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ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and demoting the appellant were justified. The Commission therefore upholds those actions and dismisses the appeal of Homero Almanzar.

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 17TH DAY OF JANUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01284-23

AGENCY DKT. NO. 2023-1604

**IN THE MATTER OF HOMERO ALMANZAR,
UNION COUNTY, DEPARTMENT OF
PUBLIC SAFETY.**

Marc P. Schwartzbach Esq., for appellant Homero Almanzar (Donald A. Digioia
Law Group, attorneys)

Brian M. Hak, Esq., for respondent Union County (Eric M. Bernstein & Associates,
attorneys)

Record Closed: September 28, 2023

Decided: November 30, 2023

BEFORE SUSANA E. GUERRERO, ALJ:

STATEMENT OF THE CASE

Appellant, Homero Almanzar (Almanzar or appellant), a County police sergeant employed by the Union County Police Department (UCPD) appeals a 120-day suspension and demotion to County Police Officer as a result of his response to an incident that occurred while he was the patrol supervisor in September 2020.

PROCEDURAL HISTORY

The County of Union, Department of Public Safety (County) served Almanzar with a Final Notice of Disciplinary Action (FNDA) dated January 13, 2023, for having violated several provisions of the New Jersey Administrative Code, Departmental Rules and Regulations and N.J.S.A. 40A:14-147, and imposing a 120-day suspension and demotion.

The New Jersey Civil Service Commission (the Commission) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on February 8, 2023, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing took place over the course of three days: May 11, May 17, and May 24, 2023. The parties were given an opportunity to file post-hearing briefs. The briefs were received on September 28, 2023, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

I FIND as FACT the following undisputed facts:

Almanzar has been employed as a police officer with the Union County Police Department, serving in various positions, for nearly twenty-three years. He was promoted to sergeant in March 2017. He was on duty as the patrol supervisor during the midnight shift, from approximately 6:30 p.m. on September 19, 2020, through 6:30 a.m. on September 20, 2020. That evening, Almanzar was the only supervisor working during his shift and was responsible for overseeing the police department which, during that shift, consisted of four (there are typically five) officers who were assigned to different sectors in the county. Officers Robert Garrison (Garrison), who was assigned to the sector that included Plainfield, and Jairo Collantes (Collantes), who was assigned to another sector, were on patrol that evening.

At approximately 3:00 a.m. on September 20, 2020, a call came in through the dispatch center which was conveyed as an assault that took place in Green Brook Park

in Plainfield. Garrison was dispatched to Brookside Place, a street just outside Green Brook Park.

When Garrison arrived at Brookside Place, he met with officers from the Plainfield Police Department (PPD), and the victim's friends or family. Garrison was informed by the PPD that the victim of the assault that took place in the park had been taken to Robert Wood Johnson University Hospital (RWJ), which is located outside Union County. Since Garrison does not speak Spanish, he was unable to communicate with the victim's family or friends, who only spoke Spanish. The information Garrison obtained at the scene was conveyed to him by the PPD.

While at the scene, Garrison spoke with Almanzar by telephone. Almanzar was at headquarters, and remained at headquarters through the end of his shift. Garrison informed Almanzar that he was unable to communicate with the victim's family/friends because they only spoke Spanish. Almanzar speaks Spanish. Garrison informed Almanzar that the PPD officers left the scene. Almanzar directed Garrison to respond to the hospital to speak with the victim, and he instructed Collantes, who speaks Spanish, to meet with Garrison at RWJ to assist with translating.

When Garrison and Collantes arrived at the hospital, they were not immediately able to see the victim, who was being prepared for a scan. The officers communicated with Almanzar by telephone while they were at the hospital. After waiting about thirty minutes, Collantes was finally able to communicate with the victim, but only briefly since the victim was in a great deal of pain. Collantes communicated the information obtained from the victim to Almanzar by telephone. Almanzar then spoke with Garrison and instructed him to take photographs of the victim and to leave the hospital. After taking photos of the victim using Garrison's cell phone, the two officers left the hospital and returned to the county.

Neither Garrison, Collantes, nor Almanzar prepared any report concerning this incident before the end of their shift.

CHARGES

The January 13, 2023, FNDA charges Almanzar with violation of N.J.S.A. 40A:14-147 (Statutory misconduct); N.J.A.C. 4A:2-2.3(a)(1) (Incompetency, inefficiency or failure to perform duties); N.J.A.C. 4A:2-2.3(a)(3) (Inability to perform duties); N.J.A.C. 4A:2-2.3(a)(6) (Conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of duty); N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause); and various violations of the Rules and Regulations of the Union County Police Department, including Volume 1, Chapter 2 Sections 2:1.6 (Neglect of Duty), Section 2:1.7 (Performance of Duty), Section 2:1.30 (Work Expectations), and Section 2:2.20 (All Other Conduct).

