

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 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. In this regard, the ALJ made his findings after reviewing the footage of several body worn cameras from the Police Officers at the scene, footage from front and rear dash cams from the appellant's police cruiser, photos of the arrestee's head, video from internal affairs interviews of the officers involved, and a review of the pertinent police radio and telephone traffic. The ALJ determined that the appellant clearly did not evaluate the arrestee's condition after having used force against her, as required by departmental policies and Attorney General Guidelines. Further, the ALJ concluded that the appellant deliberately omitted that the arrestee had hit her head when recounting the events of the day. Upon its review, the Commission finds nothing in the record or the appellant's exceptions to question those determinations or the findings and conclusions made therefrom.

Similar to its review of the underlying charges, the Commission's review of the penalty is *de novo*. In addition to considering the seriousness of the underlying incident in determining the proper penalty, the Commission 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 principle of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 *N.J.* 474 (2007). In this regard, the Commission notes that 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. As set forth by the ALJ, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. A Police Officer holds a highly visible and sensitive position within the community, whose primary duty is to enforce and uphold the law. The position represents law and order to the citizenry. A Police Officer also carries a service revolver and is constantly called upon to exercise tact, restraint and good judgment in relationship with the public. Thus, a Police Officer must present an image of personal integrity and dependability in order to have the respect of the public. *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 the instant matter, the appellant's

disciplinary history references minor disciplinary actions and one major suspension of seven days. All of these disciplinary actions occurred since 2018. The appellant's present actions were serious as he placed the health and wellbeing of an arrestee at risk in failing to properly evaluate her condition after his use of force caused her to hit her head on a wall. Further, his actions were in direct contradiction of Attorney General Guidelines and the appointing authority's policies. The appellant's conduct clearly undermines the public trust and makes it more difficult for other law enforcement officers to perform their duties. Accordingly, based on the seriousness of the offense and his prior disciplinary history, it is clear that removal is the appropriate penalty.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Mark De Azevedo.

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 22ND DAY OF MAY 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 01126-22

AGENCY DKT. NO. N/A

2022-1795

**IN THE MATTER OF MARK DeAZEVEDO,
CITY OF RAHWAY.**

Marc P. Schwartzbach, Esq., for petitioner (Donald A. DiGioia Law Group, P.A.,
attorneys)

Vikrant Advani, Esq. and John P. Harrington, Esq., for respondent (Rainone,
Coughlin & Minchello, attorneys)

Record Closed: February 26, 2024

Decided: April 11, 2024

BEFORE **MATTHEW G. MILLER, ALJ**:

STATEMENT OF THE CASE

Petitioner, Mark DeAzevedo, a police officer (PO) employed by respondent, the City of Rahway, appeals the termination of his employment arising out of an incident that occurred on May 21, 2021. Respondent generally alleges that Officer DeAzevedo failed to act appropriately following his use of force against a civilian in violation of multiple departmental policies and that his failure to do so was sufficiently egregious to justify the termination, particularly given his disciplinary history. Officer DeAzevedo argues that he

acted within departmental guidelines and that the discipline imposed by respondent was both unwarranted and excessive.

PROCEDURAL HISTORY

The record shows that on May 21, 2021, Officer DeAzevedo was involved in an incident with a female arrestee (E.F.). On or about August 25, 2021, he was served with a Preliminary Notice of Disciplinary Action (PNDA) charging him with incompetence, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(1), (6), (7) and (12). He was also charged with violations of Rahway Police Rules and Regulations 2:1.6 (neglect of duty) and 2:1.7 (performance of duty). He was suspended effective August 25, 2021.

A departmental hearing was held on October 28 and 29, 2021, after which respondent served Officer DeAzevedo with a Final Notice of Disciplinary Action (FNDA) on or about January 20, 2022, in which he was notified that all of the charges against him had been sustained and that he was being terminated from his employment effective September 10, 2021.

DeAzevedo filed an appeal with the Office of Administrative Law (OAL) and the Civil Service Commission (Commission). The appeal was perfected on February 8, 2022 and was received by the OAL on February 14, 2022, pursuant to N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13, and N.J.S.A. 40A:14-200 et seq. An initial conference scheduled for February 25, 2022 was adjourned and was ultimately held on March 1, 2022. Following a conference on April 5, 2022, the hearing was due to commence on June 8, 2022, but that session was cancelled due to ongoing discovery issues. A conference was held on June 9, 2022 and the hearing was rescheduled to commence on June 29, 2022. That hearing date was adjourned by petitioner's counsel due to a family emergency and a conference was held on July 6, 2022. A follow-up conference was scheduled for August 26, 2022, but was adjourned due to respondent's counsel's unavailability. Following a final pre-hearing conference on September 6, 2022, the hearing commenced on November 16, 2022, and continued on November 18, 2022, and January 6, 2023, before concluding on January 9, 2023.

The record remained open until February 26, 2024, for the submission of post-hearing arguments and closed that day.

