

However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore modifies the 90 calendar day suspension to a two working day suspension.

The Commission orders that the appellant be granted 88 calendar days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

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

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

**Inquiries
and
Correspondence**

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00486-23

AGENCY DKT. NO. 2023-1250

**IN THE MATTER OF DODI ZORRILLA,
CITY OF PATERSON POLICE DEPARTMENT.**

Patrick J. Caserta, Esq., for appellant Dodi Zorrilla (Patrick J. Caserta, attorneys)

Marlin G Townes III, Esq., for respondent City of Paterson (O'Toole Scrivo, attorneys)

Record Closed: June 7, 2023

Decided: July 19, 2023

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Paterson police officer Dodi Zorrilla (appellant or Zorrilla) appeals respondent City of Paterson's (respondent or Paterson) ninety-day suspension without pay for failure to follow protocol. Respondent alleges that Zorrilla failed to follow proper protocol when he, along with his partner, Officer Feliciano, took FDJ into custody and subsequently released him onto a City street. FDJ was reported missing by family members shortly thereafter.

PROCEDURAL HISTORY

A Final Notice of Disciplinary Action (FNDA) was issued on October 31, 2022. This noticed referenced the Preliminary Notice of Disciplinary Action (PNDA) issued March 25, 2022, and the charges contained therein, as follows:

- 1) Body worn cameras B. Incidents to record (VII). Deactivation.
- 2) Patrol Procedures: VII. Patrol Officers:
 - a. 6) notify dispatch of arrival.
 - b. 18) Prepare all necessary reports
 - c. 20) Notify communications of dispatches and field generated assignments.
- 3) Records:
 - a. 6) record of long sheet all assignments.
- 4) 2.21 Neglect of Duty.
- 5) 3.0 rules of conduct:
 - a. 3.8 performance of duty
- 6) 9.0 police records and information:
 - a. 9.6 preparation and submission of reports
 - b. 9.6 reporting required
- 7) 12.0 equipment and property:
 - a. 12.8 transporting citizens within guidelines of department directives and orders.

Zorrilla filed the instant appeal, and the matter was transmitted as a contested case to the Office of Administrative Law (OAL) on January 13, 2023. A plenary hearing was conducted on April 12, 2023. The record was kept open pending submission of transcripts and closing arguments. Closing arguments were received on June 7, 2023, at which time the record was closed.

FACTUAL DISCUSSION

Testimony

Detective Leonardo Castillo (Castillo) testified as a fact witness at the hearing. Castillo testified that he has been employed by the Paterson Police Department for over thirteen years, and has been in his current assignment in the Internal Affairs Division for over five years.

Castillo conducted the investigation regarding the administrative charges filed against Zorrilla. Castillo received a complaint from FDJ's brother, EDJ, on February 7, 2022, in reference to an incident on February 2, 2022, and commenced his investigation accordingly. Castillo testified that he prepared an investigation report concerning the alleged disciplinary infractions committed by Officers Feliciano and Zorrilla, patrol unit #111.

In furtherance of his investigation, Castillo searched various databases containing any records or information relating to FDJ (such as prior interactions with law enforcement). He also reviewed patrol unit #111's log sheet and footage from the body-worn cameras of Officers Feliciano and Zorrilla. He then reviewed GPS data for patrol unit #111; audio transmissions with patrol unit #111; records concerning the City's warming center; interviews with FDJ's relatives; security video from Papa Seafood; footage from the body-worn cameras of investigating detectives; security video from John F. Kennedy High School; and footage of Officer Feliciano's and Officer Zorrilla's Internal Affairs interviews. See R-7.