Incidents giving rise to the charges, as reflected in the FNDA, are described as follows:

. . . On or about September 20, 2020, you were the assigned supervisor for the 1830 to 0630 hours shift. At 0255 hours, an aggravated assault was reported at Green Brook Park in Plainfield, New Jersey. Officer Garrison was dispatched to the location for the initial report. When Officer Garrison arrived at the location he was informed that members of the Plainfield Police Department were with the victim at Brookside Place, a street next to Green Brook Park. The victim had already been taken to the hospital due to his serious injuries. The victim and the witnesses to the incident only spoke Spanish. Officer Garrison advised you, by phone, that he needed a Spanish-speaking officer to assist him with the investigation. You advised Officer Garrison that you would send Officer Collantes, who speaks Spanish, to assist Officer Garrison with the investigation. You, as supervisor, should have gone to the scene irrespective of assigning Collantes. You never responded to the scene and you remained at UCPD Headquarters during the entire incident. You failed to assist with the investigation of the incident even though you are a supervisor officer who is also fluent in Spanish.

. . . You directed Officers Garrison and Collantes to go to the hospital where they interviewed the victim, who had been attacked by several individuals, dragged into the park, almost drowned in a stream in the park, and struck in the head with a bat. Just as your failure to go to the scene, you equally failed to go to the hospital as you are also required to. At the hospital, Officers Garrison and Collantes contacted you to

update you on the situation. Officer Collantes asked you if he and Officer Garrison should stay at the hospital until a detective arrived for further investigation. You instructed Officers Garrison and Collantes to just take pictures of the victim's injuries and clear the hospital. You stated that you did not consider the assault serious, even though the victim sustained significant injuries and even though, after the Detective Bureau completed its investigation, a suspect was charged with serious crimes including second (2nd) degree aggravated assault, third (3rd) degree unlawful possession of a weapon, and third (3rd) degree possession of a weapon for unlawful purposes. You further indicated that you did not think that the incident was the UCPD's responsibility.

. . . You failed to properly supervise your subordinates during this very serious incident in which the victim was severely assaulted and had to be taken to the hospital. You failed to advise your Supervisor in the chain of command. You also failed as a supervisor to advise the Detective Bureau of the incident. You further failed to recognize the seriousness of the incident and you improperly determined that the incident was not the responsibility of the UCPD. Your complete failure to properly supervise and perform your duties during the incident resulted in there be[ing] no investigation reports completed before the end of the shift in violation of policy and no information regarding the incident being passed on to the next shift's supervisors where your tour of duty ended at 0630 hours. Due to your actions/inactions, there was also little to no information regarding the incident recorded on the CAD system. Furthermore, upon information and belief, your failure resulted in the loss of evidence and/or the securing of evidence.

TESTIMONY

At the hearing, the respondent presented six witnesses, and Almanzar testified on his own behalf.

Officer Robert Garrison

Garrison testified that he first became involved in the matter when he received a call over the radio that someone may have tried to drown another person in Green Brook Park and that the PPD was with the victim on Brookside Place, which is a dead-end street

just outside the park. When Garrison arrived, he was told by the PPD officers that the victim was walking through Green Brook Park, he was hit with a baseball bat and dragged to the brook, where they attempted to drown him. The PPD also told him that the victim was taken to RWJ. Garrison testified that he informed Almanzar of this and that he was going to the hospital to speak with the victim. He testified that Almanzar did not object to this, and that Almanzar told him that he was staying at headquarters because he was the only supervisor working.

Garrison testified that the victim told the officers that he was walking on Brookside Place when he was hit with a bat and dragged into the park where more people were waiting, and that in the park they beat him and dragged him to the brook, where they tried to drown him. He testified that prior to speaking with the victim, the information he had received at the scene initially was that the entire incident took place in the park.

Garrison testified that when he and Collantes informed Almanzar by telephone that it started on Brookside Place, Almanzar said "this sounds like a Plainfield job," but that Garrison told Almanzar that he had already taken the job based on the initial information. He testified that he also told Almanzar while initially at the scene that he had taken the job. Garrison denied that Almanzar directed him to reach out to the PPD to turn the case back over to them.

Garrison testified that he believed the detective bureau should have been called, and that the supervisor typically goes to the scene for something of this magnitude.

While initially at the scene, Garrison obtained the victim's bloody sweater. Garrison testified that when he returned to headquarters near the end of his shift, he logged it in evidence. Garrison placed the sweater in an evidence bag, and conceded that he failed to handle this piece of evidence consistent with protocol and procedure. He testified that he did not recall whether he informed Almanzar that he had collected this evidence at the time that it was collected, but that they discussed the sweater while he was at the hospital.

Garrison testified that he did not complete any reports because he was going to do it the following night when he returned to work, and since the detective bureau was not called, nobody would have seen it until Monday. Garrison testified that he had no recollection of discussing completing reports during that shift.

Garrison prepared a special report, as requested by then-Lieutenant Robert Kreisberg (Kreisberg) at the start of his Sunday evening shift. He prepared a second special report dated September 27, in response to Almanzar's request that day, to explain why he did not finish his reports before leaving that Sunday morning.

