



STATE OF NEW JERSEY

In the Matter of Stephan Pitts,
Camden County, Department of
Public Works

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2024-476
OAL Docket No. CSV 08721-23

ISSUED: OCTOBER 16, 2024

The appeal of Stephan Pitts, Road Repairer 2, Camden County, Department of Public Works, 20 working day suspension, on charges, was heard by Administrative Law Judge Nicole T. Minutoli (ALJ), who rendered her initial decision on September 18, 2024. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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, the Civil Service Commission (Commission), at its meeting on October 16, 2024 adopted the ALJ's Findings of Facts and Conclusions of Law and her recommendation to uphold the 20 working day suspension.

As indicated above, the Commission has reviewed the appellant's exceptions in this matter and finds them wholly unpersuasive. The Commission makes the following comment. The Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has

the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). The Commission finds no persuasive evidence in the record to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

Regarding the penalty, similar to its review of the underlying charges, 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 record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R.* 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007).

In this matter, the Commission agrees with the ALJ that, given the appellant's misconduct and his prior disciplinary history, that the 20 working day suspension imposed by the appointing authority is appropriate.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 20 working days was justified. The Commission therefore upholds that action and dismisses the appeal of Stephan Pitts.

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 16TH DAY OF OCTOBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08721-23

AGENCY DKT. NO. 2024-476

**IN THE MATTER OF STEPHAN PITTS,
CAMDEN COUNTY DEPARTMENT
OF PUBLIC WORKS.**

William B. Hildebrand, Esq., for appellant, Stephan Pitts (Law Offices of William B. Hildebrand, Esq.)

Brandon Hawkins, Esq., for respondent, Camden County Department of Public Works (Emeshe Arzón, Camden County Counsel, attorney)

Record Closed: August 5, 2024

Decided: September 18, 2024

BEFORE NICOLE T. MINUTOLI, ALJ:

STATEMENT OF THE CASE

Appellant Stephan Pitts (Pitts) appeals the decision of respondent Camden County Department of Public Works (County) to suspend him for twenty days from his position as a road repairer for alleged violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; 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; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the County's affirmative action policy #2. Pitts denies the charges and asserts that the

County failed to meet its burden of proving them. Should the County's suspension of Pitts be sustained? Yes. The County established by a preponderance of the competent, relevant, and credible evidence that Pitts committed the offenses by failing to cooperate in an Affirmative Action/Equal Employment Opportunity (AA/EEO) investigation, leaving work without permission, failing to follow the chain of command, and acting in an inappropriate and unprofessional manner while at work.

PROCEDURAL HISTORY

On June 7, 2023, the County served Pitts with a Preliminary Notice of Disciplinary Action (PNDA), charging him with violations of N.J.A.C. 4A:2-2.3(a)(2) (insubordination); 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); and N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause, specifically, violation of the County's affirmative action policy #2). Following a departmental hearing on July 25, 2023, the County issued a Final Notice of Disciplinary Action (FNDA) on August 21, 2023, sustaining all charges against Pitts and imposing a twenty-day suspension.

On August 25, 2023, Pitts filed an appeal with the Civil Service Commission (CSC). On September 5, 2023, the CSC transmitted the matter to the Office of Administrative Law (OAL), where it was filed 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.

This matter was initially assigned to the Hon. Robert D. Herman. Following the initial case conference, the matter was transferred to me on February 6, 2024.

On June 6, 2024, the parties appeared for an in-person hearing, during which testimony was taken and documents were admitted into evidence. The hearing concluded the same day, and the record remained open for the parties to obtain transcripts and submit post-hearing briefs. I received both parties' post-hearing briefs on August 5, 2024, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The County alleges that in two separate incidents, on March 7, 2023, and March 23, 2023, Pitts acted insubordinately, exhibited unbecoming conduct, and neglected his duties. The County also alleges that Pitts violated its Affirmative Action/Equal Employment Opportunity Policy by failing to cooperate with an AA/EEO investigation. Based on both incidents, the County issued an FNDA charging Pitts with violations of N.J.A.C. 4A:2-2.3(a)(2) (insubordination); 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); and N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause, specifically, violation of the County's affirmative action policy #2). Each incident will be examined in turn.

