



STATE OF NEW JERSEY

In the Matter of Joseph Rusk, III,
Lakewood, Police Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2024-2293
OAL Docket No. CSR 06912-24

ISSUED: NOVEMBER 27, 2024

The appeal of Joseph Rusk, III, Police Officer, Lakewood, Police Department, removal, effective March 7, 2024, on charges, was heard by Administrative Law Judge Jacob S. Gertsman (ALJ), who rendered his initial decision on October 28, 2024. Exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on November 27, 2024, adopted the Findings of Fact and Conclusion as found in the initial decision and the recommendation to uphold the removal.

While the appellant argues in his exceptions that the appointing authority did not sustain its burden of proof regarding the charges, the ALJ's detailed decision enumerates the credible evidence in the record establishing those charges. The Commission, in its *de novo*, review, finds nothing in the record or the appellant's exceptions to discredit those findings.

The appellant also argues that removal is too harsh a penalty and does not comport with the tenets of progressive discipline. The Commission rejects this assertion. Similar to its assessment of the 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). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990).

In his initial decision, the ALJ stated:

Appellant argues that "although violations of the rules and regulations were proven, the penalty imposed is excessive and should be reduced. Here, the only prior discipline in Patrolman Rusk's career was the thirty (30) day suspension from 'off-duty' road work. In fact, the discipline he has received all centers around 'off-duty' work and not his doing work as an on-duty officer. As such, the facts of this case, coupled with the specific violations, and the history of employment of Patrolman Rusk does not warrant that he be removed from employment based upon his conduct." (Appellant Post Hearing Brief at 3)

The record demonstrates that Rusk failed to follow the LTPD's extra-duty policy (J-3) when he failed to obtain required express permission to not return to the job site following the return of his patrol vehicle for service at the LTPD station. Further, he submitted documentation to be paid for a full day's work when he, unlike the other officers who were dismissed when the job was completed, only worked for approximately one hour and never returned to the job site. While appellant is correct that during his career, he has only received a thirty-day suspension from extra-duty work, this incident is remarkably similar to the conduct leading to that suspension, which happened due to conduct in May of the same year.

Finally, and most importantly, Rusk failed to tell the truth on two separate occasions in the IA interview. This is unacceptable and incompatible with being a police officer. Rusk knew the policies and procedures of the Department, and he knew he was held to a higher standard as a law enforcement officer. Yet he failed to follow this policy or live up to that higher standard. Accordingly, I **CONCLUDE** that the sustained charges are sufficiently egregious to warrant the termination of appellant from his position as a police officer.

The Commission agrees that removal is the proper penalty in this matter. The appellant's infractions as described by the ALJ are egregious and inimical to what the public expects from a law enforcement officer, who is held to a higher standard. Moreover, the appellant does not have an unblemished record, having received a major discipline for what the ALJ described as "remarkably similar" misconduct in close proximity to the current matter. Also problematic is the appellant's lack of veracity, which cannot be countenanced in any public employee and especially not a law enforcement employee. As such, a penalty less than removal would serve to undermine the public trust. Accordingly, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

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 appeals of Joseph Rusk, III.

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

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. CSR 06912-24

AGENCY DKT. NO. N/A

2024-2293

**IN THE MATTER OF JOSPEH RUSK III,
LAKEWOOD TOWNSHIP POLICE
DEPARTMENT.**

Charles J. Uliano, Esq., for appellant, Joseph Rusk III (Chamlin, Uliano & Walsh, attorneys)

Steven Secare, Esq., for respondent, Lakewood Township Police Department (Secare & Hensel, attorney)

Record Closed: September 13, 2024

Decided: October 28, 2024

BEFORE JACOB S. GERTSMAN, ALJ t/a:

STATEMENT OF THE CASE

Joseph Rusk III (Rusk or appellant), a police officer with the Lakewood Township Police Department (respondent or LTPD), appeals respondent's decision to remove him from employment for conduct related to an incident on November 27, 2023. Appellant is charged with violating: N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; (3) inability to perform duties; (6) conduct unbecoming a public employee; (7) neglect of duty; and (12) other sufficient cause. Appellant argues that the

penalty imposed is excessive and should be reduced. Respondent contends that appellant's removal should be affirmed.