Garrison testified that he believed it was UCPD's job based on the information initially received and because they were so far into the job once they were in the hospital. Garrison testified that since the incident started outside county property on a Plainfield street, jurisdiction is a "bit [of a] gray [area]," and that while either department could have taken the job, jurisdiction would be decided between the supervisors of each department.

Officer Jairo Collantes

Collantes was dispatched to go to Robert Wood Johnson to assist in translating at around 3:30 a.m., while he was stationed in Elizabeth. When he arrived at the hospital, he informed Almanzar of his arrival, and informed him that they were unable to speak with the victim because he was going for testing. About thirty minutes later, he spoke with the victim in his room. Collantes testified that the victim did not speak much because he was in pain, but he informed Collantes that he had been at his cousin's house, and that when he was at the corner of his house, he was dragged into Green Brook Park where there were men waiting to beat him and kill him. The victim reported that he almost drowned in the brook.

Collantes testified that after he informed Almanzar by telephone what the victim had told him, Collantes asked if they were going to get the detective bureau to the hospital, and Almanzar replied: "it's not our job, it's not our job." Collantes testified that Almanzar then asked to speak with Garrison, and that after Almanzar declared that it was not their job, they were directed to take pictures of the victim and clear out.

Collantes testified that he was surprised that Almanzar stated that it was not their job because the job had come from the PPD, Garrison had taken the job, and they had already invested time into the job. Collantes testified that he believed it was UCPD's job, and that when he arrived at the hospital, Garrison told him that he had taken the job. He testified that supervisors typically go to the scene depending on the magnitude of the incident, even if the supervisor is alone at headquarters.

Collantes wrote a special report, and a subsequent one at Almanzar's request. He testified that he did not write a report initially because Almanzar had determined that it was not their job.

Sergeant Joseph Eric Nordstrom

Nordstrom relieved Almanzar on the morning of September 20, 2020, when he arrived at headquarters at about 6:10 a.m. for his shift that started at 6:30 a.m. He testified that Almanzar advised him that they had a job earlier in the morning in Green Brook Park and that a person was assaulted. Nordstrom asked where the person was, and Almanzar informed him that he was at RWJ. Nordstrom testified that when he asked Almanzar if anyone had been informed about this, Almanzar replied "no, it's not our job."

Nordstrom testified that Almanzar should have notified the patrol captain because something serious occurred on county property. When they have a job and need resources, the first person to notify is the patrol captain, who then notifies the detective bureau.

Based on the information provided to him by Almanzar, Nordstrom testified that Almanzar should have responded to the job, met with the PPD if they were on scene, and figured out where the incident took place and what transpired. Nordstrom informed Kreisberg of what Almanzar reported when Kreisberg arrived at headquarters at about 7:30 a.m. Kreisberg instructed him to see if any reports were done, and Nordstrom found no reports.

Nordstrom testified that reports should be done before the officer goes home, and that the administration has made that known to the officers. He testified that the sergeant should reach out to the patrolmen and make sure reports are done, and that he usually goes into the system later in the day to make sure reports are done. When Nordstrom saw they were not done here, he informed Kreisberg. At that time, the officers had already left for the day.

Nordstrom testified that if Almanzar determined that it was not a UCPD job, it was his responsibility to notify the other agency that it was being turned back over to them. Nordstrom testified that Almanzar should have responded to the scene, obtained information, determined where exactly this happened, and communicated with PPD.

Captain Robert Kreisberg

Kreisberg was a lieutenant at the time of the incident. On September 20, 2020, he arrived at headquarters at around 7:30 a.m., and he was informed by Nordstrom that there had been an aggravated assault in Green Brook Park. He asked Nordstrom if anyone had been notified, and he saw that reports had been started but not completed. He called the officers involved that evening and spoke briefly with Almanzar. Since neither the captain nor the detective bureau had been contacted, he notified the captain of the incident.

Kreisberg testified that he was informed that a major crime had occurred in one of their parks, and that whenever that happens, the patrol captain is notified. He noted that the incident was serious enough for them to transport the victim to RWJ, and not JFK University Medical Center in Edison which is much closer.

Kreisberg also wrote a special report. He informed Chief Martin H. Mogensen (Mogensen), who was a captain at the time, who then notified the detective bureau. When he went to the scene during his shift, he was not aware that Almanzar had determined that it was not a UCPD job. He testified that he was surprised that Almanzar did not go to the scene himself because, "typically in a serious crime like that, there should be a supervisor on scene." He testified that as the supervisor, Almanzar should have called

the captain and notified him of the incident, and the captain would have decided whether to activate the detective bureau. He also testified that if Almanzar did determine that the PPD should handle the investigation, it was Almanzar's responsibility, as the highest-ranking supervisor involved, to at least ensure that the PPD supervisor was notified.

Based on the information provided to Kreisberg, including the fact that a significant portion of the incident took place in a county park, he testified that this was a UCPD job.

