

her religious objection to the COVID-19 testing requirement. As we have explained, we reverse because the motion record does establish sufficient material undisputed facts supported by competent evidence permitting a determination of the claim as a matter of law. Our reversal of the dismissal of the claim shall not be construed as a constituting findings of any facts or a determination of the merits of any aspect of Whitehead's remaining Title VII claim. We remand for further proceedings on the claim. The parties on remand shall be permitted to assert any and all factual and legal arguments in support of their respective positions concerning the claim. *Slip Opinion* at 23.

In January 2023, the Commission transmitted the matter back to the Office of Administrative Law for further proceedings as indicated by the Appellate Division. In his remand decision, the ALJ found the appellant credibly testified and, therefore, established that due to her sincerely held religious beliefs, she objected to having to take a Covid-19 test prior to returning to work and requested to be able to work from home as an accommodation. Additionally, the ALJ found that the appointing authority presented no evidence that the appellant's requested accommodations for her religious beliefs posed an undue hardship. As such, the ALJ found that the charges against the appellant could not be upheld. After its *de novo* review of the entire record, including the exceptions filed by the appointing authority, which the Commission finds unpersuasive and not requiring extensive comment, the Commission finds that the ALJ's findings and conclusions in reversing the charges and penalty imposed was based on his thorough assessment of the record and are not arbitrary, capricious or unreasonable.

In this regard, the ALJ's determination were based predominately on his determination of the credibility of the witnesses. 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 u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this matter, the exceptions filed are not persuasive in demonstrating that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations, or the findings and conclusions made therefrom.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from the first date of separation without pay until the date of reinstatement. This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing and resigning the appellant not in good standing was not justified. The Commission therefore reverses that action and grants the appeal of Carolyn Whitehead. The Commission further orders that the appellant be granted back pay, benefits, and seniority from the first date of separation without pay until the date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF FEBRUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00217-23
AGENCY DKT. NO. 2023-1435
(ON REMAND)
OAL DKT. NO. CSV 11252-20

**IN THE MATTER OF CAROLYN WHITEHEAD,
CITY OF EAST ORANGE, DEPARTMENT OF
POLICY, PLANNING AND DEVELOPMENT.**

Carolyn Whitehead, appellant, appearing pro se

Sean M. Pena, Esq. For respondent (Weiner Law Group, LLP, attorneys)

Record Closed: December 22, 2023

Decided: January 30, 2024

BEFORE: **JULIO C. MOREJON, ALJ:**

STATEMENT OF THE CASE

Appellant, Carolyn Whitehead (Whitehead) , appeals the decision by the City of East Orange, Department of Policy, Planning and Development (East Orange), terminating her on July 23, 2020, for failure to take a COVID-19 test as a condition to return to work. ¹

¹ This matter is a remand of a final agency decision made by the New Jersey Civil Service Commission, Docket No. 2021-534, on October 6, 2021, adopting the findings and recommendations contained in an Initial Decision made on September 1, 2021, under OAL Docket No. 11252-20.

PROCEDURAL HISTORY

Pursuant to a Preliminary Notice of Disciplinary Action (PNDA), dated August 10, 2020, East Orange suspended Whitehead without pay retroactive to July 20, 2020. East Orange charged her with violating N.J.A.C. 4A:2-6.2(b), resignation not in good standing, and N.J.A.C. 4A:2-2.3(a)(2), insubordination, due to her refusal to undertake a COVID-19 test as a condition to return to work.

Following a hearing held on October 6, 2020, the charges contained in the PNDA were upheld, and a Final Notice of Disciplinary Action (FNDA) was issued on October 28, 2020, which sustained the PNDA charges. Whitehead was removed from her employment effective July 23, 2020, and she now appeals the said decision.

On November 18, 2020, the Civil Service Commission transmitted the underlying matter to the Office of Administrative Law (OAL), pursuant N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on November 25, 2020.

Telephonic prehearing conferences were held on January 6, 2021, March 1, 2021, and March 22, 2021. On March 22, 2021, East Orange requested leave to file a motion for summary decision², which was granted. On or about March 31, 2021, East Orange filed its motion, and on or about April 29, 2021, Whitehead filed her opposition to the motion. On or about May 6, 2021, East Orange filed a *sur reply*.