FACTUAL DISCUSSION AND FINDINGS

TESTIMONY

FOR RESPONDENT:

Jonathan Parham, Director of Police, City of Rahway

Director Parham testified that he was hired by Rahway on July 1, 2021, as the civilian Director of Police and was also named the business administrator on January 1, 2023. He retired as Chief of the Linden (NJ) Police Department after twenty-five years on the job and also worked for two years at the Union County Prosecutor's Office, as well as for two and a half years as Undersheriff in charge of the Administrative Division of the Union County Sheriff's Office.

He is familiar with Internal Affairs investigations, but he is not involved in them as part of his job duties, since, as a civilian police director, he is barred by law from doing so. He reviews the outcomes, however, and makes disciplinary recommendations.

When he first came on the job in Rahway, he ordered an audit of the Internal Affairs Division to be conducted. In Rahway, there is no "police chief" so to speak, but David DeSordi is the "Chief Law Enforcement Officer" (CLEO) and he (along with Captain Tilton) briefed him on Officer DeAzevedo's case in early August 2021.

Captain Tilton had recommended exonerating Officer DeAzevedo of the charges concerning excessive force, but sustaining the charges regarding failure to evaluate and/or render aid, and recommended retraining. However, Director Parham, after reviewing the Attorney General Guidelines, as well as Captain Tilton's findings (although

not his report), to see if the recommendations “meshed”, felt that termination was the appropriate discipline.

He had not seen the actual report until preparing for this hearing and did not agree with the recommendation of retraining based on Officer DeAzevedo’s poor disciplinary history. Director Parham testified that retraining was “far outside” of the progressive disciplinary system. The sheer number of Internal Affairs issues (approximately nineteen) involving Officer DeAzevedo led him to conclude that the next logical step was termination. He was also aware that there were two other open disciplinary issues at the time. One of those occurred on February 10, 2021 and while he did not remember the facts of same, he knew that it led to a seven-day suspension for neglect and performance-of-duty issues. Director Parham further testified that he was aware of an incident that had occurred at a Fabric Warehouse store.¹

Director Parham testified that he did not “order” the termination, but advised Captain DeSordi and Captain Tilton that he recommended termination rather than continued progressive discipline. He also recommended termination during multiple conversations with the business administrator, who is the person who both makes the ultimate decision and signs the FNDA. He confirmed that he reviewed Officer DeAzevedo’s entire file in the past week and remains confident in his recommendation of termination. The videos did not change his mind and his recommendation was largely based on his disciplinary history.

In assessing the actions of the other officers involved in the incident, Director Parham was aware that neither of them was charged or disciplined. However, he felt that while Officer Rengifo was properly deemed only to be a witness, Officer Withers should have been charged. He further testified that he had no power or control over who Captain Tilton decided to charge.

When he began working in Rahway, he reviewed and overhauled the Internal Affairs Department (IAD). Changes have been made to the process and Captain Tilton

¹ This ultimately led to a two-day suspension. (Exhibit R-18.)

was reassigned. Some of the IAD practices were inconsistent with the Attorney General Guidelines and Director Parham felt that discipline was also inconsistent. Further, early warnings tended to be too punitive and not instructive enough. He criticized Captain Tilton for concluding that for discipline to be progressive, the offense had to be the same. Therefore, Officer DeAzevedo was given multiple verbal warnings for dissimilar events rather than the events being viewed cumulatively and leading to written warnings, suspensions, etc. He re-reviewed all open cases and worked more closely with the CLEO.

As for the specifics of this case, in reviewing the "After Action Requirements" in the Use of Force policy, Director Parham noted that the evaluation of a recipient of a use of force is mandatory, not discretionary and that the focus must shift from "arrest and control" to "care and monitoring" and that did not happen here. He felt that Officer DeAzevedo had a duty to seek care for E.F. at Rahway Hospital following the incident.

In fact, he testified that there were four different times when Officer DeAzevedo should have acted:

- a. after the initial use of force
- b. when walking E.F. to the patrol vehicle
- c. when she slumped over in the vehicle
- d. when she slumped over getting out of the vehicle

In reviewing the body-worn and in-car cameras, Director Parham noted that E.F. grabbed her head and cursed after hitting the wall. She also slumped while getting handcuffed and both of these incidents provided an opportunity for Officer DeAzevedo to assess her and he had a continuing duty to do so.

On cross-examination, Director Parham testified that discipline for minor violations should progress from a verbal warning to a written warning to a suspension and each incident should be reviewed individually, with each minor violation working up to the next level of discipline. He was concerned that the IAD's disciplinary decisions were

inconsistent, with some officers receiving little discipline for violations and other officers receiving significant sanctions.

Director Parham also acknowledged that the Internal Affairs chain of command included Captain Tilton reporting to his sister (who is the head of the RPD's Detective Bureau), who reported to the then chief, who happened to be her husband. (T4 at 60:23–61:20.) While he did not feel that this was the problem, the inconsistent disciplinary decisions were, and it was his job to correct it. He ultimately removed Captain Tilton from the IAD.

Director Parham did not review Captain Tilton's report until after the issuance of the PNDA, but given his meetings with Tilton and the CLEO, he maintained his recommendation for termination. In fact, he cannot review the report until the business administrator makes the final decision, and it is fair to say that he did not have the full picture of the event until after that decision was made.