Kreisberg testified that when he spoke briefly with Almanzar that morning, Almanzar did not say that it was not their job. Kreisberg also testified that this was a UCPD job since a significant aspect of the aggravated assault took place in the county park, and that the detective bureau should have taken over the investigation after initially responding to the scene.

Chief Martin H. Mogensen

Mogensen was the patrol captain at the time of the incident. He received a call from Kreisberg at around 8:00 a.m. or 9:00 a.m. on September 20, 2020. He testified that Kreisberg seemed upset and advised him of what had occurred the night before. Mogensen then called the then-chief of police, advised him of the information he had received from Kreisberg, and then called the detective bureau to respond. Mogensen testified that he was surprised that Almanzar never informed him of the incident, and testified that it is a "blanket order" to notify him of anything.

Specifically, Mogensen testified that he was advised by Kreisberg that there was an assault and a possible attempted murder in Green Brook Park, that their officers were involved in that investigation, that reports were not completed, and that he was not notified. At that time, Mogensen was unaware that Almanzar had made the decision that it was not a UCPD job. When asked whether he thought it was a UCPD job based on what he knew at the time, he responded: "yeah, 100 percent it was."

Mogensen testified that jurisdiction-related questions come up on occasion and when this occurs, the supervisor has a conversation with the supervisor of the other police

department, and they decide on the best course of action. He testified that if Almanzar questioned their jurisdiction, he should have had a conversation with the supervisor from the PPD to make sure it is clear who is handling the investigation. Mogensen also testified that Almanzar should have gone to the scene to guide the officers as needed, and to have conversations with local police to then make correct decisions about the investigation. He testified that sergeants are field supervisors and should be out in the field. While certain things may have to be done at headquarters, the supervising sergeant should be out with the officers even if he is the only supervisor working at the time.

Mogensen testified that when Almanzar decided not to retain jurisdiction, the PPD officers had left the scene and were no longer involved; UCPD officers furthered the investigation without the detective bureau; and the investigation was delayed for hours, which could have created a loss of evidence since security of the scene was lost.

Mogensen also testified that there is a general policy requiring officers to complete reports before they go home.

He testified that this was a UCPD matter because: a UCPD officer was dispatched to the incident that had occurred in a county park; county officers remain involved and went to the hospital after discussions with the PPD; and, at the scene, Garrison said it was their job. If Almanzar determined, based on what his officers told him, that it was not a UCPD job, he should have at a minimum talked to the PPD to ensure that they would be handling the matter. Mogensen testified that since jurisdiction can sometimes be a gray area, the supervisor must speak to the other police department to determine who should take the job.

Mogensen testified that the UCPD had jurisdiction over this matter because there was an assault, and possibly an attempted murder, that occurred in a county park, and the PPD had been at the scene, and county officers were directed by Almanzar to leave the county to go to the hospital to talk to the victim.

Captain Robert McGuire

Captain Robert McGuire (McGuire) was a captain at the Union County Police Department for about ten years. He conducted the Internal Affairs investigation into this matter, and was also the commander of the detective bureau at the time. He had been employed by the UCPD for forty years, and recently retired.

McGuire described his investigation and findings as reflected in his final report. He ultimately found that Almanzar failed to supervise his subordinates; failed to notify his chain of command; and failed to follow known procedures for a sergeant. He opined that, as a sergeant, Almanzar should have responded to the incident and assisted more in the investigation. He testified that in a serious situation such as an aggravated assault, where a person was beaten and almost drowned, he should have responded to the scene. He testified that the officers were under the impression that this was UCPD's job, and that Almanzar provided them with very little guidance. He testified that the officers were confused because they were dispatched to the hospital to do further investigation, they felt it was their job and expected the detective bureau to respond, but they were told to just take pictures and leave. He criticized Almanzar for failing to properly guide the officers.

When Almanzar made the decision that it was the PPD's case, he should have notified the PPD. Since he did not, there was a delay in the investigation because nobody was handling it for several hours. He later agreed that if the victim was beaten and chased down a Plainfield street before entering the park, where he was also beaten and nearly drowned, either the PPD or UCPD could have taken the case.

McGuire opined that this was a UCPD job, and that Almanzar should have notified his chain of command or patrol captain to advise on the serious situation that occurred during his shift.

McGuire also criticized the lack of reporting and Almanzar's failure to ensure that reports were completed in this serious matter. He testified that when a shift ends, the reports on a serious case should be completed, and that the UCPD would not have known

anything had it not been for Almanzar's brief comment to the relieving sergeant about an incident in the park. In a serious situation such as this one, it was Almanzar's responsibility to ensure his subordinates complete their reports.

McGuire also testified that Almanzar neglected his duty by failing to perform as sergeant and respond to the scene, and promptly direct his officers how to handle the situation. He testified that Almanzar failed in the performance of duty and failed to meet his work expectations, which required him to make informed decisions, assist during the investigation, ensure that reports are completed, advise his patrol commander, and go out into the field when necessary.

