



STATE OF NEW JERSEY

In the Matter of Joseph Mooney,
Middlesex County, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1090
OAL Docket No. CSR 10554-22

ISSUED: NOVEMBER 27, 2024

The appeal of Joseph Mooney, County Correctional Police Officer, Middlesex County, Department of Corrections, removal, effective November 4, 2022, on charges, was heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on October 11, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on November 27, 2024, adopted the ALJ's Findings of Facts and Conclusions and his recommendation to uphold the removal.

The Commission makes the following comment. The ALJ's decision in this matter regarding both the charges and the penalty imposed is thorough and comprehensive. The Commission, therefore, affirms the initial decision in its entirety.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Joseph Mooney.

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 27TH DAY OF NOVEMBER, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 10554-22

AGENCY DKT. NO. N/A

2023-1090

**IN THE MATTER OF JOSEPH MOONEY,
MIDDLESEX COUNTY (CORRECTIONS).**

Peter Paris, Esq., for appellant Joseph Mooney (Beckett & Paris)

Boris Shapiro, Esq., for respondent Middlesex County (Apruzzese, McDermott,
Mastro & Murphy, attorneys)

Record Closed: September 9, 2024

Decided: October 11, 2024

BEFORE **WILLIAM T. COOPER III, ALJ:**

STATEMENT OF THE CASE

Joseph Mooney (Mooney or appellant) challenges his removal from his position as a Middlesex County Corrections Officer for violations of the Middlesex County Corrections Department Rules and Regulations due to his arrest on July 27, 2020, for a violation of Operating a Motor Vehicle While Under the Influence.

PROCEDURAL HISTORY

On August 10, 2020, the Middlesex County Department of Corrections (Department) served upon appellant a Preliminary Notice of Disciplinary Action (PNDA) charging him with violations of the County Police Manual and conduct unbecoming a public employee. A departmental hearing was held on October 6, 2022. On November 4, 2022, the respondent served upon appellant a Final Notice of Disciplinary Action (FNDA) sustaining the charges and immediately removing him from respondent's employment. The sustained charges were as follows:

- N.J.A.C. 4A:2-2.3(a)(6)—Conduct unbecoming a public employee, and
- N.J.A.C. 4A: 2-2.3(a)(12)—Other sufficient cause,
- Department Rules & Regulations:
 - 3:1.1 Standard of Conduct
 - 3:1.11 Obedience to Laws and Regulations
 - 3:1.12 Conduct Towards Supervisor
 - 3:1.18 Soliciting Gifts, Gratuities, Fees, Rewards
 - 3:1.20 Misuse of Authority
 - 3:1.26 Special Treatment
 - 5:06.1 Unauthorized Use of Off Duty Firearms
 - 5:06.1 Off Duty Holsters
 - 3:2.2(H) Alcoholic Beverages and Drugs

The specifications in support of the charges noted that:

On Saturday, June 27, 2020, Middlesex County Department of Corrections received a phone call from East Brunswick Police Department that Officer J. Mooney (hereinafter referred to as Mooney) was under arrest for DWI and Obstruction as referenced in S-2020-321-1204. This is the third occurrence of the Department receiving a phone call of this magnitude as it pertains to Mooney.

The report and video from the East Brunswick Police Department, which also references statements made by Mooney, demonstrate that on the night in question, Mooney was operating his motor vehicle while under the influence of alcohol (0.14% BAC) and controlled substances.

While driving, Mooney's impairment caused him to hit a curb causing pedestrian bystanders to "jump out of the way" as Mooney drove over their bicycles. At that time, Mooney fled the scene and attempted to hide himself in the rear of an amusement park's parking lot.

When EB Police arrived, they observed Mooney's running vehicle and a holstered firearm sitting in his lap grasped by his right hand. After several orders by the law enforcement agency to put his weapon down, once responding officials were forced to draw their own weapons, only then did Mooney place his weapon on the center console.

From that point forward Mooney refused to even acknowledge the officers outside of his vehicle let alone comply with any order to exit the vehicle. Mooney simply exhibited his departmental badge and ignored the responding officers. Ignored them to the point where the responding officers were forced to break the driver's door window in order to unlock and open the door.