PROCEDURAL HISTORY

Respondent issued a Final Notice of Disciplinary Action (FNDA) (J-7), dated April 15, 2024, removing appellant from employment based upon the aforementioned charges. Appellant appealed the FNDA to the Office of Administrative Law (OAL) on May 10, 2024, and was perfected on May 17, 2024. N.J.S.A. 40A:14-202(d). The matter was assigned to the undersigned, and evidentiary hearings were held on August 7, 2024. The record remained open for the parties to submit post-hearing briefs. Following the submission of the briefs, the record was closed.

Appellant provided a waiver of the provisions of N.J.S.A. 40A:14-201 on June 11, 2024.

FACTUAL DISCUSSION AND FINDINGS

The following Joint Stipulation of Facts was duly submitted by the parties and is hereby **FOUND** as **FACT**¹:

1. Rusk is a Lakewood Police Officer who worked an off-duty road job on November 27, 2023.
2. Rusk left the job after receiving a call from Headquarters to return the police automobile that he was operating on that date for service.
3. Upon returning to Headquarters, Rusk did not return to the job site but rather went home.
4. Rusk billed for the entire day.

¹ The Joint Stipulation was modified by the undersigned for stylistic and consistency purposes.

5. Rusk was subsequently brought up on charges.

TESTIMONY

For respondent

Gregory Staffordsmith (Captain Staffordsmith) is a Captain with the LTPD and has been with the Department since 2000. He is the commander of investigations.

He explained that when a complaint is made about an officer, they receive a letter advising them that they are the subject of an investigation and charges. In this matter, Rusk was interviewed by Internal Affairs (IA) for an incident that took place on November 27, 2023, where he left an off-duty road job early. Prior to the interview, Rusk signed the form agreeing to tell the truth in the interview.

On that date, Rusk was assigned to an off-duty road job, which is extra duty outside of regular duty or overtime. The officer is paid directly by the contractor, in this case \$85 per hour, working from 7:00 a.m. to 4:00 p.m. for road construction on Rt 9 in Lakewood. Approximately forty-five minutes into the job, Rusk received a call stating that his patrol car needed to come back to the station for service. He did not return to the job and told the mechanic there were no other cars available to take back. This was not accurate as there were others available. Rusk then unloaded his belongings from the police vehicle, put them in his personal vehicle, and went home for the day.

The video of the IA interview (J-4) was played, and Captain Staffordsmith was asked several questions regarding what Rusk said. Rusk stated that he looked for other vehicles and said there were none. Captain Staffordsmith testified that this was not accurate, which was confirmed by the video of the parking lot at the station on that date. (J-4.) He also noted that Rusk was inconsistent when asked about the supposed family emergency he claimed was the reason for leaving the road job early, once not recalling it, and recalling it later.

Rusk put in for nine hours even though he worked for approximately an hour. Captain Staffordsmith noted that it is not uncommon for contractors to pay for a full day's work if a job ends early; however, in this case Rusk just left. He did not sign out, and his co-workers thought he was dealing with the patrol car.

Captain Staffordsmith stated that the extra-duty assignment policy requires that an officer needs to consult with a supervisor, who will determine if they must stay on post until relieved. Rusk did not follow the policy.

Captain Staffordsmith also described the video of the LTPD rear parking lot on November 27, 2023. (J-4.) Rusk met with the mechanic, then unloaded personal items from the police vehicle and placed them in his personal vehicle. Rusk stated in his interview that there were no other vehicles available, but the video showed that there were seven extra-duty vehicles in the parking lot. Rusk could have made a request for one of the vehicles but did not and went home.