Homero Almanzar

Almanzar testified that when Garrison first responded to the scene, Garrison told him: "dispatch f*cked up, this is not even our job."

Almanzar testified that he sent the officers to the hospital because he wanted to get information on the incident and to make decisions as to what he needed to do to "move forward with this investigation."

Almanzar testified that when he spoke with Collantes after speaking with the victim at the hospital, Collantes reported that the victim was "f'd up" but in stable condition, and told him that the incident started outside the park. Almanzar testified that he believes that when Collantes put Garrison back on the phone after reporting what the victim said, he told Garrison to "kick" the job. He later testified that he could not recall who he said this to. His special report does not reference this alleged communication.

Almanzar testified that he based his decision regarding jurisdiction on what the officers told him, and specifically that the crime was initiated in Plainfield. Almanzar testified that after Collantes relayed the conversation he had with the victim, he said: "there's really nothing that we could do about this, this is not our job, I need you guys to kick it and clear when ready." He testified that by saying "kick it," he meant for them to

turn it over to the PPD by relaying the message to dispatch. Almanzar conceded that he could have done it also but that he could also order an officer.

Almanzar testified that when he made the decision concerning jurisdiction, he did not need guidance, and that there is no rule requiring him to contact his supervisors.

Regarding his conversation with Nordstrom in the morning of September 20, 2020, Almanzar testified that he told Nordstrom that they had an assault in Green Brook Park, "that wasn't our job," that he "told the guys to kick it," and that he should just let the reports "hang," and that he would take care of them when he went in later that evening.

Almanzar testified that he was unaware that Garrison went back to the park and collected evidence at the scene. He also testified that he was unaware that Garrison had collected the bloody sweater when he first responded, and that had Garrison told him that he had the sweater, he would have told Garrison not to touch it, and would have called to "DB whoever is on call and let them run the game and I would have just sat back and watch everybody working and that's it."

Almanzar testified that when Kreisberg called him at about 9:00 a.m., he asked him what happened and why this was still pending in the CAD (computer-aided dispatch system), and Almanzar told him there was an assault job that came in through Green Brook Park that "wasn't our job," so he "told the guys to kick it." The lieutenant asked him to write a special report as to why nothing was done when he came in.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749

(9th Cir. 1963). Also, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

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

Here, Garrison testified credibly concerning his observations and actions at the scene and at the hospital, as well as his communications with Almanzar. Specifically, I found Garrison credible when he testified that he informed Almanzar that he had taken the job, and that he had retrieved the sweater/evidence at the scene. Given the initial information conveyed to Garrison—that there had been an assault in a county park, and the fact that the PPD officers left the scene after speaking with Garrison and informing him that the victim was in the hospital, it was reasonable for all those involved at the time to believe that UCPD would continue to handle the investigation. There is no evidence to suggest that jurisdiction even became a questionable issue any time prior to speaking with the victim at the hospital. I also found Garrison credible when he testified that he remained of the opinion that this was a UCPD job, even after Almanzar declared that it was the PPD’s job, because a significant portion of the assault and the attempted drowning occurred on county property, the officers had already invested time in the investigation, and because he had already taken the case.

Collantes also testified credibly concerning his exchanges with the victim and Almanzar at the hospital, and concerning his belief that this was properly a UCPD case even after hearing the victim’s account of what had occurred.

Nordstrom, Kreisberg, Mogensen and McGuire all testified consistently and credibly concerning a sergeant’s responsibility to supervise his subordinates, including the completion of reports; a patrol supervisor’s general obligation to physically present to the scene, especially when it involves a serious incident such as an aggravated assault

on county property; Almanzar's obligation to notify his chain of command or the patrol captain of significant matters that occur during his shift; and his responsibility to communicate and collaborate with other law enforcement agencies when jurisdiction may be an issue or disputed, to ensure that the proper agency handles the investigation, the investigation is handled properly, and that evidence is preserved. The County's witnesses also testified credibly and consistently concerning how Almanzar failed to appropriately judge and handle the situation as the supervising officer, and how Almanzar wrongly concluded that it was not a UCPD job.

With respect to Almanzar, I did not find him credible when he testified that he instructed Garrison and/or Collantes to "kick the case" to the PPD. This was reflected in any report, including Almanzar's special report. I also did not find him credible when he testified that Garrison reported that it was not their case, and when he testified that Garrison never mentioned that he had collected the sweater at the scene, despite speaking with him multiple times that evening.

Based on the testimony the witnesses provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following additional **FACTS**:

While at the scene, Garrison took the case before traveling to the hospital to meet with the victim. He collected a bloody sweater belonging to the victim, and he operated under the assumption that the UCPD would be handling the investigation since he was dispatched to the scene and the assault occurred in a county park. There is no evidence that jurisdiction was ever questioned at the scene, or at any time prior to the officers speaking with the victim at the hospital.