March 7, 2023, incident

Pitts works for the Camden County Department of Public Works in Lindenwold, New Jersey, as a Road Repairer 2. (R-1 at 1.) On March 7, 2023, at approximately 6:30 a.m., Julia Downes (Downes), Deputy Director of the Camden County Public Works Department, stood in the field directly outside a building known as “the glass house.”¹ Pitts attempted to call her on her telephone, but she didn’t answer while conversing. However, Downes then heard Pitts yelling her name from approximately “30 to 50 yards away. . . .” Downes further testified that she observed Pitts “waving his hands in the air.” (1T:72-23 to 73-2.) As he yelled, Downes testified that Pitts began walking aggressively toward her from across the field. Another employee, Jose Camacho (Camacho), was with Pitts when the incident allegedly occurred.

At the same time, David Stout (Stout), a County supervisor, exited the glass house and observed Pitts shouting across the field and walking in Downes’ direction. In his testimony, Stout recalls Pitts being very animated—he was loud, his hands were “flailing,” and he was “storming up” to Downes. Upon this observation, Stout also began walking towards Downes. As Stout moved closer, he heard Pitts yelling, “Jules, Jules, Jules . . .

¹ The “glass house” is where all the employees clock in and receive their daily assignments from their supervisors.

hold on, hold on, hold on.” Stout moved closer because Pitts was loud and getting close to Downes. (1T:88-22 to 90-24.)

Downes immediately told Pitts to stop yelling at her. Downes has had prior incidents with Pitts yelling, making her uncomfortable. Pitts responded, telling Downes she “was unethical in the decision that [she] made regarding this employee [Camacho].” (1T:76-9–11.) During their ten-minute interaction, Pitts continued to raise his voice, and Downes repeatedly asked him to lower it.

In her testimony, Downes explained that she prepared and disseminated a written directive regarding the proper chain of command; employees are to speak with their immediate supervisors before contacting her. (1T:77-21 to 78-5.)

Pitts and Camacho’s recollections differ from those of the County witnesses regarding the March 7, 2023, incident. Pitts and Camacho agree that Pitts yelled for Downes to get her attention because they were at least fifty feet away. Pitts was not aggressive or disrespectful. Pitts did not raise his voice. However, Pitts admitted to calling Downes unethical. (1T:146-1 to 148-6.)

Violation of the AA/EEO Policy and March 23, 2023, incident

On January 3, 2023, Pitts met with the AA/EEO officer, Timothy R. Bieg, Esq. (Bieg), regarding his complaint that he was subjected to a hostile work environment. (R-4; 1T:63-18–24.) Several months later, on March 10, 2023, Sharrae Morman (Morman), a principal employee benefits clerk for the County, scheduled an in-person meeting between Bieg and Pitts for March 20, 2023, regarding a complaint filed against Pitts. (R-5; 1T:64-1–8.) One of the responsibilities of that position is scheduling AA/EEO investigation meetings. As part of her routine practice for scheduling investigation meetings, Morman ensured that Pitts was scheduled for work on March 20, 2023, by contacting his department and ascertaining whether Pitts had requested leave for that day (he had not).

In an email dated March 16, 2023, Pitts requested that the March 20, 2023, meeting be rescheduled to the morning of Thursday, March 23, 2023. Pitts further requested that the meeting be conducted via Zoom rather than in person. Pitts explained that he "has childcare issues" and may need to leave early. (R-7 at 2.) The following day, Pitts sent two additional emails reiterating his unavailability on March 20th. (R-8; R-9.) The County held firm that Pitts meet on March 20, 2023, because his schedule still showed he was working that day. (R-10.) However, the County moved the meeting from 2:00 p.m. to 1:00 p.m. to accommodate Pitts. (R-7 at 1-2.)