On September 1, 2021, I issued an Initial Decision granting East Orange's motion for summary decision and dismissing Whitehead's appeal. On October 6, 2021, the Civil Service Commission adopted the findings and recommendations contained in the Initial Decision and issued a final agency decision approving the Initial Decision granting East Orange's motion for summary decision and dismissing Whitehead's appeal.

² Counsel for East Orange filed a motion for "summary judgment", the term used in the Superior Court. Summary decision is the administrative counterpart to summary judgment in the judicial arena. N.J.A.C. 1:1-12.5. Therefore, respondent's motion will be received as a motion for summary decision.

Thereafter, on November 10, 2021, Whitehead filed a Notice of Appeal of the Civil Service Commission final agency decision, with the Superior Court of New Jersey, Appellate Division, Docket No. A-0730-21. On December 22, 2022.³

On January 3, 2023, the Civil Service Commission transmitted this matter to the OAL, pursuant N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, on remand from the Appellate Division. The same was filed on January 5, 2023.

In her appeal before the Appellate Division, Whitehead presented a limited and focused argument challenging the Civil Service Commission's decision. The Appellate Division stated:

She [Whitehead] argues the Commission abused its discretion by granting a summary decision dismissing her claim the City failed to provide a reasonable accommodation for her religious objection to the COVID-19 testing as required under Title VII. More particularly, Whitehead asserts the City was required to provide a work-from-home accommodation based on her religious objection to the testing. Whitehead further claims the ALJ's determination the City was not required to provide a reasonable accommodation because it would result in an undue hardship lacks support in the record presented in support of the City's motion for a summary decision.

[Appellate Division, Docket No. A-0730-21, Slip Opinion at 15]

³ Whitehead appealed the Civil Service Commission Final Decision adopted the Initial Decision granting East Orange summary decision on Whitehead's claims the suspension and termination of her employment violated the ADA, her right to privacy under the Fourth Amendment to the United States Constitution, and her right to the free exercise of her religion under the First Amendment to the United States Constitution. The Appellate Division remanded the Final Decision on a limited issued pertaining to Whitehead's appeal challenging the Civil Service Commission's rejection of her claim the suspension and termination of her employment constituted prohibited religious discrimination in violation of Title VII because permitting her to work from home as a reasonable accommodation creates an undue hardship on East Orange. (Appellate Division, Docket No. A-0730-21, Slip Opinion, at 3, footnote 1).

The decision of the Appellate Division remanded this matter for further proceedings as follows:

We therefore reverse the Commission's summary decision order rejecting and dismissing Whitehead's appeal from the suspension and termination of her employment on her claim the City violated Title VII by failing to provide a work-from-home accommodation in response to her religious objection to the COVID-19 testing requirement. As we have explained, we reverse because the motion record does establish sufficient material undisputed facts supported by competent evidence permitting a determination of the claim as a matter of law. Our reversal of the dismissal of the claim shall not be construed as a constituting findings of any facts or a determination of the merits of any aspect of Whitehead's remaining Title VII claim. We remand for further proceedings on the claim. The parties on remand shall be permitted to assert any and all factual and legal arguments in support of their respective positions concerning the claim.
(emphasis added)

[Appellate Division, Docket No. A-0730-21, Slip Opinion at 23]

A prehearing order was then issued on January 26, 2023 and on March 2, 2023. A hearing was scheduled and held on September 12, 2023. Whitehead testified on her behalf, and East Orange did not produce any witnesses.

The parties requested time to file post hearing summations and the same were filed on December 1, 2023. After a thorough review of the hearing transcript and hearing exhibits, I closed the record on December 22, 2023.

ISSUE:

The issue to be resolved is whether East Orange's disciplinary action against Whitehead, resulting in the termination of her employment on her claim the City violated Title VII by failing to provide a work-from-home accommodation in response to Whitehead's religious objection to the COVID-19 testing requirement should be granted, and if so, if the

penalty imposed should have been a reprimand or lesser suspension on principles of progressive discipline.

FACTUAL DISCUSSION AND FINDINGS

The following facts relevant to the issue on remand are undisputed and I **FIND** the same as **FACTS** herein.

