STATE OF NEW JERSEY

In the Matter of Alexander Plaza,
Lindenwold, Police Department

CSC Docket No. 2023-2670
OAL Docket No. CSR 05119-23

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: MARCH 20, 2024

The appeal of Alexander Plaza, Police Officer, Lindenwold, Police Department, removal, effective May 18, 2023, on charges, was heard by Administrative Law Judge Jeffrey N. Rabin (ALJ), who rendered his initial decision on February 15, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on March 20, 2024, adopted the ALJ's Findings of Facts and Conclusions and his recommendation to uphold the removal.

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

credible evidence or was otherwise arbitrary. *See N.J.S.A.* 52:14B-10(c); *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant 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. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

The other issue in this matter is the proper penalty to be imposed. Upon its *de novo* review of the ALJ's determination in that regard, including the exceptions and reply filed by the parties, the Commission agrees with the ALJ's determination to uphold the removal. 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, such as a Police 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).

Initially, the appellant argues that he should receive a lesser penalty based on the fact that another officer received a lesser penalty for similar misconduct and a litany of other cases presenting similar misconduct also carried penalties less than removal. The Commission is unpersuaded. The appellant made the same argument to the ALJ, who has already sufficiently addressed these arguments in his initial decision. Moreover, as the matter of the charges and penalty for the other officer is not before the Commission it, therefore, cannot and will not engage in a comparative penalty analysis. Moreover, even if that matter were before the Commission, in imposing the proper penalty, the Commission is generally solely concerned with the misconduct committed by the individual before it, and whether such misconduct is

worthy of the penalty initially imposed.[1] In this case, it is clear that the appellant's misconduct is worthy or removal.

The ALJ performed a thorough analysis of the proper penalty to be imposed in this matter.[2] In finding the appellant's misconduct egregious and worthy of removal without regard to progressive discipline, the ALJ indicated that the:

> . . . Appellant's truck slammed into the rear of the vehicle that was standing still, waiting to make a turn. The impact of the crash was so great that the accident pushed the vehicle across the northbound lane, over the curb, and onto the lawn of a nearby church. Appellant Plaza did not stop his vehicle or immediately pull off the road, and, more specifically, he did not pull over to the front lawn of the church to check on the welfare of the driver he hit. Instead, appellant continued driving . . . and then parked his vehicle . . .. One of the responding Winslow police officers stated that this spot was one mile from the crash site, while the appellant argued that it was only three tenths of a mile from the crash. Either way, appellant failed to remain at the scene of an accident and failed to act like an officer of the law by seeing if the driver he hit required immediate medical help.
>
> The off-duty state trooper who followed appellant's truck as he fled the accident scene, approached appellant and noted a cell phone in his hand. Yet there was no credible evidence that appellant was calling in the accident to his sergeant, 911 or Winslow Township dispatch. When asked why he fled the scene, appellant's only remarks amounted to a concern for getting his car out of the road for traffic safety concerns. However, appellant never explained why he did not simply pull into the church parking lot, where the vehicle he hit landed after the crash.
>
> While appellant honestly disclosed to the responding Winslow officer that he had a gun in his possession, the fact was that appellant had a loaded handgun with an additional magazine in his vehicle

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[1] The Commission notes that there are situations where a comparative penalty analysis is appropriate. Such situations include where an appellant contends that the penalty imposed as compared to other similarly situated employees was based on unlawful purposes, such as discrimination based on a protected category, reprisal or other unlawful reasons. The appellant makes no such claims in this matter.

[2] The ALJ indicated that the appellant testified that he had a prior "six-month suspension for working side jobs." This appears inaccurate as the appellant testified that he received a counseling for that infraction along with a six-month suspension *from* working side jobs, which is not a formal disciplinary action under Civil Service law and rules. Additionally, the Commission could find no record of a six-month disciplinary suspension in the appellant's official personnel records. Regardless, this error is not relevant as both the ALJ and the Commission based the penalty imposed on the egregious nature of the appellant's misconduct.

> console, and the weapon was not secured in a holster, lockbox, or other kind of container.
>
> The alcohol influence test administered at appellant's vehicle after the accident . . . indicated that appellant's blood alcohol content was 0.19%, well over the New Jersey limit of 0.08%. Therefore, appellant was driving while intoxicated.

The Commission wholeheartedly agrees that the appellant's egregious actions in this matter fall well short of what is expected of a public employee, and especially that of a law enforcement officer. Such actions clearly serve to undermine the public's trust and as such, the Commission finds the penalty of removal neither disproportionate to the offenses 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 appeal of Alexander Plaza.