On March 20, 2023, Bieg appeared for the meeting; however, Pitts failed to show. Consistent with protocols, Morman confirmed before the meeting that Pitts was scheduled to work. Later, just before the meeting, Morman discovered that Pitts had "approved time off" for March 20, 2023. As a result, the County rescheduled the meeting for the afternoon of March 23, 2023. (R-5; R-7 at 1.) As they had done for the March 20, 2023, meeting, the County changed the meeting time from 2:00 p.m. to 1:00 p.m. After the County notified Pitts of the March 23, 2023, rescheduling, Pitts demanded the meeting be conducted in the morning via Zoom. Pitts explained that he "had parenting obligations." (R-11 at 1.)

On March 21, 2023, the County reminded Pitts of the March 23rd in-person meeting, stating in pertinent part, "You are required to attend the meeting. If needed, you can end the meeting at or near the conclusion of your work day and if more time is needed then another meeting can be scheduled." (R-11 at 1.)

Pitts responded on March 23, 2023:

As you are aware of the fact that I haven't filed a formal written complaint with the county or the AAI so therefore with that being said I have chosen to seek alternative legal advice and consider this matter closed due also to the fact that I have no obligation to file with the county.

[R-13.]

Catherine Binowski (Binowski), Director of Human Resources, responded to Pitts' March 23, 2023, email, stating, "Unfortunately, you do not get to determine if/when a complaint is closed, that is the job of the investigator. The meeting this afternoon at 1pm in City Hall on the 6th floor is still scheduled and you are required to attend the meeting." (R-13.) Pitts was further warned by Downes that if he were to leave work or fail to appear for the meeting, he would be subject to discipline. (R-14.)

On the morning of March 23, 2023, Downes notified Binowski that Pitts requested four hours of compensatory time on that date and was aware of the meeting. Accordingly, Downes denied Pitts' request. After the leave request was denied, Pitts met with Downes and Director Harris, the head of the Camden County Public Works Department, claiming he had to leave at 10:00 a.m. to "get his son." Director Harris and Downes specifically told Pitts that he could not leave because of the mandatory meeting in the afternoon and that if he left, he would be subject to discipline.

Pitts failed to heed the multiple warnings. Without permission, Pitts left the workplace at 10:01 a.m. on March 23, 2023, and failed to attend the 1:00 p.m. AA/EEO meeting. (R-14.)

Camden County's published Affirmative Action/Equal Employment Opportunity Policy (ver. 2.0) requires "compl[iance] with all aspects of the investigative process (interviews, phone calls, etc.)" and states that the "[f]ailure to do so will result in disciplinary action." (R-17 at 4(c)(2)(C).) Pitts was aware of this requirement, having attended and completed the annual Camden County Policies and Procedure Manual training from 2014 through 2022. (R-18 at 1–7.)²

In her testimony, Morman explained it was her understanding that the February 2, 2023, letter from Bieg to Pitts involved a complaint filed by Pitts. (R-5.) The March 23, 2023, meeting involved complaints filed by others. Either way—whether Pitts or another filed the complaint—Pitts was required to appear. Pitts' required appearance was reaffirmed in an email from Binowski to Pitts on the morning of March 23, 2023. In it,

² Pitts attended training on April 16, 2014; April 23, 2015; March 1, 2016; January 24, 2018; April 26, 2019; April 7, 2021; and May 27, 2022. (R-18 at 1–7.)

Binowski specifically advised Pitts that “employees do not dictate if and when a complaint is closed” and reminded him of the time and place of the meeting. (R-13.)

Credibility

It is the obligation of the finder of fact to assess the credibility of witness’ testimony. Credibility is defined as “[w]orthiness of belief; that quality in a witness which renders his [or her] evidence worthy of belief.” Credibility, Black’s Law Dictionary Online, (2d ed.), <https://thelawdictionary.org/credibility/>. “[C]redibility findings. . . are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience. . . .” State v. Locurto, 157 N.J. 463, 474 (1999). It is much more than demeanor alone; credibility “apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence.” Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

In this matter, I assessed the credibility of all testifying witnesses. My assessment included their demeanor while testifying, such as intonation, pitch, speed of response, speech pattern(s), and lack of divisiveness. Certain testimonies were entirely credible, while other portions were unbelievable.

