded this incident of March 28, 2021. (R-14.) This order assigned Officer Dadura to the police academy for training due to deficiencies noted in his past performance. (R-14.) This was as a result of another IA investigation that resulted in preliminary and final disciplinary action in which Officer Dadura's handling of an intoxicated female suspect who was

disorderly and resisting arrest showed that his physical conditioning and his inability to properly arrest a young, intoxicated female and take her into custody warranted retraining. This was not disciplinary. It was to get Officer Dadura better familiar with control holds and other defensive tactics and techniques that all police officers are trained in during the police academy. The Chief was not certain what type of training Officer Dadura had because he did not go through the Cape May County Police Academy.

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The Performance Improvement Plan had to be followed by both Officer Dadura and the department. Officer Dadura completed the police academy and graduated June 14, 2022. The plan also required Officer Dadura to complete a FTO program after the academy, which he did. The plan further indicated that "following his successful completion of the FTO program, Ptlm. Dadura will be assigned to attend a Rifle Operator course and a Conducted Energy Device (CED) course." This has not occurred to date although the improvement plan by its terms says it was in force for one hundred eighty days and has now expired. (R-16.)

Officer Dadura has five FNDAs contained in his file, including the one at issue in this case for a sixty-day suspension, dated October 25, 2021; the seven-day suspension that was amended to a five-day suspension before this hearing started, dated October 25, 2021; a five-day suspension, dated October 25, 2021; a three-day suspension, dated October 25, 2021; and a ten-day suspension, dated March 9, 2016. (R-18.) Prior to this case, Officer Dadura had four disciplinary charges, three of them minor and one major discipline from 2016. There was also an "Employee Performance Notice", dated March 26, 2018, for counselling contained in Officer Dadura's discipline file.

The chief spoke to Officer Dadura when they were issuing the preliminary notice of discipline and Officer Dadura did take responsibility and demonstrated remorse, but the chief did not think Officer Dadura thought his actions were as egregious as the chief did.

LEGAL ANALYSIS AND CONCLUSIONS

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority bears the burden of establishing the truth of the allegations by a preponderance of credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); See also Loew v. Union Beach, 56 N.J Super. 93,104 (App. Div. 1959).

As set forth in the findings of facts, on March 28, 2021, Officer Dadura failed to follow the proper order of operations by not immediately attempting to locate and apprehend the suspect as the primary officer investigating the call. Instead of attempting to locate the suspect when he had a detailed description of the suspect from dispatch and was close to the suspect's last location, he makes a U-turn to return to the building to take photos of the damage. In doing so, he left Officer Carter alone to locate and apprehend the suspect without backup in the area which posed a security danger. Officer Dadura's drawing of his taser for a property damage case was improper as it was unwarranted under the circumstances and police are trained to unholster their taser only if it is reasonably foreseeable that they will need to use the taser. Officer Dadura's unholstering of his taser and aiming it at the suspect with his left arm outstretched out the patrol vehicle window while he was driving was an improper use of the taser and improper operation of his patrol vehicle. Officers are instructed to use both hands while driving. Officer Dadura's attempts to aim his taser (even if inactivated) at the suspect while he was running and at the same time operate his patrol vehicle was improper and dangerous. Officers are never trained to operate a taser while in a moving vehicle or if a suspect is running away. Furthermore, Officer Dadura failed to exercise the appropriate command

authority in his various verbal interactions with the suspect. In addition, Officer Dadura failed to come to a complete stop at the stop signs at the intersections of Roberts and New Jersey Avenues and Maple and New York Avenues. Officers are trained to obey all traffic control devices, unless they are responding to an emergency in which case, they must activate their emergency lights as well as an audible siren and air horn.

Officer Dadura's actions on March 28, 2021, violated the following Rules and Regulations for the Wildwood City Police Department (R-9):

Section 3:1.1 concerns standards of conduct and provides "Members and employees shall conduct their private and professional lives in such a manner as to avoid bringing the department disrepute." Officer Dadura's actions, as shown on the body camera footage reviewed, violated 3:1.1 because police officers are held to a higher standard and are scrutinized every day in the public eye. Officer Dadura's actions in the video reflect a poor image of their agency. The failure of Officer Dadura to act professionally in the way he interacted with the suspect throughout their encounter demonstrated a very cavalier and/or laissez-faire attitude. If Officer Dadura had maintained a command presence, he perhaps could have gotten the individual to stop and talk to him and maybe the individual would not have run away.