Based on this investigation, Detective Castillo concluded that Zorrilla was culpable as charged in the PNDA. Detective Castillo testified that he also concluded that FDJ was intoxicated at the time of his encounter with Officers Zorrilla and Feliciano. He came to this conclusion based on FDJ's appearance and speech in the video recordings. It should also be noted that the owner of La Parada Grocery described FDJ as being "super drunk" on the night of February 2, 2022. See R-7; R-13. Detective Castillo noted that, under the

applicable Department rules and regulations, officers are required to take appropriate action to “[p]rotect life and property” and to “[a]id citizens in matters with police jurisdiction.” See R-6. In addition to properly documenting their interactions, Castillo opined that the proper way for dealing with FDJ in the condition in which Zorrilla and Feliciano found him, i.e., intoxicated and without sufficient clothing, is to either call for an ambulance or take him to police headquarters.

Castillo further testified that Zorrilla was responsible for knowing all Department policies and procedures despite the short amount of time he was on the job, and that all officers are required to know the Department’s rules and regulations. Ignorance of the rules and regulations is not a defense to an alleged breach of protocol. Castillo further noted that, to the extent Zorrilla received any improper orders from Feliciano, he failed to seek clarification from supervisors through the chain of command and to report same through the chain of command.

On cross-examination, Castillo testified that Zorrilla was sworn into the Paterson Police Department on July 12, 2021, and that he graduated from the police academy on December 21, 2021. He further testified that, as Paterson does not have a police academy, Zorrilla would have attended an academy outside of Paterson and would not have received training on Paterson policy and procedures or Paterson rules and regulations while at the academy. Instead, Zorrilla would have received such training once he graduated from the academy and came into Paterson to start his assignment, though Castillo could not testify as to who provided such training to Zorrilla or when such training specifically occurred.

Castillo further testified that Feliciano was assigned to train Zorrilla as a field training officer on the date in question. It appeared, based on Castillo’s review of the radio transmissions, that Feliciano had control of the radio transmissions on the evening in question.

During Zorrilla’s Internal Affairs interview, when asked why no incident report was filed for the February 2, 2022, interaction with FDJ, Zorrilla stated that, at the time, he did inquire as to whether a report should be generated, to which Feliciano responded that no

incident report needed to be filled out, as this incident was simply a transport of FDJ. Castillo testified that Feliciano's response as relayed by Zorrilla was an incorrect statement of protocol. Castillo further testified that a rookie officer, such as Zorrilla, would be expected to follow the orders and directions of his senior/training officer, Feliciano, though it appears that, in the present matter, Feliciano's directives were wrong. Castillo noted that, notwithstanding the training officer's mistaken instructions, common sense would dictate that the officers do "something more" to aid FDJ, who appeared intoxicated and without adequate clothing. Castillo affirmed that Zorrilla followed the orders and directives of his field training officer, Feliciano, on the night of February 2, 2022.

On re-direct examination, Castillo noted that, under Paterson Police Department rules 13.3, 13.5, and 13.7, an officer has a duty to disregard an improper or illegal order and a duty to report any such improper or illegal order up the chain of command. Castillo affirmed that there is no charge regarding a failure to report an improper order in the instant matter.

I find this witness to have testified credibly.

Facts

Based on my review of the evidence and testimony, I **FIND** the following to be the facts of the case:

On the evening of February 2, 2022, Zorrilla and Feliciano were assigned to patrol unit #111 and were dispatched to a residence on Union Avenue in Paterson regarding a complaint of tobacco sales to a minor. See R-7; R-15; R-16. After completing the call, the officers went back to their patrol unit, and a woman driving an SUV pulled alongside their unit and reported that a male, later identified as FDJ, had tried to open her car door a moment prior. See R-7; R-11; R-15; R-16. The woman alerted the officers to the location of FDJ, which was in the immediate vicinity of the officers' position at the time. See R-7; R-15; R-16.

The officers approached FDJ, and Feliciano told FDJ to walk away from the area. In response, FDJ explained to the officers that he thought the complainant/woman was his mother and he was attempting to procure food from her. FDJ then departed on foot towards Totowa. One of the officers then asked the woman where she was headed, and she informed them she was going to her residence. Officer Feliciano offered to escort the woman to her residence.