As for the punishment, at the time of his recommendation the last discipline on Officer DeAzevedo's record was the two-day May 21, 2020 suspension. He testified that he did not look at the number of days, but at the number of offenses.

Director Parham testified that he is aware of what passive resistance is; generally, it is when someone chooses not to comply physically, but does not actively resist. In viewing the camera footage, he testified that it is difficult to say if E.F. was doing that and admitted that the best person to determine that is the officer on the scene. Intoxication may also be a factor. He also criticized Officer Withers' choice of language, as well as what he considered to be a lack of professionalism at the scene. His criticism before the incident focused on the actions of Officer Withers; after the incident, the focus shifted to Officer DeAzevedo. He further testified that there is a difference between evaluation and examination, and he could not say whether Officer DeAzevedo evaluated E.F. or not, because he really didn't do anything.

He agreed that E.F. was the aggressor and noted that she indeed hit the wall after the push and that he saw no evidence of blood on it. While he reiterated that he would

have issued charges against Officer Withers, he testified that he could not review or make recommendations on an investigation. It was also not his role to initiate a complaint as a private citizen.

Director Parham was also questioned about whether it would be appropriate to have transported E.F. straight back into the emergency department/room (ER) at Rahway Hospital² or whether she would have had to be transported to Trinitas Hospital. He testified that she should have been brought right back into the Trinitas ER, since his primary concern at that point would have been her potential head injury, not her psychiatric issue. He also advised that while there is a policy concerning the use of shackles and a harness for prisoners when immediacy is the issue, that policy can be disregarded. However, that was not the training at that point, while it is now. He was not aware of any policy that EMS cannot transport from hospital to hospital.

Director Parham was next questioned concerning the walk from the Trinitas vestibule to Officer DeAzevedo's car. He conceded that he "may have" checked on her, and while he personally did not feel E.F. was unconscious, it could have been a case of passive resistance, but it looked to him like she was falling. He admitted that there was no issue with her getting into the station, and it was less than five minutes before an ambulance was called.

Concerning the change in the disciplinary process, Director Parham testified that he implemented a more step-by-step process but also added more flexibility, and it was not necessarily a seriatim list of punishments, as the process is more an art than a science. He knew of no legal restriction on naming a police officer first as a witness in an investigation and then changing his status to a target, although that would not be a smart tactic.

Director Parham also testified that because he had requested a hearing, he was not involved in Officer DeAzevedo's discipline.

² The formal name of the hospital is Robert Wood Johnson University Hospital at Rahway.

He was then shown the interaction between Captain Rayack and Officer DeAzevedo and criticized his claim of having no idea why she was in poor condition. He also noted that the body-worn camera (BWC) showed that E.F. had hit the corner of the wall and that there was no need for there to be spatter or blood for there to be an injury. He confirmed that the ER record demonstrated that E.F.'s wound was closed with two staples.

Director Parham testified that it would have been common sense to escort E.F. back into the Rahway Hospital ER, and the officers would not have been disciplined for doing so. He also agreed that E.F. falling asleep is a potentially troublesome sign for someone with a head injury and the officer's role should not be making conclusions, but rather he should be assessing the situation, which did not happen.

Finally, he testified that to progress from a two-day suspension to termination, he looked at Officer DeAzevedo's number of disciplinary incidents, the type of incidents, their duration and the fact that there was another disciplinary issue pending.

FOR PETITIONER:

Mark DeAzevedo, Police Officer (Rahway Police Department)

Officer DeAzevedo joined the Rahway Police Department in July 2016 shortly after graduating from the police academy. He had been employed in a variety of armed security positions prior to joining the Union County Corrections Department in November 2015. He then joined the Union County Sheriff's Office, where he was employed from January through June 2016 before taking his position as a police officer in Rahway. His last day on the job was August 25, 2021.

Initially, Officer DeAzevedo testified concerning his second administrative interview and emphasized that he was not permitted to view either his report or his BWC footage before the interview was conducted.

His testimony continued with a review of his BWC footage. He testified that he began evaluating the scene right from the time he walked in. After E.F. approached him and he pushed her with his left hand, she fell backward, hit her head on the flat of the wall behind her and slumped to the ground. (T4 at 69:18–70:1.) It was at this point that he began his evaluation of her condition. He helped her up and escorted her out of the vestibule and outside. He testified that he was not assisting her, but guiding her and that her actions and body movements were consistent with her being handcuffed and not indicative of any injury.

In essence, he testified that E.F.'s actions were consistent with someone who was potentially under the influence of alcohol or drugs and who was uncooperative and/or passively resisting arrest.

Officer DeAzevedo also reviewed the rear-facing in-car camera and testified that during the short trip to police headquarters he did see her in the rear-view mirror but would not turn around while driving. He did observe her on her side and told her to get up, but he did not have concerns for her health. He saw no need to stop and check on her.

Once they arrived at the department, he testified that she was being uncooperative and voluntarily moved her body away from him, which led to his statement, "Stop giving me dead weight." He felt that she was passively resisting. He also testified that she did not fall down or out of the car, but rather slumped down in order to again make it more difficult for him to deal with her. He testified that she had no trouble navigating the route into the station, stepping up on a curb, avoiding a hose, climbing stairs, etc. His primary concern was that she may have been under the influence of a substance.