The standard of Mooney's conduct towards responding officers, which also included MCDOC's Range Master (who was required to respond as per the Attorney General's Guidelines in order to retrieve the departmental firearm he had in his possession) was egregious and intolerable. His profanity, decorum, and inappropriateness once in custody violates the (a) values promulgated by the MCDOC, (b) the contemporary community standards of behavior commensurate with that of a County Correctional Police Officer, (c) as well as the "conduct that is expected of an employee of the County DOC" as outlined in a Settlement and Last Chance Agreement executed by Mooney in February of 2019.

On November 4, 2022, an FNDA was issued sustaining the violations and Mooney's termination. On November 10, 2022, the appellant filed a timely appeal of the FNDA, with the Office of Administrative Law (OAL), where it was filed on November 14, 2022, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The hearing was conducted on May 9, 2024. The record remained open for the parties to submit closing statements and closed on September 9, 2024.

FACTUAL DISCUSSION

Testimony

For respondent

David L. D'Amico (D'Amico) is the chief investigator for the Department. He has been in law enforcement for over thirty years and has served as the Department's chief investigator since 2016. Prior to joining the Department, he worked with the New Jersey State Department of Corrections, the Asbury Park Police Department, and finally the Monmouth County Prosecutor's Office, where he conducted internal affairs (IA) investigations for sixteen years as a detective within the professional responsibility unit.

As chief investigator, he oversees the internal affairs unit and conducts administrative investigations of the Department's correctional police officers. Since 2016, he has overseen and/or conducted well over a hundred internal affairs investigations.

D'Amico testified that on Saturday, June 27, 2020, the Department was notified by the East Brunswick Police that Mooney was involved in an off-duty incident, the result of which was that he was arrested and charged with obstructing the administration of law, a criminal violation, and multiple motor vehicle violations, including driving under the influence of alcohol or drugs, reckless driving, careless driving, and driving an unregistered vehicle. According to D'Amico, this was the third time the Department was notified that Mr. Mooney was arrested for driving under the influence. D'Amico provided appellant's background; in 2016, Mooney was arrested and convicted of driving under the influence. Two years later, in 2018, Mooney was arrested and charged for driving under the influence, which he pled down to reckless driving. Finally, on May 25, 2022, Mooney pled guilty to driving under the influence, the result of which was that he lost his driver's license for one year, was assessed a fine, and ordered to complete community service.

The remaining charges, including obstruction of administration of law (a criminal 2C violation), were dismissed as part of the plea agreement.

Mooney was on an administrative suspension, effective August 10, 2020, pending the disposition of the criminal charges and an administrative investigation. Following the disposition of the criminal charges, the Middlesex County Prosecutor's Office directed the Department to proceed with their administrative investigation, which was spearheaded by D'Amico.

At the time of the off-duty incident, Mooney was a "correctional police officer" with the Department. As a sworn police officer, Mooney carried a department-issued handgun. His firearm was confiscated by the East Brunswick Police and turned over to the Department, which was instructed by the Middlesex County Prosecutor's Office not to re-arm Mooney until expressly authorized by the Prosecutor's Office, pending the outcome of the administrative investigation.

As part of the administrative investigation, D'Amico interviewed Mooney and reviewed materials he received from the East Brunswick Police, including incident reports prepared by responding officers, video footage from the scene, and Mooney's processing at headquarters. Thereafter, he prepared a written report memorializing the factual findings and conclusions of the investigation.