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 20TH DAY OF MARCH, 2024

Allison Chris Myers

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. CSR 05119-23
AGENCY DKT. NO. N/A
2023-2670

IN THE MATTER OF ALEXANDER PLAZA,
BOROUGH OF LINDENWOLD.

Katherine D. Hartman, Esq., for appellant (Attorneys Hartman, Chartered, attorneys)

Michael J. DiPiero, Esq., for respondent (Brown and Connery, LLP, attorney)

Record Closed: January 2, 2024 Decided: February 15, 2024

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Appellant, Alexander Plaza, appeals discipline imposed by respondent, the Borough of Lindenwold (Borough, Lindenwold or respondent) under the Civil Service Act. N.J.S.A. 11A:1-1 to 11A:12-6, and the Borough of Lindenwold Police Department Rules and Regulations, §VI(C)(2) involvement in a crime of moral turpitude that negatively affects the operations of the Department; §VI(C)(11) improper use, handling or display of firearms (in possession of an off-duty weapon while intoxicated); §VI(C)(24) intoxication off duty, not in uniform, arrested and charged); §VI(C)26 failure to take police action when necessary, at any time, in or out of

uniform, and/or failure to make a written report of same to commanding officer; and §VI(C)(31) neglect of duty. The parties have stipulated to the facts of the case, with the remaining issue being the penalty imposed.

PROCEDURAL HISTORY

On May 18, 2023, appellant was served with a Final Notice of Disciplinary Action (FNDA), calling for appellant's termination, effective May 18, 2023. A corrected appeal form was submitted on June 8, 2023, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on June 12, 2023, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A hearing was conducted on November 13, 2023. Briefs were received by January 2, 2024, and the record closed on that date.

FACTUAL DISCUSSION

Joint Stipulation of Facts:

1. On June 8, 2022, at approximately 9:07 p.m., off-duty Lindenwold Police Patrolman Alexander Plaza was driving a red Ram 1500 truck southbound on [redacted] Road in Winslow Township.

2. As Officer Plaza approached the intersection with [redacted] Road, a white Ford Escape was stopped, facing southbound at the intersection, waiting to make a left turn on [redacted] Road.

3. Officer Plaza's truck struck the rear passenger side of the white Ford. Impact from the accident pushed the vehicle across the northbound lane, over the curb, and onto the lawn of [redacted] Church.

4. Officer Plaza did not stop at that time and continued southbound on [redacted] Road, turning right onto [redacted] Lane and left onto [redacted] Lane, parking his vehicle in front of [redacted] Lane.

5. An off-duty state trooper followed Officer Plaza's truck and approached Officer Plaza; the off-duty trooper observed that Officer Plaza was holding a cell phone in his hands.

6. Sergeant Ervin of the Winslow Police Department approached Officer Plaza's red Ram truck parked in front of [redacted] Lane. Officer Plaza was standing in front of the truck.

7. Officer Plaza told Sergeant Ervin that he hit a car and pulled over in order to get out of traffic. Officer Plaza then retrieved his documents from the car.

8. Sergeant Schilling and Patrolman Pizzico of the Winslow Police Department then arrived on the scene and began to question Officer Plaza.

9. After ensuring Officer Plaza was not injured, Patrolman Pizzico asked why Officer Plaza left the scene of the accident. Officer Plaza replied that he wanted to move the truck out of traffic. The officer stated, "C'mon, dude, seriously, you're in a development."

10. Officer Plaza reiterated his main concern was getting out of traffic for safety reasons. The officer asked if Officer Plaza intended to call the police, and Officer Plaza replied, "Yes, I mean that's my main concern was pulling off the side of the road for safety and calling, calling, obviously calling traffic."

11. The officer asked if Officer Plaza checked on other drivers, and Officer Plaza responded that he did not. The officer asked, "Isn't your first duty as an officer to make sure they're ok?" Officer Plaza responded, "I just want to get off the side of

the road, pulled off to safety, make sure everything was good. I was going to call 911 after the fact."

12. The officer stated, "You don't pull off a mile from a crash into a development as safe; your wheel is falling off. What's the story, dude?" Officer Plaza stated that his wheel was not falling off, but his front end was damaged. The officer stated, "Dude, you shouldn't have left the scene; I don't understand why you left."

13. Patrolman Pizzico asked Officer Plaza if he had any weapons in the truck. Officer Plaza reported that he had an off-duty weapon in his console.

14. Patrolman Pizzico then administered a variety of field sobriety tests, which Officer Plaza did not successfully complete. Patrolman Pizzico placed handcuffs on Officer Plaza. Officer Plaza did not resist.