1. Whitehead had been employed full-time with East Orange since June 4, 2012. As of June, 2016, Whitehead was the acting Zoning Officer, holding the titles of Zoning Officer and Assistant Zoning Officer (R-23 and R-24).
2. On March 17, 2020, East Orange implemented a partial work suspension due to the COVID-19 pandemic. Sometime thereafter, Whitehead, along with other municipal employees, was instructed by her supervisor to resume work in the office. She returned to work on March 25, 2020, without being required to take a COVID-19 test.
3. For a period of about four months, Whitehead worked from home four days each week and worked in the office one day each week, until July 14, 2020 (A-13).⁴
4. On June 30, 2020, a return-to-work policy, outlining COVID-19 safety protocols and mandatory COVID-19 testing, was emailed to all employees. Employees were instructed to return to work by July 15, 2020, only if they could show a negative COVID-19 test result. (R-15).
5. In response to East Orange's requirement that all municipal employees would be required to test negative for Covid-19 prior to returning to work, on July 16, 2020, Whitehead emailed the Director of Human Resources, Ms. Tucker, to notify her that she would not be taking a COVID-19 test and requested exemption from the order

⁴ Whithead labeled her exhibit documents with an "A" prefix and all of appellant documents will be reflected as such with the corresponding number.

because it violated the Americans with Disabilities Act ("ADA") as well as her rights protected by the U.S. Constitution and Title VII of the Civil Rights Act (R-18).

6. On July 20, 2020, Ms. Tucker sent an email response to Ms. Whitehead, referencing a statement from Ryan Linder, Corporation Counsel, which read that the EEOC allows COVID testing. This email also indicated that disciplinary action would result for anyone who did not comply with the testing requirement. This email included an attachment of the document from the EEOC website that reads, "viral tests may be permissible under the ADA". (A-5, sub exhibit labeled "Exhibit C").
7. Whitehead did not take a COVID-19 test and did not return to work on July 16, 2020.
8. On August 4, 2020, Whitehead sent a second email to Ms. Tucker explaining that she would not be taking the COVID-19 test, as she deemed it "...a political tactic to increase the number of COVID tests taken. Mandating any individual to take a medical test, without cause, in order to lose their job is coercion, and is unconstitutional. My rights don't go out the window just because there is a pandemic. The testing mandate is a wasted effort since it does not determine an employee's health status at the time the results are submitted." (R-19).
9. Whitehead was then suspended on August 10, 2020 (A-1)
10. Whitehead requested a Loudermill hearing, which was held on August 19, 2020. At the Loudermill hearing, Whitehead informed the Counsel for East Orange her religious objection. This was the first time Whitehead notified East Orange of her religious objection to taking the COVID-19 test as a condition to return to work.
11. East Orange did not dispute Whitehead's assertion, that she advised East Orange of her religious objection to the testing for the first time at the August 19, 2020, Loudermill hearing.

12. Whitehead was then terminated on October 6, 2020, effective July 23, 2020 (FNDA).

Whitehead testified at the hearing, which testimony I **FIND** credible. Below is a summary of Whitehead's testimony, which I **FIND** as **FACT** herein:

Whitehead testified that she served as an assistant zoning officer for four years prior to her termination (2016-2020). (T54:3-15). Whitehead testified that most of her work, prior to the pandemic, was conducted in the office. She stated that she sometimes conducted field inspections, although "rarely.", and agreed that field inspections were part of her job description and being aware of that at the time she objected to the testing. (T54:16-25; T102:6-14; T104:1-6).

Whitehead testified that she did not mention the religious conflict initially in her email communications with East Orange (T63:1-25-T64:1-16). She stated that the first time she raised her religious objection to East Orange's requirement that she take the COVID-19 test was in her Loudermill hearing (T64:17-25; T:66:1-3). Whitehead testified further that she put East Orange on notice of their need to accommodate her religious objection for the first time in her Loudermill hearing (T65:5-11). She stated that East Orange could have accommodated her as they had a "protocol" for the same, which she could not specify (T65:12-25; T66-3).

Whithead testified that when East Orange sent everyone home on March 17, 2020, she worked from home four days a week and in the office one day a week. (T85:24-25). Whithead stated she did not object to other precautions such as masking, and she further testified that she did not wear the mask "at all the times and took it off walking around the building" (T84:5-24). Whitehead reiterated that her job duties would not have changed by working from home as she did not have a municipal vehicle to conduct field inspections and therefore, she would primarily at the office. Id.

I **FIND** that Whitehead objected to the COVID-19 testing requirement at the Loudermill hearing based on her sincere religious beliefs, and that East Orange was put on actual notice

of the same at the time of the Loudermill hearing. I **FIND** that East Orange did not object to Whitehead notifying East Orange for the time at the Loudermill hearing that she objected to taking the COVID-19 test due to her religious objection.