The officers were then flagged down by two male employees from the La Parada Grocery convenience store, which is located across the street from the officers' position. The employees informed the officers that FDJ was inside the store and that he had grabbed a female customer. Officer Feliciano and Officer Zorrilla went to enter the store as FDJ was exiting. At this point, Zorrilla activated his body-worn camera. See R-7; R-8. Zorrilla went into the store to speak to the customer and Feliciano stayed outside with FDJ. While inside, the customer told Officer Zorrilla that FDJ had grabbed her by the shoulders and pulled her to the side. The customer asserted that she did not wish to pursue the matter any further. Zorrilla exited the grocery store and observed that Feliciano had FDJ handcuffed on the ground.

Officer Zorrilla assisted Officer Feliciano in picking up FDJ from the ground. See R-7; R-8; R-9. They escorted FDJ to their patrol car but had some difficulty getting him into the vehicle, due to FDJ acting agitated and using foul language. After the officers successfully secured FDJ in the rear passenger portion of the patrol unit, Feliciano approached the female customer in the convenience store and asked once more if she wanted a report to be prepared. She declined. Both officers then entered their patrol unit and deactivated their body-worn cameras. See R-8; R-9. FDJ continued to have an agitated demeanor while in the patrol car and continued to curse at the officers. See R-7; R-8; R-9. Once he calmed down, the officers asked FDJ where he wanted to be dropped off, as he was not under arrest. See R-7. FDJ asked to be dropped off by John F. Kennedy High School, and the officers did so. FDJ's current whereabouts are unknown.

Officers Zorrilla and Feliciano did not prepare any reports in connection with their February 2, 2022, encounters with the female convenience-store customer and FDJ.

Zorrilla and Feliciano did not obtain a file number for their interactions at the grocery store and/or for their transport of FDJ. Zorrilla followed his field training officer's orders and directives during the February 2, 2022, incident with FDJ.

LEGAL DISCUSSION

In disciplinary cases, the appointing authority has the burden of persuasion and must demonstrate by a preponderance of the evidence that it had just cause to discipline the officer and lodge the charges. See 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 the 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).

Zorrilla is charged with violating several rules and regulations of the Paterson Police Department. Based on the findings above and the Department rules and regulations provided by the respondent, I **CONCLUDE** that Zorrilla did not follow applicable rules and proper procedures or protocols in his handling of the February 2, 2022, incident with FDJ, as detailed in the notices of disciplinary action. I further **CONCLUDE** that Zorrilla's failure to follow the applicable rules and proper protocols was a direct result of his following his supervisor's orders and directives.

Having concluded that Zorrilla violated the applicable rules and regulations as charged, I must now assess the penalty to be imposed. To this end, the concept of progressive discipline is generally held as a guiding principle in assessing a disciplinary penalty. Progressive discipline has generally been utilized in two ways: (1) to ratchet-up or support imposition of a more severe penalty for a public employee who engages in habitual misconduct; and (2) to mitigate the penalty for an employee who has a record largely unblemished by significant disciplinary infractions. In re Stallworth, 208 N.J. 182, 196 (2011).

On the other hand, progressive discipline is not a fixed and immutable rule to be followed without question. Id. at 196. As such, progressive discipline has been bypassed in certain instances wherein an employee engages in severe misconduct, especially when the misconduct causes risk of harm to persons or property. Id. at 197. Further, applicable case law has established that progressive discipline is not necessary when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest. Ibid.

In the case at bar, a ninety-day suspension without pay was imposed by the appointing authority. I **CONCLUDE** that there are a number of extenuating circumstances that warrant the application of progressive discipline in this matter, and, as a result, a reduction of the penalty to be imposed. First, it appears that Zorrilla had no disciplinary history to speak of at the time of the incident. He had only been on patrol a little over one month. Thus, Zorrilla was also greatly inexperienced at the time, another factor to be considered. It is also unclear whether Zorrilla received proper training in the various procedures and protocols he has been found to have violated. More importantly, all of Zorrilla's actions or failures to act on the night in question were by order and under the supervision of his training officer, Feliciano, who was, himself, less than one year on the job as a patrolman.