Given that dispatch reported that an assault occurred in a county park, Almanzar, as the patrol supervisor, had a duty to notify his patrol captain, or his chain of command, of the incident and to also go to the scene himself. Even though he was the only supervisor at headquarters at the time, there was nothing precluding him from going to the scene or to the hospital. By neglecting to go to the scene, Almanzar also failed to

adequately supervise Garrison, who did not handle the sweater/evidence in a manner consistent with proper practice and protocol.

At the hospital, the victim informed the officers that he was walking down the street when he was approached and dragged into the park, where others were waiting for him, assaulted him, and attempted to drown him in a brook. They relayed this information to Almanzar by telephone. This was the first time that the officers learned that the incident started outside the park. The victim also reported being struck with a bat, but the evidence is inconclusive whether the victim informed the officers at the hospital that he was struck with the bat before being dragged into the park.

After speaking with the victim, Collantes and Garrison believed that the investigation would remain with the UCPD, and they asked Almanzar about sending the detective bureau to the hospital. Almanzar told the officers that he believed this was not UCPD's job, and he instructed the officers to take pictures of the victim and leave the hospital. Prior to ordering the officers to leave the hospital, Garrison told Almanzar that he had already taken the job, and that he had secured the sweater at the scene. Although the officers questioned and disagreed with Almanzar's decision, they complied with his orders to take the photographs and return to the county.

The UCPD conducts criminal investigations on county-owned properties, including its parks, and it assists local police departments in the county. The UCPD had jurisdiction to handle this criminal investigation. While the PPD may have also handled this investigation since the incident began on the street outside the park, a significant portion of the assault, including the beating and the attempted drowning, occurred in the county park. When an investigation can be handled by either the UCPD or a local police department, the supervisors of each agency typically collaborate and jointly determine which agency should handle the investigation. Almanzar, the UCPD patrol supervisor at the time, never contacted the PPD to discuss which agency should handle the investigation, nor to inform them that the case was being transferred over to them. When Almanzar unilaterally decided that this was not a UCPD job, as the supervisor, he had an obligation to contact the PPD himself to inform them of this. Almanzar never contacted the PPD, and he never directed the officers to do so.

Almanzar also had an obligation to inform the patrol captain, or at least someone in the chain of command, that an aggravated assault had occurred on county property during his shift. Since Almanzar never contacted the PPD, nor the patrol captain, the investigation was suspended for several hours, the scene was not secured, and evidence was not collected during a critical period following the assault.

As the supervising officer that evening, Almanzar also had an obligation to ensure that the officers completed their reports before going home. He failed to do so.

Despite Almanzar's decision not to further the investigation, the UCPD ultimately maintained jurisdiction over the matter. When Nordstrom arrived at headquarters at about 6:10 a.m. to relieve Almanzar, Almanzar mentioned that there had been an assault in Green Brook Park. When Kreisberg arrived at about 7:30 a.m., Nordstrom informed him that there had been an incident in the park, and Kreisberg notified the captain, who then had the detective bureau investigate. The detective bureau completed the investigation and criminal charges were filed.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (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). 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).

The issue to be addressed here is whether a preponderance of the credible evidence establishes that the appellant’s actions constitute a violation of the charges set forth in the FNDA. If so, the question to be addressed is whether the violation warrants a demotion and 120-day suspension, as reflected in the FNDA, or another penalty, if any. In the County’s brief, they now seek the harsher penalty of termination, while Almanzar proposes a suspension of five days or less for not confirming that Garrison notified dispatch to return the investigation to the PPD. As reflected above, however, I found that a preponderance of credible evidence does not exist to show that Almanzar ordered Garrison or Collantes to return the case to the PPD.

The events of September 20, 2020, even as initially reported by dispatch, constituted a serious incident—an aggravated assault—that ultimately resulted in the filing of criminal charges, including a second-degree assault charge. As the patrol supervisor, Almanzar had a duty to go to the scene. Had he gone, he could have collaborated with the PPD officers at the scene and spoken to the victim’s family/friends in Spanish himself rather than relying solely on whatever information the PPD officers may have told Garrison. He also could have better supervised Garrison and ensured that whatever evidence was obtained at the scene was properly handled and preserved. Had Almanzar gone to the scene, he would have been in a much better position to manage the case and make informed decisions. He chose, however, to remain at headquarters even though there was nothing precluding him from going to Plainfield or to the hospital. Six officers, including captains and the Chief, testified credibly that, as patrol supervisor, Almanzar was required to go to the scene when dispatch reported that an aggravated assault had taken place in a county park. Also, because a serious incident occurred in a county park, he was required to notify the patrol captain or at least someone else in the chain of command, but he failed to do so for no apparent reason.