15. Sergeant Schilling retrieved a handgun, a magazine, a badge, and a police ID from the center console of Officer Plaza's truck. The handgun was loaded and not secured in a holster, lock box, or other kind of container.

16. At the Winslow County Police Department, Patrolman Pizzico performed an alcohol influence test using an Alcotest 7110 MK III-C breath test. Officer Plaza's blood alcohol content was 0.19%.

17. Officer Plaza was charged with: (1) driving while intoxicated; (2) careless driving; (3) failure to report an accident; and (4) leaving the scene of an accident. He was then released to his wife.

18. As a result of the plea deal, Officer Plaza ultimately pled guilty to driving while intoxicated (DWI), and the remaining charges were dismissed.

TESTIMONY

For respondent: none

For appellant:

Juan Cacedres was a Lindenwold Township police officer/detective for approximately eleven years. Cacedres received a DUI, when he was off duty, while he was employed by the Lindenwold Police, sometime in 2015. Cacedres could not recall if he pled guilty or was found guilty, but he received a three-month license suspension as a first-tier DUI. Cacedres received a thirty-day suspension from the Lindenwold Police Department. During his DUI, Cacedres struck another vehicle. He remained parked at the scene and checked on the other vehicle's driver. He found the driver was doing "okay," and he called 911 to report the accident. Cacedres did not recall whether his weapon was in the vehicle when the DUI occurred.

Appellant **Alexander Plaza** was hired by the Lindenwold Police Department in January 2019 and was also employed by the New Jersey Air National Guard as a staff sergeant.

In April 2022, appellant responded to a call regarding a drive-by shooting. He and his partner found the victim lying face down in the middle of the road. Appellant's response was to try to control the crowd and save the victim's life. His partner placed a chest seal on the victim. In the weeks following that event, appellant thought about the event, bothered that they could not save the victim's life. This was the first homicide in Lindenwold in the four years that appellant worked there. Appellant's drinking increased; he used to have a couple of drinks to have a good time when he was out, but now he would drink until he blacked out. He would find any excuse to drink.

Prior to his DUI, Plaza was at a family birthday party. He drank a lot, and his wife drove him home. He said he wanted to go to a second family event, and while his wife was showering, he left the house, despite still being drunk.

After the DUI incident (the Incident) where he crashed into another car, an off-duty state trooper followed him to where he pulled over. Appellant had his phone in his hand and was just about to call his accident in. He should have called it in from the scene, but he was drunk, and the trooper said he had already called it in to the Winslow Township Police Department. The trooper stayed with him until the police arrived. Appellant could not recall if the place where he pulled over was on the same road as the Incident.

Appellant's wife picked him up. When he got home, appellant called his sergeant at the Lindenwold Police Department; this was his first chance to call in the Incident. His sergeant did not tell him to do a written report. The next day, appellant notified the military about what happened. He told both the military and Lindenwold that he had a problem with alcohol and needed help. He told his union representative, Mr. Tommasetti, that he needed help for an alcohol problem. He was evaluated and diagnosed with severe alcohol disorder. He was suspended by the Lindenwold Police Department. He went to [redacted] Detox in Los Angeles, California. He was there for thirty days and then did five to six weeks of outpatient care. He began attending Alcoholics Anonymous meetings. He has been sober since then.

Appellant received a letter of reprimand from the military and one-year probation, which he completed without incident. He was disciplined at work for two lateness issues and received a six-month suspension for working side jobs.

The gun he had during the accident was his off-duty weapon. He was allowed to carry a concealed weapon without a permit as a law enforcement officer (LEO), although he could not recall which law permitted this. He received no citation from the Lindenwold Police Department for having his gun in the vehicle. He was not carrying his weapon on the Incident date because he knew he would be drinking. His gun was in his vehicle, meaning he was driving while intoxicated with a loaded gun in his vehicle console.

Detective Ryan Brennan offered to help Plaza after the shooting call, but Plaza declined help. Plaza neither reached out to Brennan, nor did he seek help from his union, the Lindenwold Police Department, or a doctor. He never discussed his drinking with anyone prior to his DUI incident.

Credibility

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness' 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). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, at 521–22; See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Further, "'[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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable

one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

Juan Caceres testified as to his own DUI and that he had only been suspended for thirty days after his incident. However, he did not display a good memory, often saying, "I don't recall." Further, the facts of his incident differed from appellant's because he in fact remained with the vehicle he hit at the accident scene and checked on the other vehicle driver's well-being, as opposed to appellant, who fled the Incident scene. Caceres was not a persuasive witness.