D'Amico testified that his investigation disclosed that around 9:30 p.m. on June 27, 2020, the East Brunswick Police received a 911 call from a resident reporting a motor vehicle crash. Upon arrival at the scene, the officer spoke with the caller and witnesses who reported that a vehicle had turned onto the private roadway of a waterpark, where they were sitting/standing near the curb with their bicycles. After turning into the roadway, the vehicle swerved in their direction, causing them to jump out of the way to avoid getting hit. The vehicle proceeded to strike the curb and one of the bicycles, which it dragged a short distance as it proceeded down the roadway, finally turning into and coming to rest in the waterpark's parking lot. After speaking with witnesses, the responding officer walked to the back of the parking lot, where the vehicle was parked. Once next to the vehicle, the officer observed a man, later identified as Mooney, sitting in the driver's seat

with his hand on a holstered handgun that was resting on his lap. The officer immediately ordered Mooney to "put the gun down." Mooney did not acknowledge the officer or comply with the command, prompting the officer to draw his weapon, call for assistance, and order Mooney a second time to put his weapon down. Mooney eventually complied and placed the handgun on the center console. The officer then proceeded to order Mooney to "turn the car off" and get out of the vehicle. Mooney ignored the order and instead responded by taking out his departmental badge and placing it against the driver's side window for the responding officer to see.

The officer proceeded to again order Mooney out of the vehicle, telling him that "I don't care" and "I get it, I see the badge." Mooney, however, continued to ignore the order to turn the car off and step out of the vehicle, prompting the officer to warn Mooney that if he did not comply, he would have no choice but to break his window and remove him from the vehicle. Mooney continued to ignore the officer's orders, prompting the officer to break the window with a baton, unlock and open the door, and remove Mooney from the vehicle. According to D'Amico, officers ordered Mooney to open the door and exit the vehicle approximately fifteen to twenty times before finally breaking the window.

With Mr. Mooney out of the vehicle, the officer immediately observed signs of intoxication, including bloodshot eyes, slow speech, and an odor of alcohol on Mooney's breath as well as emanating from the vehicle. Mooney was asked if he had anything to drink, which he initially denied. When the officer responded that he could smell the alcohol, Mooney changed his answer, stating that he did have one drink of rum but that it was hours ago. When asked if he was taking any medication, Mooney said that he took a Percocet earlier in the day, but upon further questioning, he changed his answer to Vicodin, stating "Percocet doesn't agree with me." During the conversation with police officers, Mooney stated that he "pulled over just because I was going to text wife prior to going home on my wife on my way home." He also denied knowing why the police were called and remarkably had no recollection of almost running over pedestrians or hitting a bicycle. When asked by officers where he was coming from, Mooney responded "shopping." When asked where he was shopping, Mooney responded that he could not remember.

Mooney was subjected to field sobriety tests, which he failed. He was then handcuffed and escorted to the police vehicle to be transported to East Brunswick Police. While the officer was escorting Mooney to the vehicle, Mooney told the officer, "You ended my career." The arresting officer then asked Mooney what he just said, and Mooney repeated "you just ruined my career." Mooney was placed in the back of the police vehicle and transported to police headquarters. While in the vehicle, Mooney told the officer that he has a "Last Chance Agreement" with the County. He also exclaimed, "you just got me fired, seriously, you just got me fired. I'm not kidding. I have four kids, you just got me fired for being a little intoxicated. Congratulations, you could have given me a blue taxi. You just got me fired. No pension, I'm fired, no pension, my kids get nothing, good job, great collar!"

During Mooney's interview, Mooney explained that a "blue taxi" is a ride home in lieu of arrest, as a courtesy/favor to a fellow law enforcement officer. While being transported, Mooney also told the officer, "When you get to the County make sure you tell them I work fucking there. That will go over great." Thereafter, Mr. Mooney fell asleep in the moving vehicle until it hit a bump in the road, which woke him up.

D'Amico testified that he understood Mr. Mooney to be under the mistaken belief that the arresting officer was taking him directly to the Middlesex County Adult Correction Center. Once at headquarters, Mooney was processed and submitted to a breathalyzer test. His readings were a .14 percent blood alcohol concentration (BAC).

While being processed, Mooney became disrespectful with the officers, one a police sergeant, who he challenged regarding processing procedures for DWI arrests, saying to him "that's not the way it goes," and then ordering the sergeant to read the department's policies and procedures, exclaiming "go get it right now and read it!" At one point during the video, Mooney is allowed to make a phone call to arrange for someone to pick him up from headquarters. Mooney proceeded to call a fellow correctional officer from the Department, who advised Mooney that he was unable to pick him up, in response to which Mooney called him "worthless" and a "stupid mother fucker."