At the scene, Garrison took the case, the PPD officers left the scene, and Almanzar directed Garrison to go to RWJ to obtain additional information from the victim. The victim

was badly injured as a result of the assault and spoke only briefly with the officers. He informed the officers that he was approached while walking down the street and dragged into the park, where others were waiting to beat him. They also tried to drown him in a brook. While the victim reported being hit with a bat, it is unclear whether he told the officers that they hit him with a bat on the street or only while inside the park. Even if he had been struck by a bat on the street, a significant portion of the assault occurred in the park, where he was beaten by a group of men, and where they attempted to drown him. The UCPD clearly had jurisdiction to handle this matter, and all six UCPD witnesses, including Captains and the Chief, testified credibly that the UCPD should have continued to handle the matter, the detective bureau should have been called, and the case never should have been kicked back to the PPD.

Almanzar demonstrated very questionable judgement when he unilaterally decided that this was a PPD job, and he was wrong to conclude that it not UCPD's job and that there was "really nothing that we could do," as he testified. He testified that he did not need guidance in reaching this decision, and despite the testimony of the other officers, captains, lieutenant and chief, he failed to ever acknowledge that he may not have made the correct, or at least the optimal decision. Rather, he maintains that it was his decision to make, and because the incident started on a Plainfield street, regardless of what actually occurred in the county park, it should now be kicked back to the PPD even though the UCPD had already taken the case from the PPD and the officers had put time into the job, traveled out of county to speak the victim, and collected evidence. Almanzar wrongfully concluded that this was not UCPD's job and that there was nothing they could do about it.

When Almanzar informed the officers that he would not be sending the detective bureau to investigate, and that it was not a UCPD job, he also failed to reach out to the PPD to inform them of this. His failure to call the PPD resulted in a delay of several hours in the investigation of a serious crime, and the potential loss of valuable evidence. Had Nordstrom and the Captain not responded as quickly as he did on the morning of September 20, the time lag would have been even more significant, and the investigation could have been further compromised.

Almanzar is charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform his duties. In this type of breach, an employee performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). Based on my consideration of the testimony and findings of fact, I **CONCLUDE** that Almanzar violated N.J.A.C. 4A:2-2.3(a)(1) when he failed to perform his duties as the patrol supervisor and demonstrated both inefficiency and incompetency when he: failed to leave headquarters to go to the scene and coordinate efforts regarding the investigation; failed to provide Garrison with an appropriate level of supervision and guidance; determined that UCPD should not continue to handle the case and that it should be returned to the PPD; failed to ensure that Garrison and Collantes had finished their reports before their shifts ended; failed to notify the Patrol Captain, or anyone else in his chain of command of the incident; and when he failed to notify the PPD that he was turning the matter over to them.

I also **CONCLUDE** that, for the reasons set forth above, Almanzar's conduct also constitutes conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7). "Conduct unbecoming" is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for [government] employees and confidence in the operation of [governmental] services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). 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)). "Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, 2009 N.J. AGEN LEXIS 112 (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. Neglect of duty

can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. Here, Almanzar breached his duty as a patrol supervisor when he: failed to go the scene; failed to provide Garrison with an appropriate level of supervision and guidance; failed to ensure that Garrison and Collantes had finished their reports before their shifts ended; failed to notify the Patrol Captain, or anyone else in his chain of command of the incident; and failed to notify the PPD that he was turning the matter over to them.

The appellant is charged with "Inability to perform duty," N.J.A.C. 4A:2-2.3(a)(3), a charge which has been upheld where the employee is incompetent to execute his or her job responsibility. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305 (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county). I **CONCLUDE** that the respondent has not sufficiently demonstrated how Almanzar violated N.J.A.C. 4A:2-2.3(a)(3).

Finally, Almanzar is charged with violating 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 standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, 2014 N.J. AGEN LEXIS 236 (May 19, 2014), adopted, Civil Serv. Comm'n (September 3, 2014), <http://njlaw.rutgers.edu/collections/oal/>. Moreover, Almanzar is also charged with violating a number of UCPD Rules and Regulations, and specifically Section 2:1.6 (Neglect of Duty)¹; Section 2:1.7 (Performance of Duty)²; Section 2:1.30 (Work Expectations)³; and Section 2:2.20 (All Other Conduct)⁴. For the reasons set forth above,

¹ This rule provides: "Employees shall not commit any act, nor shall they be guilty of any omission that constitutes neglect of duty."

² This provides: "All employees shall perform their duties as required or directed by law, department rule and regulation, policy or order, or by order of a supervisor. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities."

³ This provides: "Employees are expected to perform their duties to the best of their abilities at all times."

⁴ This rule provides: "Conduct not specifically addressed by law, departmental policy, public policy, philosophy, rule or regulation shall be consistent with existing law, departmental policy, public policy, philosophy, rule or regulation."

I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence that Almanzar's conduct on September 20, 2020, constituted a violation of the aforementioned rules and regulations and, therefore, N.J.A.C. 4A:2-2.3(a)(12).