On cross-examination, he agreed that it is common practice for the foreman to say that the job is over but for the officers to put in for the whole day. In this instance, the other officers were off the job by 1:00 p.m. and were paid for the whole day.

He also stated that there was no supervisor on the job site. In the interview, Rusk said he looked for a vehicle but then said he did not. Captain Staffordsmith testified that Rusk did not misspeak. He only acknowledged that he did not in fact look for a vehicle when he was challenged and shown the video.

Cameron Rose (Officer Rose) is in his seventh year as an officer with the LTPD. He was assigned to the same off-duty road job as Rusk on November 27, 2023, along with Officers Yahr and Mercado. The officers all arrived around the same time, and Rusk left to return his patrol car to the LTPD station between 7:45 a.m. and 8:00 a.m. Rusk had been at the job for approximately one hour and did not return.

Officer Rose called Rusk at the completion of the job at approximately 1:00 p.m. and told him not to come back. The foreman had advised Officer Rose that the job was

completed. The conversation was approximately one minute long, and Rusk told him that he had a family emergency. Officer Rose described this as a courtesy call as he had no authority to tell him not to come back and could not release Rusk from the job. Officer Rose was on the job from 7:00 a.m. until 1:00 p.m., and both he and Rusk were paid \$720.

On cross-examination, he confirmed that there are instances when an off-duty road job is done early and the officers are paid for the full day. He did not recall telling Rusk that "he may not be needed," and he never advised Rusk to put in for anything. Additionally, he did not recall telling Rusk that the foreman said they could put in for the entire day.

Thomas D'Elia (Lt. D'Elia) is a lieutenant with the LTPD, working in IA. He noted that this matter was initially referred to the Ocean County Prosecutor's Office, which conducted a criminal investigation. The report by Detective Kaitlin Mantle determined that there were "insufficient proofs" to proceed with criminal charges, and the matter was sent back to the LTPD IA unit for an administrative investigation. (J-5.) Rusk was notified of the allegations in a target letter sent to him and was given the administrative advisement form prior to the IA interview. Lt. D'Elia conducted the interview with Rusk and noted that he had interviewed Officer Rose first.

Lt. D'Elia stated that he did not find Rusk truthful in the interview. Rusk claimed that he looked around for other patrol cars, which was contradicted by the video of the parking lot showing him getting into his car with his personal belongings. (J-4.) When the video was brought up during the interview by Captain Staffordsmith, Rusk changed his testimony. Additionally, Rusk initially denied telling Officer Rose that he did not return to the job due to a family emergency. However, when presented with Detective Mantle's report (J-5), which included an interview with Officer Rose, he again changed his testimony, stating that he in fact remembered saying that he had a family emergency.

Rusk was calm and cooperative during the interview, did not dispute that he left the job site, and stated that he thought he was no longer needed. Lt. D'Elia sustained the charges against Rusk.

On cross-examination, Lt. D'Elia agreed that it is common practice for officers to be paid for a full day of road work when the job is done early. He added that a supervisor generally is not present on a job site.

For appellant

Joseph Rusk (Rusk) was employed by the LTPD as a police officer from 2017 through 2024. He worked off-duty road jobs frequently, and he stated that it was common for jobs to end early. He was suspended from off-duty work for thirty days in 2023 when he was missing from an off-duty assignment at the Blue Claws stadium. His eligibility for off-duty work resumed after the suspension.

On November 27, 2023, he did not have a patrol car at home and got one from the parking lot at the LTPD station. He received a call from Sgt. Shaw while on the off-duty assignment that his patrol car needed maintenance and asked Officer Rose to tell the foreman that he was taking his patrol car to headquarters. Rusk thought he looked for a vehicle following the return of his patrol car, but he did not. He then put his personal belongings in his personal car and went home. Rusk did not tell anyone he was going home.

He thought his second conversation with Rose was between 11:00 a.m. and 11:30 a.m. while Officer Rose stated that it was at 1:00 p.m. Rusk said that he could be wrong. During the conversation, Officer Rose stated that they were done for the day, and they were being paid for the entire day. Rusk informed Officer Rose that he was not coming back due to a family emergency. He testified that he did not have a family emergency, did not know why he said it, and had no explanation for why he said it.