Mooney was given an opportunity to review the police reports and watch the police videos prior to the interview. During the interview, Mooney said he did not remember much about the incident; that is, he did not have an independent recollection of what happened. Mooney admitted that he was operating his motor vehicle and in possession of his department-issued firearm while under the influence of alcohol. Mooney recalled that he removed the weapon from his glovebox and placed it on his lap when approached by the responding police officer. Mooney stated that he placed the weapon on his lap so that the officer would know it was in the vehicle. Mooney did not recollect the officer breaking his window or removing him from his vehicle but did recall identifying himself as a correctional police officer. Mooney did not have an independent recollection of any other statements he made, but did recall that he was arrested.

Mooney clarified that the Last Chance Agreement he was referring to in the video came about as a result of a prior disciplinary incident he was involved in at work. Mooney also clarified that a "blue taxi" is a courtesy/favor offered to a law enforcement officer, at the responding officer's discretion. Mooney also confirmed that he pled guilty to driving under the influence as part of a plea deal in Court on May 25, 2022, and that this was his second conviction for driving under the influence, albeit the third time he was arrested for driving under the influence. According to Mooney, one time his DWI conviction was reduced to reckless driving. Finally, Mooney admitted that as a correctional police officer, he was a sworn law enforcement officer and that he had received and reviewed the Department's Rules and Regulations, as well as the Policy and Procedure on Firearms.

D'Amico determined that Mooney's overall conduct on June 27, 2020, was in violation of the Department's Rules and Regulations. D'Amico stressed that "Mooney's conduct toward the responding East Brunswick police officers was egregious and intolerable; the use of profanity, his decorum and uncooperative behavior violated the rules promulgated by the Department."

D'Amico forwarded his report to the Warden, who agreed with the findings of the investigation. Mooney was issued a preliminary notice of disciplinary action seeking his removal and, following a hearing at the local level, was issued a final notice of disciplinary action removing him from employment, effective November 4, 2022.

D'Amico concluded by testifying about Mr. Mooney's prior disciplinary history. Mooney's disciplinary history includes the following: **A.** In August 2004, Mooney was issued a written reprimand for chronic or excessive absenteeism. **B.** In September 2005, Mooney was issued a second written reprimand for chronic or excessive absenteeism. **C.** In April 2008, Mooney was suspended for 120 days and removed from the then-current Sergeant Promotional list. The charges related to Mooney's failure to conduct head counts (which led to the escape of an inmate,) and thereafter providing false statements during an IA interview. The initial penalty being sought was removal, but a lesser penalty was ultimately agreed upon. **D.** In March 2017, Mooney forfeited six vacation days as settlement of charges relating to his first DWI arrest/conviction, during which time police officers found him unconscious, behind the wheel, in the driver's seat of his vehicle. The initial penalty being sought was a twenty-day suspension. **E.** In February 2019, Mooney entered into a "settlement and last chance agreement" pursuant to which he was double demoted from the rank of lieutenant to correctional police officer. The original penalty being sought was removal and related to an incident involving the mistreatment of an inmate. Moreover, the settlement agreement had a last chance provision, which set forth, in relevant part, that "in accepting the discipline and terms of this Agreement, Mooney acknowledges that he is being given a last chance to conform his conduct to that expected of an employee of the County DOC, and he understands that should he be charged with any charges warranting a major disciplinary penalty, he will be terminated. While Mooney may challenge whether the conduct alleged in such charges did not occur, should he be so charged as outlined in this paragraph, he agrees that such proven charges warranting any major disciplinary action will result in his termination." **F.** In May 2019, Mr. Mooney received an oral reprimand for chronic or excessive absenteeism or lateness. **G.** In July 2019, Mr. Mooney received a final oral reprimand for chronic or excessive absenteeism or lateness.

For appellant

Joseph Mooney testified that he was hired by the County on August 28, 2000, as a correctional police officer. While employed full-time, appellant earned an associate's degree in 2007. He was promoted to sergeant in October 2011. Five years later, in 2016,

he was promoted to lieutenant. Unfortunately, that was the same year that appellant's addiction to alcohol began to cause problems.