Appellant **Alexander Plaza** was a calm, well-spoken witness who displayed a good recollection. However, I found much of his testimony to be self-serving. It appeared that he did not seek any help for his alcohol problem until after the Incident, and it appeared to be at the urging of his union representative in an attempt to keep his job. Appellant never provided any documentary proof that a doctor had diagnosed him with severe alcohol disorder, or proof of the military's diagnosis.

His testimony as to having his gun with him during the incident lacked credibility, as he seemed to be defending having driven while intoxicated with a loaded gun in his vehicle. He added little to the facts already stipulated to.

LEGAL ARGUMENT AND CONCLUSION

The issue is whether the respondent acted properly in terminating appellant's employment as a Lindenwold police officer due to having an off-duty accident while driving intoxicated with a loaded weapon in his vehicle.

PENALTY

Civil Service employees' rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. appointment and broad tenure protection. See Essex Council No.

1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cty. Park Comm'n, 46 N.J. 138, 147 (1965).

As set forth by respondent, a police officer "is a special kind of public employee. His primary duty is to enforce and uphold the law . . . 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." In re Carter, 191 N.J. 474, 485-86 (2007) (quoting Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966)). "In matters involving discipline of police and corrections officers, public safety concerns may also bear upon the propriety of the dismissal sanction." Carter, 191 N.J. at 485-86 (citing Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980)).

When deciding on an appropriate punishment, a fact finder must consider the seriousness of the underlying offense and, when appropriate, the concept of progressive discipline. West New York v. Bock, 38 N.J. 500 (1962). It is well established that progressive discipline is not a "fixed and immutable rule to be followed without question." Henry, 81 N.J. at 580. 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.

Progressive discipline is not a necessary consideration when the misconduct is severe, unbecoming to the employee's position, or when it renders the employee unsuitable for continuation in the position, or when the application of the principle would be contrary to public interest." In re Herrmann, 192 N.J. 19, 33 (2007).

The stipulated facts of the case indicate egregious behavior by appellant. Appellant's truck slammed into the rear of the vehicle that was standing still, waiting to make a turn. The impact of the crash was so great that the accident pushed the vehicle across the northbound lane, over the curb, and onto the lawn of a nearby church. Appellant Plaza did not stop his vehicle or immediately pull off the road, and, more specifically, he did not pull over to the front lawn of the church to check on the welfare of the driver he hit. Instead, appellant continued

driving southbound on [redacted] Road, made a right onto [redacted] Lane, and then a left onto [redacted] Lane, and then parked his vehicle in front of [redacted] Lane. One of the responding Winslow police officers stated that this spot was one mile from the crash site, while the appellant argued that it was only three tenths of a mile from the crash. Either way, appellant failed to remain at the scene of an accident and failed to act like an officer of the law by seeing if the driver he hit required immediate medical help.

The off-duty state trooper who followed appellant's truck as he fled the accident scene, approached appellant and noted a cell phone in his hand. Yet there was no credible evidence that appellant was calling in the accident to his sergeant, 911 or Winslow Township dispatch. When asked why he fled the scene, appellant's only remarks amounted to a concern for getting his car out of the road for traffic safety concerns. However, appellant never explained why he did not simply pull into the church parking lot, where the vehicle he hit landed after the crash.

While appellant honestly disclosed to the responding Winslow officer that he had a gun in his possession, the fact was that appellant had a loaded handgun with an additional magazine in his vehicle console, and the weapon was not secured in a holster, lockbox, or other kind of container.

The alcohol influence test administered at appellant's vehicle after the accident using an Alcotest 7110 MK III-C breath test indicated that appellant's blood alcohol content was 0.19%, well over the New Jersey limit of 0.08%. Therefore, appellant was driving while intoxicated.

One must apply the facts of the case to the charges filed against the perpetrator. Departmental Rule §VI(C)(2) covers involvement in a crime of moral turpitude that negatively affects the operations of the Department. Here, appellant knowingly drove while intoxicated and fled the scene of the accident. Rather than immediately pull over next to the vehicle he hit, appellant drove between three-tenths and one mile, making several turns, into a residential development. These facts clearly lead to the conclusion

that appellant was fleeing the scene and not merely getting his car out of traffic, as appellant had alleged. Respondent was correct to state that driving while intoxicated was a serious offense but that then leaving the scene of an accident was an even greater offense. Appellant should consider himself lucky that the driver he hit was not killed or suffered great injury because appellant failed to check on the welfare of that driver and failed to attempt to render her aid.