During the IA interview, he stated that he made a mistake when he was asked whether he looked for another car. After talking to Officer Rose, he thought all four officers were getting paid the full amount for the day.

On cross-examination, he stated that there was no reason to believe any officers would lie about him, and he did not disagree with Officer Rose's testimony. He agreed that it was pretty obvious that other patrol cars were in the parking lot and that there is a protocol to get another vehicle. He just decided to go home. Rusk agreed that it was not good for police officers to make misstatements and not tell the truth to IA officers. He thinks he is being punished unfairly for lying. Rusk conceded that there was no family emergency and that he had to change what he said earlier in the interview about looking for another vehicle.

On re-direct, he stated that he put in for the full amount based on his conversation with Officer Rose and thought all four officers were being paid for the entire day. He reiterated that he thought he did look for a vehicle.

On re-cross, he acknowledged that he was untruthful in the IA interview.

CREDIBILITY ANALYSIS AND ADDITIONAL FINDINGS OF FACTS

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 witness' 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 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).

After having the opportunity to review the evidence and observe the witnesses, I found that Captain Staffordsmith, Officer Rose, and Lt. D'Elia provided professional, clear, consistent, and believable testimony. In fact, Rusk testified that there was no reason to believe that any officers would lie about him, and he did not disagree with Officer Rose's testimony. Accordingly, I found these witnesses to be credible.

Conversely, Rusk admitted that he was untruthful in his IA interview. Further, his testimony that he made a "mistake" in the interview when he was asked about whether he looked for another car, when in fact he changed his testimony when presented with video evidence, is not believable. Accordingly, I do not find Rusk to be a credible witness.

Appellant concedes that there "is little dispute as to the facts" in this matter. "However, it is Officer Rusk's position that his conduct does not warrant his termination from employment." (Appellant Post Hearing Brief at 1.) Accordingly, based upon due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACT**:

Rusk was suspended from extra-duty work for thirty days as a result of not working an assignment at Blue Claws Stadium on May 30, 2023, while being paid for that assignment. (J-7.) This is Rusk's only prior disciplinary incident.

On November 27, 2023, Rusk was assigned to an off-duty road job with three other LTPD officers. Following approximately one hour of work, Rusk's vehicle was called in for service, and he returned to the LTPD station. When the vehicle was returned, he did not look for another police vehicle. Rusk then transferred his personal

belongings to his personal vehicle and went home. He did not return to the job site and did not inform his supervisors that he was not returning.

Officer Rose called Rusk after the foreman had advised him that the job was completed and told him not to come back. The conversation was approximately one minute long, during which Rusk falsely told Officer Rose that he had a family emergency. Officer Rose had no authority to tell him not to come back, could not release Rusk from the job, and never advised Rusk to put in for anything. Officer Rose was on the job from 7:00 a.m. until 1:00 p.m. when he was released from the job, while Rusk was on the job from 7:00 a.m. until approximately 8:00 a.m. Both officers were paid \$720, the amount for a full day of work. Rusk submitted his information to be paid the full amount for a complete day of work notwithstanding the fact that he was only present at the job site for approximately one hour.

The LTPD's policy on extra-duty employment provides: "Lateness and/or unannounced absence are sufficient justification for disciplinary action"; and "Under no condition, except those identified in Section IX of this policy, shall an officer leave an extra-duty employment assignment prior to the scheduled termination of the assignment without the expressed permission of the employer and/or shift commander." (J-3 at 3.) Rusk never received the required express permission to not return to the job site following the return of his patrol vehicle for service at the LTPD station.