LEGAL ANALYSIS AND CONCLUSION

Whitehead claims that her rights under Title VII of the Civil Rights Act were violated by East Orange when it refused to provide her "reasonable accommodations" for her sincerely held religious belief that her faith in God "will protect her from COVID-19 so there is no reason to take a test", as she stated in oral argument. East Orange argues that Whitehead's requested accommodations would cause them undue hardship.

Whitehead faced disciplinary action and removal for her refusal to take a viral COVID-19 test. The charges levied include insubordination pursuant to N.J.A.C. 4A:2-2.3(a)(2), and resignation not in good standing. An employee may be subject to major disciplinary action for insubordination. N.J.A.C. 4A: 2-2.3. Major discipline shall include removal, disciplinary demotion, and suspension for more than five working days at any one time. N.J.A.C. 4A: 2-2.2. The New Jersey Administrative Code does not provide a definition of insubordination. Common law generally defines it as a refusal to obey orders of a supervisor. Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982). The governing rule for resignation not in good standing, N.J.A.C. 4A:2-6.2(b), provides:

Any employee who is absent from duty for five or more consecutive business days without the approval of his or her supervisor shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

Title VII

Under Title VII, it is unlawful "to discriminate against . . . individual[s] with respect to [their] compensation, terms, conditions, or privileges of employment,

because of [an] individual's . . . religion." 42 U.S.C. § 2000e- 2(a)(1). Title VII defines the term "religion" to "include[] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that [they are] unable to reasonably accommodate . . . an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). "To establish a prima facie case of religious discrimination" under Title VII employees must show: they hold a sincere religious belief that conflicts with a job requirement; they informed their employer of the conflict; and they were disciplined for failing to comply with the conflicting job requirement. EEOC v. GEO Grp., Inc., 616 F.3d 265, 271 (3d Cir. 2010) (quoting Webb v City of Phila., 562 F.3d 256, 259 (3d Cir. 2009)).

Here, the record reflects that Whitehead first notified East Orange of her religious objection during the Loudermill hearing. Whitehead admitted that she did not communicate her religious objection in her two e-mails to East Orange on July 16, 2020 (R-18) and August 4, 2020 (R-19), as well as any other communication with East Orange. The record further shows that Whitehead objected to the COVID-19 testing requirement based on her sincere religious beliefs, and Whitehead gave East Orange notice of a conflict between her religious beliefs and the COVID-19 testing requirement at the time of the Loudermill hearing.

Based upon the foregoing, I **CONCLUDE** that Whitehead has established that she had a sincere religious belief in objecting to taking the COVID-19 test, and that she communicated the same to East Orange in the Loudermill hearing. We now turn to East Orange's obligation under Title VII to accommodate Whitehead for her religious objection.

Though the standard for evaluating an undue hardship has consistently been a "more than de minimis cost" on the employer, the Supreme Court recently held that "showing 'more than a de minimis cost,' . . . does not suffice to establish 'undue hardship' under Title VII." Groff v. DeJoy, 600 U.S. 447, 468, 143 S. Ct. 2279, 216 L. Ed. 2d 1041 (2023). In the Groff v. DeJoy, decision the Supreme Court held that "more than a de

minimis cost" was the incorrect standard for proving Title VII undue hardship; instead, religious accommodations must pose "substantial increased costs" to an employer to constitute undue hardship. 143 S. Ct. at 2294

Instead, "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." 600 U.S. 447, 468. An undue hardship can be shown if "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of [the employer's] particular business." Id. at 470.

In determining whether an undue hardship exists, "courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer" and "should resolve whether a hardship would be substantial in the context of an employer's business in [a] common-sense manner." Id. at 470-71 (internal quotes and alteration omitted). The Court in Groff "le[ft] it to the lower courts to apply [its] clarified context-specific standard." Id. at 473.

Whitehead argues further that East Orange also allows high risk employees to work from home. Whitehead states that her four-month period of working from home during the partial work suspension was successful as she was able to successfully perform her duties from home four-days each week.

East Orange argues that all employees were ordered to return to work on July 16, 2020, and that Whitehead's refusal to be tested creates an undue hardship because it risks exposing their low-risk employees to COVID-19 in the office which could create an outbreak and shut down the office again. East Orange argues further that said employees could then also expose high-risk individuals outside of work.