In 2016 the appellant was found to be unconscious at the wheel of a motor vehicle in Millstone. In March 2017, Mooney forfeited six vacation days as settlement of charges relating to this DWI arrest/conviction. Appellant admitted that alcohol was related to other incidents that impacted both his personal life and career.

Appellant did not dispute that in February 2019, he entered into a settlement and last chance agreement pursuant to which he received a double demotion from the rank of lieutenant to correctional police officer. (R-8 E). The agreement calls for the appellant's termination if he is proven to have committed a subsequent major disciplinary violation.

Concerning his June 27, 2020, arrest, Mooney admitted that he was returning home from a repast for an uncle who recently passed away, and the statements he made to police officers were false. Mooney also testified that he did not remember striking the bicycle or police officers breaking his window to remove him from the vehicle. Mooney acknowledged that this was now the third time that the County was seeking his removal from the Department.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. 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 witnesses' story in light of its rationality or 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, "the 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, the testimony from D'Amico was straightforward, detailed, and uncontested by appellant. I accept him as credible.

Appellant's testimony was also credible. He candidly acknowledged that on June 27, 2020, he was driving while under the influence and had pled guilty to that infraction in municipal court. He also readily acknowledged his past disciplinary infractions, including the last chance agreement he executed on February 6, 2019. Appellant admitted that his prior disciplinary issues were the result of his addictions but argued that he is not the same person because of the inpatient and outpatient programs he has successfully completed. I found the appellant to also be credible.

Specifically, as to these charges, I **FIND** that appellant operated a motor vehicle while under the influence of alcohol (BAC .14 percent). I **FIND** that the appellant admitted to pleading guilty to this offense in East Brunswick Municipal Court. I **FIND** that the appellant was in possession of his department-issued firearm while under the influence of alcohol. I **FIND** that the department-issued firearm was holstered and in appellant's lap and was clearly visible to the East Brunswick police officers who responded to the scene. I **FIND** that the appellant was uncooperative with the responding police officers and failed to obey their lawful orders.

LEGAL ANALYSIS AND CONCLUSIONS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However,

consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent against the appellant. An appeal to the Civil Service Commission requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

This case is particularly sensitive because it involves a law-enforcement official.

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

[Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).]

Based upon his conduct on June 27, 2020, the appellant has been charged with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged

with violations of the Department's Rules and Regulations as follows: 3:1.1 Standards of Conduct, 3:1.11 Obedience to Laws and Regulations, 3:1.12 Conduct Towards Supervisor, 1:1.18 Soliciting Gifts, Gratuities, Fees, Rewards, 3:1.20 Misuse of Authority, 3:1.26 Special Treatment, 5:06.1 Unauthorized Use of Duty Firearms, 5:06.1 Off Duty Holster, and 3:2.2(H) Alcoholic Beverages and Drugs

1. N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee

Pursuant to N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to discipline for: conduct unbecoming a public employee.

"Conduct unbecoming a public employee" is an elastic phrase which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of 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. Department of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off-duty. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

In the present matter, the appellant admitted to being intoxicated on June 27, 2020; and that he had operated a motor vehicle while he was intoxicated; and that he was in possession of his departmental-issued firearm while intoxicated; and that his behavior toward the East Brunswick police officers during his arrest was not acceptable behavior for a correctional police officer.

Applying the regulations to the facts of this matter, I **CONCLUDE** that appellant's actions constitute unbecoming conduct, and the charge of N.J.A.C. 4A:2-2.3(a)(6) is hereby **SUSTAINED**.

2. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause

Pursuant to N.J.A.C. 4A:2-2.3(a)(12), an employee may be subject to discipline for: other sufficient cause.

"Other sufficient cause" is essentially the catchall provision for conduct that is not specified in the eleven listed causes at N.J.A.C. 4A:2-2.3 as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would "violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Boyd, Cumberland Cnty Dep't of Corrections, 2019 N.J. AGEN LEXIS 526 at *120 (July 3, 2019), adopted Comm'r, 2019 N.J. AGEN LEXIS 731 (August 14, 2019).