Section 3:1.8 states that "Officers may be charged with neglect of duty for any act or omission in violation of the law, police orders, procedures or rules and regulations." The Chief believed Officer Dadura was guilty of neglect of duty in this incident because he failed to stop at stop signs in a non-emergency. Officer Dadura failed to immediately locate the suspect, which was his primary responsibility. He could have taken the photographs later. Officer Dadura was a block and a half from the suspect's location behind the Pine Avenue Wawa when he decided to leave the area and drive three blocks in the opposite direction, when he could have proceeded across the street and try to locate the suspect.

Performance of duty, 3:1.9 states that "All members and employees shall perform their duties as required or directed by law, department rule, policy, or order or by order of a superior officer. All lawful duties required by competent authority shall be performed

promptly as directed notwithstanding the general assignment of duties and responsibilities.”

Officer Dadura’s actions on March 28, 2021, violated the performance of duty regulations. One of the primary duties of an officer is to apprehend offenders. He made no initial effort to apprehend the offender, especially given his close proximity to the suspect’s last known location and in fact drove away from the suspect’s last known location. His primary responsibility was to locate and apprehend the offender. He could have spoken to the witness or have another officer speak to the witness and deal with the broken window and the property damage later.

“3:1.13 Obedience to laws and regulations – Members and employees shall observe and obey all laws and ordinances, all rules and regulations and orders of the department. No member shall induce or attempt to induce any other member to violate any section of this article.” Officer Dadura also violated this section of the rules and regulations because this section includes the other rules regarding standard of conduct, neglect, and performance of duty. Officer Dadura’s unholstering and displaying his CED also violated the use of force policies and procedures.

Section 3:3.16 regarding operation of motor vehicles provides: “Members and employees when driving vehicles private or of the department shall not drive in a negligent manner or violate the traffic laws except cases of emergency and then only in conformity with the law regarding same. They shall set an example for other persons in the operation of their vehicles.” Officer Dadura’s failure to stop at the two stop signs in the video violated this section.

Officer Dadura’s conduct on March 28, 2021, as set forth above was also in violation of the following code sections: 1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency or failure to perform duty; 2. N.J.A.C. 4A:2-2.3(a)(3) Inability to perform duties; 3. N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; and 4. N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause. Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. The specified ‘Other sufficient cause’ allegations

against appellant are for violation of the Wildwood City Police Department Rules and Regulations as specified aforesaid including: 1. 3:1.1 Standards of Conduct; 2. 3:1.8 Neglect of duty; 3. 3:1.9 Performance of duty; 4. 3:3.11 Obedience to laws and regulations; and 5. 3:3.16 Operation of motor vehicles.

Officer Dadura's conduct also constituted a violation of Conduct unbecoming a police officer under common law of the State of New Jersey. "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, 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))

The video from the BWC flash drive of Officer Dadura (R-7) shows that when Officer Dadura first locates the suspect, Officer Dadura is heard to say, "Yo, Bud, get over here!" and the suspect begins to run. Officer Dadura, while driving his vehicle, catches up with the suspect (14:41 on video), unholsters his taser and holds his taser out the car window with his left hand pointing it at the suspect, with his right hand on the steering wheel and says, "Yo. . . Yo. . . I don't mind, I'll tase your ass. Stop dude! Don't make me tase you!" (14:52 on video). Then Officer Dadura holsters his taser after eleven seconds and states, "I'm not running man. I got all day." This conduct is certainly violative of the implicit standard of good behavior which devolves upon a police officer, one who stands in the public eye as an upholder of that which is morally and legally correct.

As set forth in the findings of facts and as discussed above, I **CONCLUDE** that the respondent has met its burden of proof by a preponderance of the credible evidence in

establishing the following violations: 1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency of failure to perform duty; 2. N.J.A.C. 4A:2-2.3(a)(3) Inability to perform duties; 3. N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; 4. N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause, being various violations of the Wildwood Police Department Rules and Regulations including 1. 3:1.1 Standards of Conduct; 2. 3:1.8 Neglect of duty; 3. 3:1.9 Performance of duty; 4. 3:3.11 Obedience to laws and regulations; 5. 3:3.16 Operation of motor vehicles; 5. Conduct unbecoming a police officer under common law of the State of New Jersey; and 6. Wildwood Police Department Rules/Regulations.