The second charge was Department Rule §VI(C)(11), improper use, handling or display of firearms by being in possession of his weapon while intoxicated. Appellant's off-duty weapon was loaded in the center console of his truck. This constituted a violation of the departmental regulations against carrying a firearm while intoxicated. I cannot accept appellant's argument that he was not "carrying" the gun because it was in his truck; respondent properly submitted that Black's Law Dictionary defined "carry" as meaning to "bear, bear about, sustain, transport, remove, or convey."

Appellant violated the third charge, Department Rule §VI(C)(24) (intoxication off duty, not in uniform, arrested and charged), by being arrested for DWI. Appellant violated the fourth charge, Department Rule §VI(C)26 (failure to take police action when necessary, at any time, in or out of uniform, and/or failure to make a written report of same to commanding officer), by failing to check on the driver whose vehicle he hit, by failing to call the accident in to 911, emergency services, or the Lindenwold or Winslow Police Departments, and by failing to write a report of the Incident. Appellant violated the fifth charge, Department Rule §VI(C)(31)–neglect of duty, for the same reason: driving away from the accident scene without rendering aid to the driver whose vehicle he hit and failing to immediately call 911 or emergency services or call the accident in to his own Lindenwold sergeant or the local Winslow Township Police Department.

The court takes judicial notice of the examples of other penalties issued for various crimes committed by off-duty LEOs set forth in appellant's Exhibit R-4. There was an example of an off-duty LEO having his employment terminated by an off-duty DUI. As stated by appellant's counsel herself, it was difficult to know the exact circumstances of each of the

cases recited in the Attorney General's Major Discipline Report, and therefore the within court is unable to determine if any of the cases listed were similar in factual pattern to the within case before us. Appellant was unable to cite any specific case where an off-duty police officer had been drinking alcohol to excess all day, then drove his vehicle while intoxicated with a loaded, unsecured gun in his vehicle, who then crashed his vehicle into a stopped car, and immediately fled the scene without calling in the accident of the driver of the vehicle who he crashed into. Accordingly, I must base my penalty decision here on the facts in the within case alone.

Based on the egregious nature of appellant's actions surrounding the accident on June 18, 2022, I **CONCLUDE** that the appellant violated Borough of Lindenwold Police Department Rules and Regulations §VI(C)(2) (involvement in a crime of moral turpitude that negatively affects the operations of the Department); §VI(C)(11) (improper use, handling or display of firearms (in possession of an off-duty weapon while intoxicated)); §VI(C)(24) (intoxication off duty, not in uniform, arrested and charged); §VI(C)26 (failure to take police action when necessary, at any time, in or out of uniform, and/or failure to make a written report of same to commanding officer); and §VI(C)(31) (neglect of duty).

Therefore, I **CONCLUDE** that respondent acted properly in terminating appellant's employment as a Lindenwold police officer.

ORDER

I **ORDER** that the disciplinary action of the respondent, the Borough of Lindenwold, in terminating appellant's employment as a Lindenwold police officer, is hereby **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** pursuant to N.J.A.C. 1:1-18.6., by which law it 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.

February 15, 2024
DATE

JEFFREY N. RABIN, ALJ

Date Received at Agency: February 15, 2024

Date Mailed to Parties: February 15, 2024

JNR/jm

APPENDIX

WITNESSES

For appellant

Juan Caceres

Alexander Plaza, appellant

For respondent

none

EXHIBITS

Joint

J-1 Joint Stipulations

For appellant

A-1 [redacted] Detox Letter, dated July 4, 2022

A-2 [redacted] Detox Letter, dated July 20, 2022

A-3 Maryville Certificate of Completion

A-4 Attorney General's Major Discipline Reporting for January 1 through December 31, 2022

A-5 Attorney General's Major Discipline Reporting for January 1 through December 31, 2021

A-6 Attorney General's Major Discipline Reporting for January 1 through December 31, 2020

For respondent

R-1 Internal Investigation Report

R-2 Winslow Incident Report

R-3 Crash Report

R-4 Winslow Ticket and Summons
R-5 Winslow Arrest Report
R-6 Winslow DUI Report
R-7 Statement of Rights Form
R-8 Traffic Detail
R-9 PNDA, dated August 22, 2022
R-10 Map
(Flash Drive: Exhibits R-11 through R-15)
R-11 FNDA, dated May 18, 2023
R-12 Ervin Body Camera Footage
R-13 Schilling Body Camera Footage
R-14 Pizzico Body Camera Footage
R-15 Moore Body Camera Footage