Once they were in the station, he answered Sergeant Rayack's question about what was wrong with her by saying, "I have no idea" and also explaining what had happened in the vestibule (although that statement only said that she fell down and omitted that she hit the wall).

However, when she complained of pain, Officer DeAzevedo testified that he asked if she needed an ambulance, and while she did not reply, he did evaluate her head for an injury with gloved hands but did not see one.

EMS was called, but that was due to her psychiatric issues, not her physical ones. (Exhibit P-1.)

Officer DeAzevedo testified that during the entire time he was involved with E.F., he was evaluating her to see if she was injured.

The focus of the questioning then shifted to the Rahway Police Department's policies and procedures concerning prisoner medical transport. Officer DeAzevedo confirmed that he was aware of the policy that no prisoner was to be transported to a medical facility unless they were in shackles and a harness. He was "not trained to ignore policy" and would be written up if he did.

Officer DeAzevedo then reviewed the After Action Requirements and confirmed that Officer Withers took no action following the arrest, while he complied with the policy requirements since he "observed and took in the totality of the situation." (T4 at 110:24-111:2.) He acknowledged that there was no "test" as to whether he understood the policies but testified that he felt that he understood and complied with the policy's requirements and was aware that he could have asked for clarity if he did not understand them. He reviewed the policies using the PowerDMS system³ and by initialing that he had reviewed them he was also asserting that he understood them.

On cross-examination, Officer DeAzevedo reiterated that he was aware of the After Action Requirements policy and knew that if he did not follow it, he could be written up. Concerning this incident, he testified that based upon his observation of E.F.'s movements, how she acted and his observation of the back of her head, he had complied with same.

³ <https://www.powerdms.com/why-powerdms/law-enforcement-home> (last accessed March 18, 2024)

He agreed that he had used force on E.F., but, even after reviewing the video, he testified that she had struck her head on the flat of the wall, not the corner. (T4 at 121:25–122:17.) He further testified that once E.F. was restrained, the After Action Requirements policy applied, but that as he was picking her up off the ground, he was already evaluating her condition for a possible head injury and that is in compliance with the policy.

He disagreed with the assertion that the first time he complied with the policy was when he checked her head in the police station. Rather, Officer DeAzevedo testified that he was actually continuing his evaluation of E.F.'s condition. His answer to Sergeant Rayack's question about what was wrong with E.F. focused on her slumping over on the bench and not a potential head injury. (T4 at 136:3–137:22.)

He testified that he did not secure her in the car because he did not want to lean over her and cause a security risk for him. Even when she slumped over, he did not feel that E.F. needed assistance, but rather he thought she had fallen asleep. At that point he was right near the station, so pulling over did not make any sense.

When questioned about the dozen times he told her to "get up" when attempting to get her out of the car at the station, Officer DeAzevedo testified that she was simply passively resisting the arrest and making their jobs more difficult. He conceded, however, that it was possible that she could have been "stunned" and was not just being uncooperative.

Reviewing the front-viewing in-car camera footage, Officer DeAzevedo testified that E.F. had no difficulty making her way from the sally port to the interior of the station and that they were guiding her, not assisting or carrying her.

Officer DeAzevedo also reviewed the New Jersey Attorney General Guidelines on the use of force, in particular the guideline that calls for paying "particular attention" to arrestees with suspected mental-health or substance-abuse issues. He claimed to have complied with that policy, but failed to provide any real explanation as to how.

He also agreed that policies and procedures should be interpreted in a “reasonable light,” and that there are actually specific instructions that advise officers of that.

Thomas Kane (EMT, Rahway Emergency Squad):

Mr. Kane testified that he has been an Emergency Medical Technician (EMT) with the Rahway Emergency Squad since 2009. He is also an operations supervisor with the squad and the squad works about 3,000 calls per year. He is also a full-time firefighter in Woodbridge, New Jersey.

He testified that he had no specific recollection of this call and he needed to review his report and the videos to refresh his memory. He examined E.F. in the police station and found her to be alert and oriented with normal motor function. He did find an abrasion on the back of her head, but her bleeding was controlled. This was not a severe or critical injury and he confirmed that he is a BLS (basic life support) EMT and that ALS (advanced life support) was not called.

He noted that she had complaints of head pain and an abrasion, but the call was originally made as a psychiatric one since E.F. had stated to the police that she had wanted to harm herself.

After his initial examination, she complained that the police had “bashed [her] fucking skull” and that she wanted to see the EMT since she was “bleeding from [her] head.” On re-examination, he did not see any bleeding, but gave her a gauze pad anyway.

On cross-examination, he testified that he had been given a very limited history and he did not recall seeing any blood on her fingers. He did see a scuff mark on her head which he equated to “road rash”. In reviewing the Trinitas Hospital record, he was surprised by the note of a laceration and that she had received two staples. That was inconsistent with his recollection of her injury. He also claimed not to know what the word “linear” means or what a “bloodless field” is.

He drove the EMS unit transporting E.F. to the hospital, handed off care upon arrival and had no further involvement in her case.