During his IA interview, he falsely stated that he looked for another police vehicle when he returned his vehicle for maintenance. He only changed his testimony, admitting that he in fact did not look for another police vehicle, when he was informed that there was a video of the parking lot showing that he did not. Additionally, he initially denied in the interview that he told Officer Rose that he did not return to the job due to a family emergency. However, when presented with Detective Mantle's report (J-5), he changed his testimony to state that he remembered saying that.

LEGAL ANALYSIS

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). 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); West New York v. Bock, 38 N.J. 500 (1962).

Appellant's status as a police officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "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." Township of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The appellant has been charged with violations of N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; (3) inability to perform duties; (6) conduct unbecoming a public employee; (7) neglect of duty; and (12) other sufficient cause.²

² During the hearing, and in their post-hearing submissions, the parties raised the issue of whether Rusk's alleged untruthfulness makes him subject to the "Brady-Giglio" rule (Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972)), rendering him unable to testify in future cases.

Rusk has been charged with a violation of N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties. It is not in dispute that Rusk failed to return to the off-duty road job on November 27, 2023, after he returned his patrol vehicle to the LTPD. Rather than obtain one of the available police vehicles, he returned home without the express permission of the employer and/or shift commander as required by LTPD policy. (J-3.) This conduct, which was an abandonment of his assignment, was both egregious and unacceptable. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1). I thus **CONCLUDE** that this charge is **SUSTAINED** and warrants the imposition of discipline upon appellant.

The charge of inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3) usually entails some type of impairment, either physical or psychological, that prevents an individual from performing their job. The charge has been upheld where the employee is too 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). This can also be a non-disciplinary type of charge, where the employer seeks to prove that an employee should be demoted or removed due to his physical, intellectual, or psychological inability to perform his duties. Rivera v. Hudson Cnty. Dept. of Corrections, CSR 06456-16, Initial Decision (October 24, 2016) <https://njlaw.rutgers.edu/collections/oal/>. Here respondent argues that "failure to perform duties again needs no further explanation. Leaving the assigned post makes one unable to perform duties." (Respondent Post Hearing Brief at 4.) I **CONCLUDE** that respondent's argument is insufficient and is not supported by the record. Accordingly, I **CONCLUDE** that respondent has not met its burden of proof and that this charge must be **DISMISSED**.

However, the FNDA (J-7) did not find that Rusk was a "Brady-Giglio" officer. Accordingly, this tribunal lacks jurisdiction to address this issue, and it will therefore not be addressed further.

“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. Dep’t 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. Emmons, 63 N.J. Super. at 140.

In the present matter, Rusk put in for, and received, payment for a full day of work on the off-duty road job when he only worked for approximately one hour. It is immaterial that Officer Rose and the other officers were paid for a full day when they only worked for five hours, and that it is common for this to occur. Those officers worked until they were dismissed by the foreman, while Rusk, without authorization, never returned to the job site. Further, Rusk was untruthful on two occasions in his IA interview. He falsely stated that he looked for another vehicle when he returned his vehicle for maintenance. He only changed his testimony and admitted that he in fact did not look for another vehicle when he was informed that there was a video of the parking lot showing that he did not. Additionally, he initially denied telling Officer Rose that he did not return to the job due to a family emergency. However, when presented with Detective Mantle's report (J-5), he changed his testimony to state that he remembered saying that. It is evident that he would not have told the truth in the IA interview without being confronted with the video and the report. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6). I thus **CONCLUDE** that this charge is **SUSTAINED** and warrants the imposition of discipline upon appellant.

Appellant also sustained charges for a violation of N.J.A.C. 4A:2-2.3(a)(7) neglect of duty. Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214. In the present matter, I agree with the respondent that "[l]eaving an assignment without permission and contrary to the Rules and Regulations of the Police Department is a manifest neglect of duty." (Respondent Post Hearing Brief at 5.) Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7). I thus **CONCLUDE** that this charge is **SUSTAINED** and warrants the imposition of discipline upon appellant.