Specifically, appellant has additionally been charged with violations of the Department rules and regulations as follows: 3:1.1 Standards of Conduct, 3:1.11 Obedience to Laws and Regulations, 3:1.12 Conduct Towards Supervisor, 1:1.18 Soliciting Gifts, Gratuities, Fees, Rewards, 3:1.20 Misuse of Authority, 3:1.26 Special Treatment, 5:06.1 Unauthorized Use of Duty Firearms, 5:06.1 Off Duty Holster, and 3:2.2(H) Alcoholic Beverages and Drugs.

A. Standards of Conduct 3:1.1

Appellant has been charged with a violation of the Department's Rules and Regulations, Standards of Conduct. Section 3:1.1 states that "Employees shall conduct their private and professional lives in such a manner as to avoid subjecting the department to disrepute."

By operating a motor vehicle while under the influence of alcohol and in a manner that threatened pedestrians, appellant has failed to conduct himself in such a manner so as to avoid subjecting the Department to disrepute. Therefore, I **CONCLUDE** that appellant's actions constitute a violation of Section 3:1.1, Standards of Conduct, and the charge is hereby **SUSTAINED**.

B. Obedience to Laws and Regulations

Appellant has been charged with a violation of the Department's Rules and Regulations, Obedience to Laws and Regulations. Section 3:1.11 states: "Employees shall obey all Federal laws, State laws, Departmental Rules, regulations, policies and procedures."

Here, the appellant readily admitted to pleading guilty to the violation of N.J.S.A. 39:4-50, Operating a Motor Vehicle While Under the Influence of Alcohol, and that he failed to obey all laws and ordinances as well as departmental rules and regulations. Therefore, I **CONCLUDE** that appellant's actions constitute a violation of Section 3:1.11, Obedience to Laws and Regulations, and the charge is hereby **SUSTAINED**.

C. Conduct towards Warden, Captains, Supervisors, Subordinates, and coworkers

Appellant has been charged with a violation of the Department's Rules and Regulations, Conduct towards Warden, Captains, Supervisors, Subordinates, and coworkers. Section 3:1.12 states: "Employees shall be courteous and civil at all times. When on duty, employees shall be referred to as their rank or as Mister, Mrs., Miss, or Ms."

Appellant was off-duty when he was arrested on June 27, 2020, and as such this regulation was not applicable. Therefore, I **CONCLUDE** that appellant's actions did not constitute a violation of this section, and the charge is **NOT SUSTAINED**.

D. Soliciting Gifts, Gratuities, Fees, Rewards and loans

Appellant has been charged with a violation of the Department's Rules and Regulations, Soliciting Gifts, Gratuities, Fees, Rewards and loans. Section 3:1.18 states: "Employees shall not under any circumstances, solicit any gift, gratuity, oath, reward or fee where there is any connection between the solicitation and their Departmental employment."

Appellant was off-duty when he was arrested on June 27, 2020, and as such this regulation was not applicable. Therefore, I **CONCLUDE** that appellant's actions did not constitute a violation of Section 3:1.18, and the charge is **NOT SUSTAINED**.

E. Misuse of Authority

Appellant has been charged with a violation of the Department's Rules and Regulations, Misuse of Authority. Section 3:1.20 states: "No current employee of the Department shall knowingly or with reason to know shall use or attempt to use his/her official position to secure unwarranted privileges or exemptions which are not properly available to similarly situated individuals. Using or attempting to use one's position, rank, badge, or uniform to obtain free or reduced costs for goods, services or merchandise is prohibited."

Respondent has failed to prove this violation. Therefore, I **CONCLUDE** that appellant's actions did not constitute a violation of Section 3:1.20, and the charge is **NOT SUSTAINED**.

F. Special Treatment

Appellant has been charged with a violation of the Department's Rules and Regulations, Special Treatment. Section 3:1.26 states: "No employee will treat any inmate in a special manner (favoritism or discrimination)." Respondent has failed to prove this violation. Therefore, I **CONCLUDE** that appellant's actions did not constitute a violation of Section 3:1.26, and the charge is **NOT SUSTAINED**.