Ryann Scoles (EMT, Rahway Emergency Squad):

Ms. Scoles testified that she has been an EMT in Rahway for about five years and has answered about 3,000 calls for service in that time. She also works for ACE Medical Transport and the Westfield (NJ) EMS. She has no independent recollection of this call and had to review the report and videos to refresh it. In doing so, she saw that she examined E.F.'s head in the EMS unit and noted, "Yeah, I see it . . . you have a little lump."

On cross-examination, she reviewed the Rahway Emergency Squad report, which described the injury as an "abrasion," which was the size of a "quarter . . . and slightly raised." She and Mr. Kane would generally jointly author reports, although the language in this one made her think that she was the primary writer here.

In her experience, an abrasion may be bloody or not and the term "bleeding controlled" in her report means that while it may have bled previously, it was not bleeding at the time of her examination.

The fact that E.F. received two staples for a laceration at Trinitas was surprising to her and she confirmed that a laceration is definitely different than an abrasion.

THE VIDEOS

Multiple videos were entered into evidence, including BWCs from the police as well as videos from inside Rahway Police Department headquarters.

1. DeAzevedo BWC (Exhibit R-20 - 1:06.10)

This video begins with Officer DeAzevedo just having arrived at Rahway Hospital and approaching the front door of the facility, where he is met by a guard who advises him that E.F. had been causing a disturbance and wants to fight him. He advised Officer DeAzevedo, "She's got to go now. I'm done." E.F. is in the background and discusses "fighting [the] guard."

After a brief exchange, Officer Withers walks up on the scene and advises E.F. that she has to leave. There is an extended exchange between the officers and her. Officer DeAzevedo can be seen leaning on a wall rail to E.F.'s left, about five feet away from and facing her. There was an interchange concerning his demeanor during the hearing; she advised that she "doesn't like him" and he appears to be passively antagonizing her with his hand gestures and tone of voice. She then slowly approaches him to about a foot, while he tells her to back up and that she has "to go." She then backs off just a bit and quiets down.

Officer Rengifo then appears in the video talking to the security guard⁴ and begins talking to E.F. in a much more measured manner, but she declines to leave and advises that she does not want to go to Trinitas Hospital. She is offered Overlook as an alternative, but she is again distracted by Officer DeAzevedo, noting that she "don't like him" and claiming that he is giving her "a fucking look." Officer Rengifo then continues to redirect her. After another fifteen or so seconds, she approaches Officer DeAzevedo more quickly and he tells her to "back up" before she approaches him in a quicker, but not particularly aggressive, manner. At the 7:25 mark of the video, with his right hand still on the wall rail, Officer DeAzevedo shoves her in the chest with his left hand. She is propelled backward about five feet and hits her head on the corner (not the flat) of the wall. She immediately groans in pain as she slumps to the floor at 7:28.

⁴ While his name was not mentioned during testimony, per audio picked up on Officer DeAzevedo's BWC, the guard's name is (Teddy) Edwards. This was confirmed by Officer Rengifo's police report. (Exhibit R-O.)

Officer DeAzevedo then grabs her right shoulder with his right arm and helps her up while guiding her out of the entrance foyer, with Officer Withers leading the way. E.F. was quietly moaning and leaning over while she was handcuffed. Officer Withers then obtains her belongings and he leads her to Officer DeAzevedo's car and opens the rear door. Officer DeAzevedo, now speaking in a more deliberate tone, guides E.F. into the car.

The drive back to police headquarters begins at approximately the 10:38 mark of the video. They arrive at about the 17:10 mark and as the rear door is opened, E.F. is slumped over sideways in the seat and is admonished to "get up." She appears to be "unconscious", but an objective impression is that she is consciously making the process more difficult. She is able to be guided through the sally port and into the headquarters building itself, where she is seated on a bench, leaning back against the wall with her eyes closed.

There was then this exchange between Sergeant Rayack and Officer DeAzevedo (19:58):

- Q. What is she under arrest for, Mark?
- A. Agg.⁵
- Q. Like what?
- A. She basically came at me in an aggressive manner, said she wanted to fight me, so I pushed her, and she fell to the ground.

A few seconds later, he described the incident again (20:35):

- A. So, I pushed her and she fell.
- Q. What's wrong with her right now?
- A. No idea.

⁵ Aggravated assault.

At 28:22 it is noted that the ambulance is coming, and at 31:47, E.F. states, "you bashed my fuckin' head." This statement is repeated on multiple occasions for the next ninety or so seconds and at the 33:30 mark an EMT can be seen examining E.F. in the background.

Throughout the balance of the video, E.F. repeatedly states, "you bashed my head," but given that she has already been examined by the EMTs at this point, Officer DeAzevedo's reporting responsibilities are effectively over and the balance of the video is largely irrelevant, except for when she demanded to know the identity of the officer who "bashed her head" with Officer DeAzevedo acknowledging that he was the one she was accusing (52:22).

2. DeAzevedo vehicle front-facing camera (Exhibit 21—Stream 1—no sound—36:44)

At about the 7:45 mark, the handcuffing of E.F. in front of the ER entrance can be seen, although it is partially obscured. Officer DeAzevedo can then be seen guiding her back to the cruiser. She appears unsteady on her feet, but is clearly making progress on her own and is not falling or stumbling. Officer Withers can be seen walking slightly ahead and to the right side of the pair.