Penalty

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the 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.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Appellant has been found to have violated: 1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency of failure to perform duty; 2. N.J.A.C. 4A:2-2.3(a)(3) Inability to perform duties; 3. N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; 4. N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause, being various violations of the Wildwood Police Department Rules and Regulations including 1. 3:1.1 Standards of Conduct; 2. 3:1.8 Neglect of duty; 3. 3:1.9

Performance of duty; 4. 3:3.11 Obedience to laws and regulations; 5. 3:3.16 Operation of motor vehicles; 5. Conduct unbecoming a police officer under common law of the State of New Jersey; and 6. Wildwood Police Department Rules/Regulations.

Respondent seeks a sixty-day working suspension for the aforementioned violations. The chief recommended a sixty-day suspension because Officer Dadura had numerous incidents in 2020 and 2021 that resulted in preliminary notices and final notices of discipline being imposed that involved suspensions. It was a progressive discipline format, and this was Officer Dadura's fourth incident in which a taser was involved and the chief thought it necessary to bring Officer Dadura back into compliance with the rules and regulations as well as the laws they are required to uphold. The chief saw grave safety issues that gave him concern not only in this incident but prior incidents that resulted in suspensions where Dadura's lack of officer safety was evident. Officer Dadura's physical conditioning and how he handled suspects was drastically poor and the chief had great concern for Officer Dadura's safety as well as the safety of other officers and felt he needed to remove Officer Dadura from the street and take his duty and off-duty weapons away. The chief felt his actions were egregious and he had to take an aggressive stance to protect the department and to get Officer Dadura to realize his actions were improper and he should never have handled the incident the way he did.

However, prior to this incident of March 28, 2021, the chief had signed a Personnel Order, dated March 22, 2021. (R-14.) This order assigned Officer Dadura to the police academy for training due to deficiencies noted in his past performance. (R-14.) This was as a result of another internal affairs investigation that resulted in preliminary and final disciplinary action in which Officer Dadura's handling of an intoxicated female suspect who was disorderly and resisting arrest showed that his physical conditioning and his inability to properly arrest a young, intoxicated female and take her into custody warranted retraining. This was not disciplinary. It was to get Officer Dadura better familiar with control holds and other defensive tactics and techniques that all police officers are trained in during the police academy. The chief was not certain what type of training Officer Dadura had because he did not go through the Cape May County Police Academy.

Following this incident on March 28, 2021, and as a result of this incident, the chief signed Personnel Order 21-16, dated March 30, 2021, reassigning Officer Dadura and stated: "Above officer is reassigned to Administrative Duty working in Communications effective March 31, 2021, at 0700 hours. Any previous authorizations to carry off-duty weaponry is rescinded until further notice." (R-15.) The chief felt this was necessary for Officer Dadura's safety as well as the safety of his fellow officers. His conduct was unsafe, and they decided to remove his weapons and his ability to carry while off duty and to reassign him to administrative duty while they were preparing to put him into the Cape May County Police Academy and have him receive all of the training because he had so many different incidents that they could not just direct unarmed self-defense and taser training. They felt it was better to start at the very beginning and cover every functional area that every officer is trained in, to ensure that Officer Dadura was trained properly and effectively.

A Performance Improvement Plan for Officer Dadura, dated May 18, 2021, was implemented. (R-16.) Both the Chief and Officer Dadura signed the plan. The document provided a history of the multiple incidents in which Officer Dadura's performance was called into question, the various suspensions he received and what corrective measures would be implemented to bring him back into compliance.

Personnel Order 22-02, dated January 4, 2022, stayed Officer Dadura's suspension so he could attend the Cape May County Police Academy with the new starting class for a basic course for police officers. (R-17.) He would still have been on suspension when the academy started so the chief thought it necessary to stay his suspension so he could start on day one of the academy. He would serve the balance of his suspension after he completed the academy. The police academy was six months from January 25, 2022, to June 14, 2022, and Officer Dadura attended and completed the police academy.

Officer Dadura was not working on the street as a police officer from the date of the first personnel order putting him on administrative duty effective March 30, 2021, (R-15) until June 2022 when he completed the police academy.

The Performance Improvement Plan had to be followed by both Officer Dadura and the department. Officer Dadura completed the police academy and graduated June 14, 2022. The plan also required Officer Dadura to complete a FTO program after the academy, which he did. The plan further indicated that "following his successful completion of the FTO program, Ptlm. Dadura will be assigned to attend a Rifle Operator course and a Conducted Energy Device (CED) course." This has not occurred to date although the improvement plan by its terms says it was in force for one hundred eighty days and has now expired. (R-16.)