G. Unauthorized Use of Off Duty Firearms

Appellant has been charged with a violation of the Department's internal management procedure for the use of firearms. Procedure 5:06.01, Unauthorized Use of Off Duty Firearms, states: "No employee will carry a weapon, either on or off duty, while under the influence of alcohol and/or drugs, or in locations where they intend to consume alcohol."

Appellant admitted to being in possession of his duty weapon on June 27, 2020, while under the influence of alcohol. Therefore, I **CONCLUDE** that appellant's actions did constitute a violation of Section 5:06.01, and the charge is hereby **SUSTAINED**.

H. Off Duty Holsters

Appellant has been charged with a violation of the Department's internal management procedure for the use of off-duty holsters. Procedure 5:06.01, Off Duty Holsters states: "(1) All pistols are to be holstered when carried and (2) When not in uniform, every effort will be made to ensure that the off-duty weapon is concealed and not readily observable or accessible to an observer."

Appellant admitted to being in possession of his duty weapon on June 27, 2020, while under the influence of alcohol. Further, the credible evidence established that the off-duty firearm was holstered and clearly visible in appellant's lap when the East Brunswick police officers responded to the scene. Therefore, I **CONCLUDE** that appellant's actions did constitute a violation of Section 5:06.01, and the charge is hereby **SUSTAINED**.

I. Alcoholic Beverages and Drugs

Appellant has been charged with a violation of the Department's Rules and Regulations, Alcoholic Beverages and Drugs. Section 3:2.2(H) states as follows: "No

employee will carry a weapon, either on or off duty, while under the influence of alcohol and/or drugs, or in any location where they intend to consume alcohol.”

Appellant admitted to being in possession of his duty weapon on June 27, 2020, while under the influence of alcohol. Further, the credible evidence established that the off-duty firearm was unholstered and clearly visible in appellant’s lap when the East Brunswick police officers responded to the scene. Therefore, I **CONCLUDE** that appellant’s actions did constitute a violation of Section 3:2.2(H), and the charge is hereby **SUSTAINED**.

PENALTY

Once it has been determined that a civil-service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee’s past record. West New York, 38 N.J. at 523–24. The past record is said to encompass the employee’s reasonably recent history of promotions or commendations on the one hand, and on the other hand, any “formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee.” Id. at 524. Consideration should also be given to the timing of the most recently adjudicated disciplinary history. Ibid.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). “[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.” Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one’s sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. at 485. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious.

Here, respondent has brought and sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged with sustained violations of the Department's Rules and Regulations as follows: 3:1.1 Standards of Conduct; 3:1.11 Obedience to Laws and Regulations; 5:06.1 Unauthorized Use of Duty Firearms; 5:06.1 Off Duty Holster; and 3:2.2(H) Alcoholic Beverages and Drugs.

The salient facts in this matter are not in dispute. On June 27, 2020, appellant was operating his motor vehicle in East Brunswick with a BAC .14 percent. His driving was erratic, and he nearly struck pedestrians on a sidewalk. He parked his vehicle in a facility that was closed, and when he was located by the East Brunswick police officers, his behavior was erratic and uncooperative. The appellant failed to respond to the officers' numerous commands, and worse, he had his department-issued firearm holstered and clearly visible in his lap. The fact that this incident did not spiral out of control was due to the patience and commitment of the East Brunswick police officers.

One positive that came from his arrest on June 27, 2020, was the fact that the appellant finally realized he had an addiction to alcohol. Appellant has addressed this issue through inpatient rehabilitation and intensive outpatient counselling. I believed the appellant when he testified that he is not the same person he was on the night he was arrested and trust that for his, and for his family's sake, he will maintain his commitment to sobriety.