The car door can be seen closing at about the 9:25 mark and Officer DeAzevedo departs the scene at about 10:36. The sally port garage opens at about 17:13 and at about 18:50, E.F. is guided in by Officers DeAzevedo and Rengifo, walking slightly hunched over but under her own power.

3. DeAzevedo vehicle rear-facing camera (Exhibit R-21—Stream 2—no sound—36:44)

E.F. is placed into the car at about the 9:20 mark, sitting upright with her eyes closed and leaning back against the seat. She opens her eyes at about the 10:00 mark on the tape and alternately opens and closes them for about thirty seconds before closing them and appearing to fall asleep. She then starts to progressively slump over to her

right and by about 11:52 she is essentially lying over completely (although she is still seated and not recumbent).

The car stops at about the 17:00 minute mark and Officer DeAzevedo can be seen reaching into the back seat with his left arm and straightening E.F. up. She appears largely non-responsive. Eventually, he pulls her upright and she exits the vehicle at about the 18:35 mark and is thereafter out of camera range.

4. Withers BWC (Exhibit 22—10:12)

The video begins with Officer Withers parking and approaching the guard outside the ER and being told that E.F. was acting up. He then confronted E.F. with Officer DeAzevedo standing to his right and leaning on the shelf in front of what appears to be a glassed-in information desk.

The camera shows both E.F. and Officer DeAzevedo and provides some visual context to their confrontation. She does approach him and he orders her to back off. At about the 4:40 mark Officer Rengifo enters the room and shortly thereafter Officer Withers is provided with a medical document by an unknown person.

Officer Rengifo offers to take E.F. to Trinitas Hospital, but she is resistant, calling it "Trinitrash" and she does not reply to an offer to take her to Overlook Hospital. The video continues to show both E.F. and Officer DeAzevedo, who, by his gestures and voice tone, appeared to passively, but purposely, antagonize E.F.

The "push" is then seen at about the 7:00 minute mark and while the contact with the wall was not seen, the video was consistent with what was shown on Officer DeAzevedo's BWC. E.F.'s exit from the hospital and her arrest are also shown, although her walk to the car and her placement in it are not in view of the camera.

5. Rengifo BWC—Part 1 (Exhibit 23—6:33)

The video shows Officer Rengifo arriving in the ER and professionally and politely engaging E.F. for about thirty seconds, during which time she expressed a desire to "harm herself" (although my impression was that this was not a serious threat or ideation given the manner in which it was spoken) and further expressed a desire not to go to Trinitas. He then left the ER and reported to headquarters before returning to the ER and confirming with the guard that E.F.'s needs were above the level of psychiatric care available at the hospital.

He remained outside the facility and was not involved in the altercation, nor did he witness it. The camera does record E.F. exiting the ER with Officers DeAzevedo and Withers and the guard relates that she approached DeAzevedo and that he pushed her. Officers DeAzevedo and Withers also very briefly related what happened.

6. Rengifo BWC—Part 2 (Exhibit 24—50:10)

This video starts with Officer Rengifo pulling up to the police station and exiting his vehicle, while Officer DeAzevedo is telling E.F. to get out of his vehicle, which is parked in the entrance to the sally port. He then goes over to the vehicle just as Officer DeAzevedo gets her out, and they walk simultaneously into the station. He guides her on her left shoulder as she sits down. He is asked what is wrong with her, and he advises that he does not know, but that she had advised him that she has post-traumatic stress disorder (PTSD). He then advised her that a sergeant was available for her to talk to.

Officer Rengifo is in the same room as E.F. for about a minute before exiting the station, heading back to his vehicle and returning with what appears to be a medical bag. She complains that her head hurts and she is asked if she hit her head when she fell. Officer DeAzevedo is seen doing a very cursory examination of her head, and she is asked whether she wants to be checked out.

Officer Rengifo then communicated over the radio about E.F.'s complaints and advised E.F. that an ambulance was coming. He continued to talk to her calmly and got her to lean against the wall instead of lying down. Officer DeAzevedo helped pull her up, but Officer Rengifo did most of the talking. She was then subjected to a pat down by Officer Giunta and was able to stand essentially without assistance.

The search is documented on the BWC and at about the 14:00 mark, E.F. asks why she is being arrested. Officer Rengifo continues to calmly answer/address E.F.'s questions and accusations and then conducts a search of her bag while the EMTs enter the room and conduct their examination.

The audio continues and is the same as on Officer DeAzevedo's BWC, with Officer Rengifo sitting just to the left of him and in front of and to the right of E.F.

At about the 24:00 mark, E.F. reaches to the back of her head with her left hand, presents it to Officer Giunta and indicates that it has blood on it. She then demands that the EMTs return. The EMTs returned shortly after the 26:00 mark and they advised her to stop touching it because it was not bleeding when they examined it before. They handed her gauze to put on the wound.

They then advised that they were going to take her to Trinitas and she was defiant that she would not go there for either medical or psychiatric treatment.