Consequently, I **CONCLUDE** that the charges of Incompetency, inefficiency or failure to perform duties [N.J.A.C. 4A:2-2.3(a)(1)]; Conduct unbecoming a public employee [N.J.A.C. 4A:2-2.3(a)(6)]; Neglect of duty [N.J.A.C. 4A:2-2.3(a)(7)]; Other sufficient cause [N.J.A.C. 4A:2-2.3(a)(12)]; and Union County Police Department Rules and Regulations, including Volume 1, Chapter 2 Sections 2:1.6 (Neglect of Duty), Section 2:1.7 (Performance of Duty), Section 2:1.30 (Work Expectations), and Section 2:2.20 (All Other Conduct) are hereby **SUSTAINED**. I also **CONCLUDE** that the charge of Inability to perform duties [N.J.A.C. 4A:2-2.3(a)(3)] is **REVERSED**.

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, or demotion. Bock, 38 N.J. at 522-24.

Progressive discipline may be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention.

Rotundi v. Dep't of Health & Human Servs., OAL Dkt. No. CSV 385-88, Initial Decision (September 29, 1988).

Here, while I agree that major discipline is warranted, I **CONCLUDE** that, given the nature of the sustained charges, together with the fact that Almanzar had been employed by the UCPD for about twenty years without a more significant disciplinary history, a penalty of removal, as proposed in respondent's summation, is excessive and not appropriate.

Almanzar's disciplinary history consists of a nine-day suspension in 2022 for being absent without leave from a patrol overtime assignment; an eight-day suspension in 2021 for violating UCPD's body-worn camera policy; a two-day suspension in 2020 for appearing late for an extra assignment; a five-day suspension in 2019 for failing/neglecting to perform his duty on documenting an officer call-out; and a one-day suspension in 2017.

While the respondent now argues for Almanzar's removal, or at least a demotion and a six-month suspension, the FNDA only calls for a 120-day suspension and demotion.

It is important to recognize, as noted in respondent's summation, that Almanzar is employed in a paramilitary setting, serving as a supervisor, and in charge of maintaining security, discipline and order. On September 20, 2020, he failed in his duties as supervisor on multiple levels. When an assault was reported, he failed to go to the scene to assess the situation himself, to collaborate with the PPD, and to provide Garrison with needed guidance, as was expected of him as the patrol supervisor. While Almanzar asserts that Garrison improperly handled evidence at the scene and did not memorialize his interactions with the PPD, this could have been averted had Almanzar gone to the scene himself and provided the necessary guidance and supervision.

After the officers spoke briefly with the victim at the hospital, Almanzar declared that UCPD lacked jurisdiction to continue to handle the case and that it was a PPD job. Not only was he wrong about jurisdiction and his decision to "kick" the case back to the

PPD, he neglected to inform the PPD of his decision and to coordinate the turnover of the investigation to the PPD. This resulted in no agency doing anything with the investigation for several hours, a potential loss of evidence, and a potentially compromised investigation. Almanzar not only failed to communicate his unilateral decision to the PPD, he also failed to inform his chain of command or Captain of the aggravated assault and of what had occurred, as he was required to do. He also failed to ensure that reports were completed before the end of shift, leading to further confusion the following morning when the relieving sergeant and captain were at a loss as to what had happened the night before.

What is also troubling here is Almanzar's refusal to accept any responsibility whatsoever for what occurred that evening, or to at least recognize that perhaps he may have made the wrong call regarding jurisdiction or not handled the situation in the most optimal manner. Rather, he denied any wrongdoing and simply tried to blame others. Even in his special report, Almanzar blamed a "breakdown of information" with Garrison and Collantes, even though there is no evidence of any such "breakdown," and Almanzar was unable to point to any miscommunication that may have caused him to act differently.

Almanzar's actions reflected poor judgment and a disregard for his department's rules, standard practices and protocols. His conduct demonstrates that he is unsuitable to continue in his current supervisory role in law enforcement. I **CONCLUDE** that the appellant's misconduct and violations are sufficiently significant to warrant a demotion from sergeant to patrol officer and a suspension of 120 days.

ORDER

Accordingly, it is **ORDERED** that the action of the respondent to suspend the appellant for 120 days and to demote him to the rank of patrol officer is **AFFIRMED**.

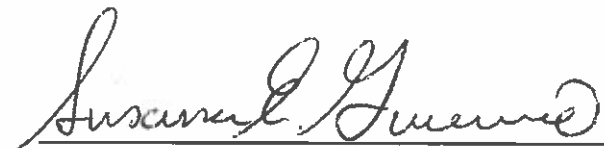
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

November 30, 2023

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency:

December 1, 2023

Date Mailed to Parties:

jb

APPENDIX

WITNESSES

For Appellant:

Homero Almanzar

For Respondent:

Robert Garrison

Jairo Collantes

Joseph Nordstrom

Robert Kreisberg

Martin Mogensen

Robert McGuire

EXHIBITS

For Appellant:

None

For Respondent:

R-1 Final Notice of Disciplinary Action dated January 13, 2023

R-2 Specifications

R-3 Internal Affairs files

R-4 Not in evidence

R-5 Criminal complaint

R-6 GPS Printout

R-7 Rules and Regulations

R-8 Final Notice of Disciplinary Action

R-9 Document regarding nine-day suspension