I FIND that the County’s witnesses, Morman, Binowski, Stout, Downes, and Brown, were credible here. They appeared honest while testifying. I observed their demeanor, which included intonation and speed of response. Notably, there was no hesitation in their answers, whether on direct or cross-examination. Collectively and individually, the County’s witnesses’ testimony was consistent and concise. I observed the absence of rambling, evasive, and discursive testimony throughout their time while on the witness stand. Moreover, their testimony matched documents produced and admitted into evidence, and their corroborative testimony was close, if not identical.

The same cannot be said for Pitts’ testimony explaining his failure to attend the March 23, 2023, meeting. I listened and watched Pitts closely during the testimony. For the following reasons, **I FIND** his testimony about this subject incredible. For example, when asked about his reasoning for failing to appear on March 23, 2023, his best

explanation was that he had to go. No additional explanation was provided. Pitts' tone, demeanor, and body language struck me as odd for the circumstances and nature of the testimony. He appeared defiant and did not attempt to explain a difficult fact or event.

During cross-examination, Pitts' answers were curt and evasive. For example, when questioned why he had to pick up his son from his mother's residence on March 23, 2023, Pitts refused to answer, saying that his mother told him to pick up his son at 11:00 a.m. (1T:158-3-4.) He stated, "I don't question my mother." (1T:158-5.)³

I also observed Pitts when he was not testifying. He regularly looked away from witnesses when testimony against his interest was presented. Under such circumstances, when presented with testimony one believed to be false, an opposite reaction would be expected. While this formed a very small portion of the credibility analysis regarding the March 23, 2023, event, when considered as part of the totality, it underscores my credibility determination.

The testimony presented regarding the March 7, 2023, "incident" is far better characterized as two perspectives on an identical fact. On the one hand, as noted above, Downes' and Stout's testimony was entirely credible. Pitts' testimony here appears "imperfect," but not incredible. Overall, I cannot say with any degree of certainty that Pitts, in relating his perception of what occurred on March 7, 2023, was untruthful.

Based on the testimony the witnesses provided and my assessment of its credibility, together with the documents the parties submitted and my evaluation of their sufficiency, I **FIND** that Pitts failed to attend two mandatory AA/EEO meetings on March 20, 2023, and March 23, 2023, without justification. I **FIND** that on March 23, 2023, Pitts disregarded management's directive and left work without permission. I **FIND** that before speaking with Downes, Pitts was required to speak with Stout, Camacho's direct supervisor, following the proper chain of command. I **FIND** that on March 7, 2023, Pitts acted inappropriately and unprofessionally when he yelled and waved his hands at

³ Pitts did not call his mother to testify on his behalf.

Downes, attempting to get her attention and calling her unethical in front of other employees.

CONCLUSIONS OF LAW

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). An employee may be subject to discipline for several reasons, including insubordination, N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6); and neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). Major discipline for such infractions may include removal, disciplinary demotion, or suspension for more than five working days at any time. N.J.A.C. 4A:2-2.2(a).

The Act protects classified employees from arbitrary dismissal and other onerous sanctions. See, In re Shavers-Johnson, 2014 N.J. AGEN LEXIS 439 Initial Decision (July 30, 2014), adopted, Comm'n., 2014 N.J. AGEN LEXIS 1049 (September 3, 2014); Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). To determine if a penalty is reasonable, the employee's record may be reviewed to determine the appropriate penalty for the current specific offense. "The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Shavers-Johnson, 2014 N.J. AGEN LEXIS 439, Initial Decision. Major discipline may include suspension or removal, depending upon the incident complained of and the employee's record. See, West New York v. Bock, 38 N.J. 500, 519 (1962) (describing progressive discipline).

The issue to be addressed here is whether a preponderance of the credible evidence establishes that Pitts' actions violate the FNDA's charges. If so, the question to

be addressed is whether the violation warrants a twenty-day suspension, as reflected in the FNDA, or another penalty, if any.

The appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(2), insubordination; 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; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of Camden County's AA/EEO Policy 2.0.

Insubordination

The regulation, which includes "insubordination" as an offense subject to discipline, does not define the term. N.J.A.C. 4A:2-2.3(a)(2). Insubordination is defined in Black's Law Dictionary 802 (11th Ed. 2019) as a "willful disregard of an employer's instructions" or an "act of disobedience to the proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been used by courts to define the term where it is not specifically defined in contract or regulation.