However, appellant has an extensive disciplinary history, including the following:

A. In August 2004, Mooney was issued a written reprimand for chronic or excessive absenteeism. **B.** In September 2005, Mooney was issued a second written reprimand for chronic or excessive absenteeism. **C.** In April 2008, Mooney was suspended for 120 days and removed from the then-current Sergeant Promotional list. The charges related to Mooney's failure to conduct head counts (which led to the escape of an inmate,) and thereafter providing false statements during an IA interview. The initial penalty being sought was removal, but a lesser penalty was ultimately agreed upon. **D.** In March 2017, Mooney forfeited six vacation days as settlement of charges relating to his first DWI

arrest/conviction, during which time police officers found him unconscious, behind the wheel, in the driver's seat of his vehicle. The initial penalty being sought was a twenty-day suspension. **E.** In February 2019, Mooney entered into a "settlement and last chance agreement" pursuant to which he was double demoted from the rank of lieutenant to correctional police officer. The original penalty being sought was removal and related to an incident involving the mistreatment of an inmate. Moreover, the settlement agreement had a last chance provision, which set forth, in relevant part, that "in accepting the discipline and terms of this Agreement, Mooney acknowledges that he is being given a last chance to conform his conduct to that expected of an employee of the County DOC, and he understands that should he be charged with any charges warranting a major disciplinary penalty, he will be terminated. While Mooney may challenge whether the conduct alleged in such charges did not occur, should he be so charged as outlined in this paragraph, he agrees that such proven charges warranting any major disciplinary action will result in his termination." **F.** In May 2019, Mr. Mooney received an oral reprimand for chronic or excessive absenteeism or lateness. **G.** In July 2019, Mr. Mooney received a final oral reprimand for chronic or excessive absenteeism or lateness.

Accordingly, I **CONCLUDE** that the sustained charges are egregious, and coupled with his prior disciplinary history, termination of appellant from his position as a correctional police officer is warranted.

ORDER

It is hereby **ORDERED** that the charges of violations of; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; and the charges of violations of Departmental Rules and Regulations as follows: 3:1.1 Standards of Conduct, 3:1.11 Obedience to Laws and Regulations, 5:06.1 Unauthorized Use of Off Duty Firearm, 5:06.1 Off Duty Holsters, and 3.2.2(H) Alcoholic Beverages and Drugs, are **SUSTAINED**.

It is hereby **ORDERED** that the charges of violations of; 3:1.12 Conduct Towards Supervisors, 3:1.18 Soliciting Gifts, Gratuities, Fees, Rewards, 3:1.20 Misuse of Authority, and 3:1.26 Special Treatment are **NOT SUSTAINED**.

It is hereby further **ORDERED** that the Middlesex County Correction Department's removal of appellant from his public employment is **AFFIRMED**.

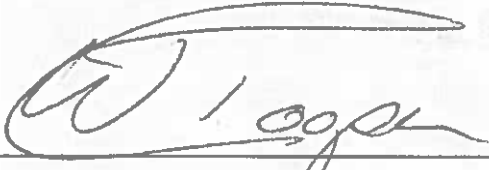
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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. 40A:14-204.

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

October 11, 2024

DATE



WILLIAM T. COOPER III, ALJ

Date Received at Agency:

Date Mailed to Parties:

WTC/am

APPENDIX

Witnesses

For Appellant:

Joseph Mooney

For Respondent:

David D'Amico

Exhibits

For Court:

- J-1 Written summation from appellant
- J-2 Written summation from respondent

For Appellant:

None

For Respondent:

- R-1 FNDA dated 11/04/22
- R-2 Internal Affairs Investigation Report
- R-3 East Brunswick Police Department Investigation Report
- R-4 DWI Questionnaire and Alcotest Results
- R-5 Certification of Disposition of Criminal Charges
- R-6 Department's Rules and Regulations
- R-7 Policy and Procedures on Firearms
- R-8 Prior Discipline
 - A. Written Reprimand (8/28/04)
 - B. Written Reprimand (9/18/05)
 - C. 120 Day Suspension & Removal from Promotional List (4/8/08)
 - D. Forfeiture of 6 Vacation Days (3/27/17)
 - E. Double Demotion and Last Chance Agreement (2/6/19)

F. Oral Reprimand (5/18/19)

G. Oral Reprimand (7/23/19)

R-9 Digital Media on USB: IA interview and arrest video