Officer Dadura has five FNDAs contained in his file, including the one at issue in this case for a sixty-day suspension, dated October 25, 2021; the seven-day suspension that was amended to a five-day suspension before this hearing started, dated October 25, 2021; a five-day suspension, dated October 25, 2021; a three-day suspension, dated October 25, 2021; and a ten-day suspension dated March 9, 2016. (R-18.) Therefore, prior to this case, Officer Dadura had four disciplinary charges, three of them minor and only one major discipline from 2016. There was also an "Employee Performance Notice", dated March 26, 2018, for counselling contained in Officer Dadura's discipline file.

Although I have sustained all of the charges against Officer Dadura, I am not inclined to impose a sixty-working-day suspension penalty based on theories of progressive discipline since this discipline arose before Officer Dadura could receive the training anticipated to be conducted pursuant to the Personnel Order, dated March 22, 2021. This incident occurred on March 28, 2021, and resulted in the Chief ordering Officer Dadura to complete the entire Cape May Police Academy to ensure he is trained properly. The chief had testified that Officer Dadura had not initially attended the Cape May County Police Academy, and this was the way to make sure he was trained properly by their instructors.

Officer Dadura has now completed the academy and also attended the FTO program pursuant to the Performance Improvement Plan that was implemented for him dated May 18, 2021. (R-16.) It is interesting to note that he has not been provided with the Rifle Operator course and a CED course also contemplated by the Performance Improvement Plan.

I **CONCLUDE** that considering principles of progressive discipline, the imposition of a thirty-day suspension without pay is appropriate for the sustained charges of 1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency of failure to perform duty; 2. N.J.A.C. 4A:2-2.3(a)(3) Inability to perform duties; 3. N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; 4. N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause, being various violations of the Wildwood Police Department Rules and Regulations including 1. 3:1.1 Standards of Conduct; 2. 3:1.8 Neglect of duty; 3. 3:1.9 Performance of duty; 4. 3:3.11 Obedience to laws and regulations; 5. 3:3.16 Operation of motor vehicles; 5. Conduct unbecoming a police officer under common law of the State of New Jersey; and 6. Wildwood Police Department Rules/Regulations.

Therefore, I **CONCLUDE** that the original penalty of a sixty-working-day suspension be **MODIFIED** to a thirty-working-day suspension without pay.

ORDER

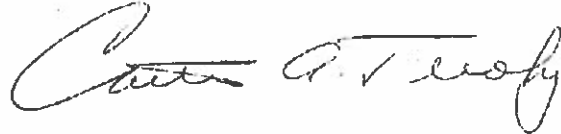
It is **ORDERED** that the charges and specifications made against the appellant set forth in the Final Notice of Disciplinary Action, dated October 25, 2021, are **SUSTAINED**.

It is also **ORDERED** that the penalty of a sixty-working-day suspension against appellant be **MODIFIED** to a thirty-working-day suspension without pay.

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.



July 24, 2023 _____

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

CAT/gd/lam

APPENDIX

WITNESSES

For appellant

None

For respondent

Robert Regalbuto

Matthew Sicilia

EXHIBITS

For appellant

The parties stipulated that all of the respondent's exhibits were in evidence as **Joint** exhibits.

For respondent

- R-1 Notice of Internal Affairs complaint IA 2021-17 to Officer Dadura
- R-2 PNDA and Specifications, dated April 7, 2021
- R-3 Lt. Yuhas' report
- R-4 Officer Dadura's report
- R-5 Wildwood Police Department Investigation report, supplemental investigation report, arrest report and criminal charges
- R-6 Officer Dadura's use of force report
- R-7 Body Worn Camera footage, Officer Dadura
- R-8 Body Worn Camera footage, Officer Carter
- R-9 Wildwood Police Department rules and regulation
- R-10 FNDA, dated October 25, 2021
- R-11 Cape May County Prosecutor's Office Guidelines on use of force for conducted energy devices (CED)
- R-12 New Jersey Attorney General's Supplemental Policy on CED
- R-13 State power point regarding CEDs

R-14 Personnel Order 21-13

R-15 Personnel Order 21-16

R-16 Performance Improvement Plan for Officer Dadura, dated May 18, 2021

R-17 Personnel Order 22-02

R-18 Discipline File of Officer Dadura