Finally, appellant has been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause. The record demonstrates that Rusk never received the express permission of the employer and/or shift commander as required by the extra-duty policy. Further, that policy explicitly states that "Lateness and/or unannounced absence are sufficient justification for disciplinary action." (J-3.) Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating that Rusk's conduct supports the sustaining of a charge of other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). I thus **CONCLUDE** that this charge is **SUSTAINED** and warrants the imposition of discipline upon appellant.

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 as 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. Ibid. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid.

Sworn law enforcement officers are recognized as a "special" kind of public employee. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and to represent law and order to the citizenry. Ibid. Hence, law enforcement employees must present an image of personal integrity and dependability to garner the respect of the public. Ibid.

Here, respondent has brought and sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; (6) conduct unbecoming a public employee; (7) neglect of duty; and (12) other sufficient cause.

Respondent argues that “[t]here is no place in a police department or public service for an employee who exhibits the conduct shown by Rusk in this case.” (Respondent Post Hearing Brief at 5.)

Appellant argues that “although violations of the rules and regulations were proven, the penalty imposed is excessive and should be reduced. Here, the only prior discipline in Patrolman Rusk’s career was the thirty (30) day suspension from ‘off-duty’ road work. In fact, the discipline he has received all centers around ‘off-duty’ work and not his doing work as an on-duty officer. As such, the facts of this case, coupled with the specific violations, and the history of employment of Patrolman Rusk does not warrant that he be removed from employment based upon his conduct.” (Appellant Post Hearing Brief at 3)

The record demonstrates that Rusk failed to follow the LTPD’s extra-duty policy (J-3) when he failed to obtain required express permission to not return to the job site following the return of his patrol vehicle for service at the LTPD station. Further, he submitted documentation to be paid for a full day’s work when he, unlike the other officers who were dismissed when the job was completed, only worked for approximately one hour and never returned to the job site. While appellant is correct that during his career, he has only received a thirty-day suspension from extra-duty work, this incident is remarkably similar to the conduct leading to that suspension, which happened due to conduct in May of the same year.

Finally, and most importantly, Rusk failed to tell the truth on two separate occasions in the IA interview. This is unacceptable and incompatible with being a police officer. Rusk knew the policies and procedures of the Department, and he knew he was held to a higher standard as a law enforcement officer. Yet he failed to follow this policy or live up to that higher standard. Accordingly, I **CONCLUDE** that the sustained charges are sufficiently egregious to warrant the termination of appellant from his position as a police officer.

ORDER

The respondent has proven by a preponderance of the credible evidence the following charges against the appellant: N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; (6) conduct unbecoming a public employee; (7) neglect of duty; and (12) other sufficient cause. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**.

The respondent has failed to prove by a preponderance of the credible evidence the following charges against the appellant: N.J.A.C. 4A:2-2.3(a)(3) inability to perform duties. Accordingly, I **ORDER** that this charge be and is hereby **DISMISSED**.

Therefore, it is hereby **ORDERED** that the appeal of Joseph Rusk III is **DENIED**. It is further **ORDERED** that the termination of his employment is **UPHELD**.

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 28, 2024

DATE



JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

October 28, 2024

Date Mailed to Parties:

October 28, 2024

JSG/cab

APPENDIX

Witnesses

For the appellant:

Joseph Rusk III

For the respondent:

Captain Gregory Staffordsmith

Officer Cameron Rose

Lt. Thomas D'Elia

Exhibits³

Joint:

- J-1 Lakewood Police Department Internal Affairs Report, dated March 3, 2024
- J-2 Lakewood Police Department Invoice #970005794, dated November 30, 2023
- J-3 Lakewood Police Department Extra Duty Policy
- J-4 Videos
- J-5 Report of Detective Kaitlin D. Mantle, Ocean County Prosecutor's Office, dated February 5, 2024
- J-6 Preliminary Notice of Disciplinary Action, dated March 5, 2024
- J-7 Final Notice of Disciplinary Action, dated April 15, 2024

³ Exhibits J-6 and J-7 were entered into the record by the undersigned, with the consent of the parties on October 7, 2024.