The entire disciplinary incident seems to be the product of compounded inexperience and lack of knowledge of the Department rules and regulations. To this point, as noted above, the Department's position is that all officers, regardless of experience level, are responsible for knowing and adhering to all Department rules and procedures. While I agree, and note that all law-enforcement officers are generally held to a higher standard, it cannot be ignored that Zorrilla was, effectively, receiving on-the-job training in those very same rules and procedures at the time of the incident, albeit, from a supervisor who was, himself, inexperienced. Castillo noted during his testimony that Zorrilla's gut instinct was to file a report at the time, but his supervisor advised him that a report was not necessary. The Department failed to show what recourse, if any, Zorrilla had to override the directive of his supervisor at that moment. While Zorrilla could have, potentially, reported the issue up the chain of command after his patrol, his actions

at the time of the interaction with FDJ were within reason given that they were by directive, order, and instruction of his supervisor.

I must also note that the individual with whom the officers were interacting, FDJ, was not charged with a crime, was not placed under arrest at the time, and was released from the vehicle at his own request. It appears, thus, that Zorrilla is being scrutinized not for acting overly aggressive, but for acting overly passive. While FDJ wore no overcoat and appeared to be intoxicated, he also appeared as a citizen who did not wish to be further aided by police. The convenience-store customer who reported alleged actions by FDJ also appeared to not want any further police involvement, as no charges were pressed. It appears that the officers' act of removing FDJ from the area of the convenience store and subsequently releasing FDJ onto a City street (by FDJ's own direction) was a misguided attempt to peaceably diffuse the situation.

At all times relevant, Zorrilla was under the direct supervision of his field training officer and followed his orders and directives dutifully, as was expected of him. While those orders and directives may have been improper at times, Zorrilla's primary directive at the time the underlying incident occurred was to follow the lead and command of his supervisor. Based on the foregoing, coupled with this being Zorrilla's first disciplinary incident of his early career, and applying the principles of progressive discipline, I **CONCLUDE** that Officer Zorrilla should be assessed no more than a two-day suspension without pays.

ORDER

Based upon the foregoing, it is **ORDERED** that appellant, Dodi Zorrilla, be suspended for two days 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. 52:14B-10.

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

July 19, 2023
DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency: 7/19/23

Date Mailed to Parties: 7/19/23

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APPENDIX

LIST OF WITNESSES

For Appellant:

None

For Respondent:

Officer Leonardo Castillo

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

None

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action for Officer Zorrilla, March 25, 2022
- R-2 Final Notice of Disciplinary Action for Officer Zorrilla
- R-3 Standard Operating Procedures—Body Worn Cameras, February 9, 2022
- R-4 Standard Operating Procedures—Body Worn Cameras, December 2, 2020
- R-5 Standard Operating Procedures—Patrol Procedures
- R-6 Paterson Police Department Rules and Regulations
- R-7 Internal Affairs Investigative Report by Detective Leonardo Castillo, March 18, 2022
- R-8 Officer Zorrilla's body-worn camera video from February 2, 2022
- R-9 Officer Feliciano's body-worn camera video from February 2, 2022
- R-10 Audio files of radio transmissions (20)
- R-11 Security video from Papa Seafood (3)
- R-12 Detective's body-worn camera video at Papa Seafood (3)
- R-13 Detective's body-worn camera video at La Parada Grocery (1)
- R-14 Security videos from Kennedy High School (3)

R-15 Video of Internal Affairs interview of Officer Zorrilla

R-16 Video of Internal Affairs interview of Officer Feliciano