In the within matter, I **CONCLUDE** that East Orange has failed to present evidence in the form of witness testimony or documentary evidence that satisfies the requirements of Groff v. DeJoy, that Whitehead's requested accommodations for her religious beliefs pose an

undue hardship. Thus, I **CONCLUDE** that East Orange assertion that it is not required by Title VII to accommodate her is flawed, as it does not meet the requirements set forth in Groff v. DeJoy .

In a civil service disciplinary case, the employer bears the burden of sufficient, competent and credible evidence of facts essential to the charge. N.J.S.A. 11A:2-6(a)(2), -21; N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-2.1, “burden of proof”; N.J.A.C. 4A:2-1.4. That burden is to establish 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). In an administrative proceeding concerning a major disciplinary action, the appointing authority must prove its case by a “fair preponderance of the believable evidence.” Polk, 90 N.J. at 560 (citation omitted); N.J.A.C. 4A:2-1.4(a); Atkinson, 37 N.J. at 149.

The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The greater weight of credible evidence in the case—the preponderance—depends not only on the number of witnesses, but “the greater convincing power to our minds.” State v. Lewis, 67 N.J. 47, 49 (1975). Similarly, credible testimony “must not only proceed from the mouth of a credible witness, but it must be credible in itself.” In re Estate of Perrone, 5 N.J. 514, 522 (1950).

Having determined that East Orange has failed to satisfy the requirements of Groff v. DeJoy, that Whitehead’s requested accommodations for her religious beliefs pose an undue hardship, I **CONCLUDE** that East Orange has failed to present any evidence by a preponderance of the credible evidence that she should be terminated because she violated N.J.A.C. 4A:2-6.2(b), resignation not in good standing, and N.J.A.C. 4A:2-2.3(a)(2), insubordination, due to her refusal to undertake a COVID-19 test as a condition to return to work on July 16, 2020.

I **CONCLUDE** that East Orange should have provided Whitehead's requested accommodations to work from home, as she had done during the pandemic closure, due to her religious objection to taking the COVID-19 test.

As the record reveals East Orange has not sustained its burden of proof, and I therefore **CONCLUDE** that East Orange's decision removing Whitehead effective July 23, 2020, is **REVERSED** and Whitehead should be restored to her position of employment on said date.

ORDER

It is hereby **ORDERED** that respondent, East Orange's decision made on October 28, 2020, and contined in the FNDA of said date, terminating Whitehead is **REVERSED**.

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

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

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

January 30, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

January 30, 2024

Date E-Mailed to Parties:
lr

January 30, 2024

APPENDIX

Witnesses

For Appellant:

Carolyn Whitehead

For Respondent:

None

Exhibits⁵

Appellant:

- A-1 PNDA
- A-2 Decision of Hearing Officer cover page
- A-3 Decision of Hearing Officer, page 5
- A-4 Appellant's opposition to motion for summary judgment
- A-5 Appellant's Statement of Undisputed Material Facts (motion)
- A-6 Transcript of July 9, 2021 oral argument
- A-7 Transcript of July 9, 2021 oral argument
- A-8 Transcript of July 9, 2021 oral argument
- A-9 Return to Work After Covid-19 Standard Operating Procedure
- A-10 Return to Work Procedure-Overview section of the City's return to work procedures
- A-11 E-mail from Whitehead 7/16/2020
- A-12 E-mail from Whitehead 7/17/2020

⁵ A review of the hearing transcript provided reveals that documents admitted in evidence were not reflected in transcript Index or the transcript pages. However, I have reviewed my hearing notes and below are the documents admitted in evidence on September 12, 2023.

- A-13 Whitehead-Days in office during suspension of work
- A-14 Whitehead Earnings Statement 7/1/2020
- A-15 Whitehead Earnings Statement 7/15/2020

Respondent

- R-13 Email from Tonya Brown
- R-14 Department of Human Resources Covid-19 Safety Guidelines 7/2/2020
- R-15 Returning to Work after Covid-19 SRO
- R-16 Covid-19 related FMLA Protocol
- R-17 Letter Department of Health and Human Services to Employees
- R-18 Email Whitehead 7/16/2020
- R-19 Email Whitehead 8/4/2020
- R-23 N.J. Civil Service Commission Job Description, Assistant Zoning Officer
- R-24 N.J. Civil Service Commission Job Description, Zoning Officer