The above definitions incorporate acts of non-compliance, non-cooperation, and affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Here, I found that on March 23, 2023, Pitts failed to follow a management directive by leaving work after his leave request was denied. While I am sympathetic to Pitts' parenting situation, employees must follow management directives or be subject to consequences. Further, I found that Pitts failed to cooperate with the AA/EEO investigation by not attending the scheduled meetings on March 20, 2023, and March 23, 2023. Last, in her testimony, Downes explained that she prepared and disseminated a written directive, establishing the proper chain of command whereby employees are to speak with their immediate supervisors before contacting her. (1T:77-21 to 78-5.) Her

testimony is supported by an email she sent to the AA/EEO officer, Bieg, on March 7, 2023, in which she stated that she had announced to all staff to follow the proper chain of command at the staff meeting on February 22, 2023. (R-16.) Pitts violated the chain of command by speaking to Downes directly instead of with Camacho's supervisor, Stout. Therefore, I **CONCLUDE** that the County has proved by a preponderance of the credible evidence that Pitts violated N.J.A.C. 4A:2-2.3(a)(2), insubordination.

Conduct Unbecoming a Public Employee

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, CSV 02768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or tends to destroy public respect in the delivery of governmental services. Karins v. Atl. 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)). Unbecoming conduct may include improper behavior under the circumstances; it may be less serious than a violation of the law, but it is inappropriate on the part of a public employee because it disrupts governmental operations.

There are two versions of the March 7, 2023, incident. In the version from the County, Pitts acted aggressively and in a hostile manner. When contact was first made, Pitts was roughly seventy-five to one hundred feet away, yelling for Downes and waving his hands to get her attention. The other perspective comes from Pitts and Camacho. In

that version, Pitts acted non-threateningly and non-aggressively and only yelled to get Downes' attention. (1T:146-1 to 148-6.) Both event versions are equally plausible, and neither preponderates over the other. The uncontested facts are that Pitts yelled and waved at Downes in an open field with other employees around and called Downes unethical in front of Camacho and Stout. However, as much as there was consensus regarding Pitts' use of the term unethical and his animation, there is no testimony that he used threatening language or body posture towards Downes. Even if his actions were not aggressive, he acted inappropriately and unprofessional for a public employee. Moreover, Pitts' disregard for management's clear directive on March 23, 2023, and his failure to follow the chain of command was not only a violation of the implicit standard of good behavior but a disruption of County operations. I **CONCLUDE** that the County has met its burden of proving that Pitts' actions on March 7, 2023, and March 23, 2023, were conduct unbecoming a public employee, violating N.J.A.C. 4A:2.3(a)(6).

Neglect of Duty

To prove neglect of duty, the employer must demonstrate that the employee failed to perform a required task or was negligent in carrying out their responsibilities. According to the AVEEO Policy, Pitts must cooperate with an investigation. His failure to do so indicates a lack of cooperation. Here, I found Pitts failed to cooperate by missing two scheduled AVEEO meetings. Additionally, I found Pitts disregarded a management directive and left work without permission, neglecting his employee duties. Leaving work without permission can have severe consequences for the employee and the organization. It disrupts workflow, burdens colleagues who must cover the absence, and may damage team morale. Therefore, I **CONCLUDE** that the County has proven by a preponderance of the credible evidence that the appellant violated N.J.A.C. 4A:2-2.3(a)(7), neglect of duty.

Other Sufficient Cause

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offenses caused and derived from all other charges against the appellant. There have been cases when the charge of other sufficient

cause has been dismissed when “[r]espondent has not given any substance to the allegation.” Simmons v. City of Newark, 2006 N.J. AGEN LEXIS 68, *113, Initial Decision (February 22, 2006), adopted, Merit System Bd. 2006 N.J. AGEN LEXIS 565 (April 5, 2006).