Officer Rengifo then recounted his earlier contact with E.F. at the hospital, and discussions continued concerning her allegations that she wanted to hurt herself, that her head was bashed and her adamant opposition to going to Trinitas.

At about 40:33, Sergeant Rayack re-enters the room and yet another discussion of her transportation to Trinitas commences. Ultimately, she is placed in shackles to be transported, with Officer Rengifo assisting Sergeant Rayack and Officer Giunta.

Of interest is that when Officer Rengifo draped E.F.'s jacket over her back at 47:38, the hood appeared to have a half-dollar-sized red stain on the left side of the lining. She is then placed on a stretcher and removed to the ambulance.⁶

7. E.F. photos (Exhibit 25)

There are four photos on this disc. The first is a direct facial shot that is irrelevant for the purposes of this matter. The second is a picture of the rear of E.F.'s head after two staples were placed essentially in the center of the back of her head. The third is a close-up of the staples, and the fourth is an even closer close-up.

8. Giunta BWC (Exhibit 28—1:03:57)

This video commences with Officer Rengifo speaking to E.F. while she is leaning against the wall in the police station.

Officer Giunta then approaches her and begins a pat-down search before removing her hoodie. At the 3:49–3:53 mark of the video, more, somewhat diffuse red stains are seen on the inside of the hood as it is removed.

There is nothing else of particular significance on this video that was not seen or heard on the previous videos, although it was Officer Giunta who advised the EMTs that E.F. was complaining of a "really bad headache" as they arrived from outside the building. She then followed them back inside.

The search is documented on the BWC and at about the 14:00 mark E.F. asks why she is being arrested. Officer Rengifo continues to calmly answer/address E.F.'s questions and accusations and then conducts a search of her bag while the EMTs enter the room and conduct their examination. She was largely passive during the exam, although Officer Giunta did approach E.F. and more tightly secure her right hand/handcuff to the restraint on the wall.

⁶ This spot is also visible at about the 10:20 mark of this video when Officer Giunta removes E.F.'s jacket.

While there is some additional dialogue, there is nothing else on the video of importance that had been seen or heard until she is being led to the sally port, when a red stain is again visible on the inside of her hood at about the 41:50 mark.

Officer Giunta then accompanied E.F. to Trinitas in the EMS unit, during which time E.F. continued to complain about her head being "bashed against the wall."

At about the 24:00 mark, E.F. reaches to the back of her head with her left hand, presents it to Officer Giunta and indicates that it has blood on it. She then demands that the EMTs return. The EMTs returned shortly after the 26:00 mark and they advised her to stop touching it because it was not bleeding when they examined it before. They handed her gauze to put on the wound.

They then advised that they were going to take her to Trinitas and she was defiant that she would not go there, either for medical or psychiatric treatment.

Officer Rengifo then recounted his earlier contact with E.F. at the hospital, and discussions continued concerning her allegations that she wanted to hurt herself and that her head was bashed and her adamant opposition to going to Trinitas.

At about 40:33 Sergeant Rayack re-enters the room and yet another discussion of her transportation to Trinitas commences. Ultimately, she is placed in shackles to be transported, with Officer Rengifo assisting Sergeant Rayack and Officer Giunta.

Of interest is that when Officer Rengifo draped her jacket over her back at 47:38, the hood appeared to have a slightly bigger than a quarter-sized red stain on the left side of the lining. She is then placed on a stretcher and removed to the ambulance.⁷

At about 50:32, E.F. complains about a knot on the back of her head and blood and is examined by the EMT as she points to the back left side of her head. At 51:25 she

⁷ This spot is also visible at about the 10:20 mark of this video when Officer Giunta removes E.F.'s jacket.

points to the spot and the EMT acknowledges that she can "see it." She describes it as a "little lump" and says that she "hit her head on the wall for sure."

The rest of the video was uneventful.

9. Withers IA interview (Exhibit 33—June 15, 2021—14:14)

This interview was conducted by Captain Tilton and began with Officer Withers acknowledging his status as a witness and stating that he would be truthful. He then recounted his initial contact with E.F. at the hospital when he and Officer Rengifo had been called because she was refusing to leave the building.

They were attempting to find a solution for her, and ultimately she agreed that she would wait outside and would either call someone to get her or would walk home. She did not appear intoxicated, but did advise them that she had PTSD. However, he felt that she would be safe to leave outside the hospital.

Initially, she acted afraid of them, but then she calmed down quickly and there were no issues. However, they were called back to the scene twenty to thirty minutes later. Since Officer Rengifo was on another call, Officer Withers was sent as the primary and Officer DeAzevedo was his backup. He was told that E.F. was "throwing stuff around". Officer DeAzevedo actually got to the scene first and was interacting with her, but he then took over the "contact" from DeAzevedo.

Officer Withers noted that even while he was talking, E.F.'s focus was on Officer DeAzevedo. Officer Rengifo then arrived and while they were trying to figure out how to move her along, she remained "transfixed" on Officer DeAzevedo and he believed that she threatened to fight him. He stated that Officer DeAzevedo was already on overtime and was just trying to get through the day and kind of shrugged it off and did not say much. She then advised that she did not like Officer DeAzevedo and then moved quickly toward him (they were about three to four feet apart); he pushed her back and she crumpled to the ground. He thought that she "caught the corner of the sheet rock" and "that was that" and she was then placed under arrest.