The County determined other sufficient cause charges are attributable to Pitts’ failure to cooperate with the AA/EEO investigation by not attending the scheduled investigative meetings on March 20, 2023, and March 23, 2023, violating the AA/EEO Policy. I **CONCLUDE** that Pitts did violate AA/EEO Policy #2, and therefore violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

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). Several factors must be considered in determining the appropriateness of a penalty, including the nature of the employee’s offense, the concept of progressive discipline, and the employee’s prior record. George v. N. Princeton Dev. Ctr., 96 N.J.A.R.2d (CSV) 463. According to Bock, progressive discipline concepts involving increasingly severe penalties are used where appropriate. See In re Parlow, 192 N.J. Super. 247 (App. Div. 1983). Major discipline may include suspension, removal, or demotion depending upon the incident complained of and the employee’s record. Bock, 38 N.J. at 522–24.

The appellant’s prior undisputed disciplinary history from 2017 through 2023 includes a ten-day suspension, a one-day suspension, and a written warning for charges including insubordination, conduct unbecoming a public employee, and neglect of duty. (R-3.)

Here, the appellant is subject to major discipline for the violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; 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; and N.J.A.C. 4A:2-2.3(a)(12), other

sufficient cause due to violations of AA/EEO Policy. Major discipline for such infractions may include removal, disciplinary demotion, suspension, or fine for more than five working days at any time. N.J.A.C. 4A:2-2.2(a). The respondent imposed a twenty-day suspension upon the appellant due to these charges.

Based upon the totality of the evidence and with due consideration of the appellant's prior disciplinary record, I **CONCLUDE** that the penalty of a twenty-day suspension is reasonable, appropriate, and consistent with the policy of progressive discipline.

ORDER

I hereby **ORDER** that the appeal of appellant Stephan Pitts of charges of (1) insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); (2) conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); (3) neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and (4) other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violations of Camden County AA/EEO Policy 2.0, is **DENIED**, and the decision of respondent, the Camden County Department of Public Works, to impose a twenty-day suspension upon the appellant for violating those charges 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 the other parties.

September 18, 2024

DATE


NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/dw

APPENDIX

Witnesses

For appellant:

Stephan Pitts
Jose Camacho
Garren Steiner

For respondent:

Sharrae Morman
Catherine Binowski
David Stout
Julia Downes
Donnette Brown

Exhibits

For appellant:

- A-1 Emails regarding telephone hearing in Morales and Givens matters, dated March 14, 2023
- A-2 Four pages of documents, including emails and text messages
- A-3 Notice of Minor Disciplinary Action, Taplan, dated March 23, 2023
- A-4 Letter of Dr. William L. Summers, PsyD, dated October 5, 2022

For respondent:

- R-1 Amended Preliminary Notice of Disciplinary Action, dated June 7, 2023
- R-2 Revised Final Notice of Disciplinary Action, dated August 21, 2023
- R-3 Appellant's prior disciplinary actions

- R-4 Letter to Stephan Pitts from Timothy R. Bieg, dated February 2, 2023
- R-5 Memorandum to Stephan Pitts from Sharrae Morman, dated March 10, 2023
- R-6 Memorandum to Stephan Pitts from Sharrae Morman, dated March 20, 2023
- R-7 Emails between Stephan Pitts and Sharrae Morman, dated March 16, 2023
- R-8 Email from Stephan Pitts to Sharrae Morman, dated March 17, 2023
- R-9 Email from Stephan Pitts to Sharrae Morman, dated March 17, 2023
- R-10 Emails between Stephan Pitts, Sharrae Morman, and Catherine Binowski, dated March 17, 2023
- R-11 Emails between Stephan Pitts and Catherine Binowski, dated March 20, 2023, through March 21, 2023
- R-12 Emails between Sharrae Morman and Timothy R. Bieg, dated March 22, 2023
- R-13 Emails between Stephan Pitts, Sharrae Morman, and Catherine Binowski, dated March 23, 2023
- R-14 Email from Julia Downes to Catherine Binowski, Sharrae Morman, Donnette Brown, and Brandon Hawkins, dated March 23, 2023
- R-15 duplicate of R-11
- R-16 Email from Julia Downes to Timothy R. Bieg, dated March 7, 2023
- R-17 Camden County Affirmative Action/Equal Employment Opportunity Policy 2.0
- R-18 Certificates of Training, Stephan Pitts, 2014 through 2022