He was then questioned about the content of Officer DeAzevedo's report, including his allegation that she approached him with a cocked fist. Officer Withers noted that the incident occurred so quickly that he could not be sure of that and would have to see the video. He did not see that she struck him, but emphasized that if Officer DeAzevedo had not done anything, he would have been hit.

He reiterated that E.F.'s anger seemed to be focused on Officer DeAzevedo, but also noted that Officer DeAzevedo did nothing to de-escalate the situation in the three to four minutes that they were there.

Officer Withers acknowledged that the newly issued New Jersey A.G. Guidelines require them to de-escalate situations and that he had both read and signed off on them. He then, albeit reluctantly, reiterated that Officer DeAzevedo had not done anything to de-escalate this confrontation.

As to the guidelines that require that aid be rendered after a use of force, he confirmed that this had not been done, but Officer Withers noted that E.F. did not appear injured. However, he acknowledged that she grabbed the back of her head after hitting the wall, and that Officer DeAzevedo did not comply with those guidelines and did not make any attempt to obtain help for her.

He did not follow E.F. to the station (Officer Rengifo did) and was unaware of her injuries. He did not see any blood or any obvious injury when he was walking with her and Officer DeAzevedo back to his vehicle. If he had, he would have rendered aid.

Officer Withers did not complete any reports on this case since Officer DeAzevedo made the arrest and took over as the primary. He acknowledged that his BWC had been activated and was working properly.

The interview concluded with Officer Withers claiming that "he had heard" that E.F. was picking at her head in the squad room and may have opened up an old wound, but

also noting that he did not know what had happened, other than that she had been at Rahway Hospital "for some reason."

10. Rayack IA interview (Exhibit 34—June 29, 2021—8:37)

This interview was conducted by Captain Tilton and began with Sergeant Rayack acknowledging his status as a witness and saying that he would be truthful. On the day in question, he was working as the patrol supervisor when the department received a call from the hospital at about 7:42 a.m. about a patient who was refusing to leave. Initially, Officers Rengifo and Withers were dispatched, and that call was cleared. However, E.F. returned, the hospital called again and Officer DeAzevedo was sent out with Officer Withers, since Officer Rengifo was on another call.

Sergeant Rayack related that the first indication of an issue with the second visit to the hospital was when he learned that Officer Rengifo was talking to a Lieutenant Irvine (phonetic) on the phone when the tenor of their conversation changed and he went from almost clearing the scene to an arrest. Officer Rengifo then learned that E.F. had been arrested by Officer DeAzevedo for aggravated assault.

He was present when an agitated and combative E.F. was brought to the station. He talked to both her and Officer Rengifo but did not remember the details. He became aware that she had some injury and that there was some blood when she touched her head. He then had Officer Rengifo retrieve his medical equipment and called for an ambulance.

Officer DeAzevedo did mention that E.F. had approached him with clenched fists and that he had pushed her, but he never said that she was injured or that he had sought medical treatment for her. Officer DeAzevedo also did not mention that she had passed out and slumped over in his patrol vehicle and Sergeant Rayack felt that this was something that should have been addressed immediately. He agreed that given her state of consciousness, the fact that Officer DeAzevedo had to drag her out of the car and lay her on the ground and particularly since he had used enough force to split her head open, this should have been reported immediately.

Sergeant Rayack was aware of the Rahway use-of-force policy and he then read the "After Action Requirements" section of the policy out loud. He stated that Officer DeAzevedo did not evaluate E.F. or seek medical attention for her and given the facts and circumstances, the "After Action Requirements" policy applies. If he had known about her actions in the car, he would have advised Officer DeAzevedo to stop the car and seek medical attention immediately.

To his knowledge, Officer Rengifo was not present during the use of force and Officer Withers did not immediately return to headquarters but rather resumed patrol.

11. DeAzevedo IA interview #1 (Exhibit 35—June 29, 2021—13:17)

This interview began with a dispute between Captain Tilton and Officer DeAzevedo concerning representation by counsel and the presence of a Weingarten representative.⁸ This took up the first eleven minutes of the video. The interviewer then proceeded to ask questions concerning the incident and Officer DeAzevedo refused to answer them without the presence of counsel.

12. DeAzevedo IA interview #2 (Exhibit 36—July 9, 2021—35:17)

This interview by Captain Tilton took place in the presence of Officer DeAzevedo's attorney and began with acknowledgment that he was the subject of a complaint of excessive force that was made by E.F.

After some additional preliminary questions, Officer DeAzevedo began his recitation of the day's events. He recalled being dispatched to the hospital and arriving before Officer Withers. He was met by a guard who told him that E.F. "needs to go" and had been throwing things. Officer DeAzevedo advised E.F. that she had to leave but she refused and might have said that she was going to attack the hospital guard.

⁸ For an understanding of what a Weingarten representative is, please see <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/weingarten-rights> (last accessed March 20, 2024).

Officer Withers then arrived and asked what E.F. was still doing there, since he had been on an earlier call concerning her. She kept refusing to leave and saying not to touch her. She was focused on Officer DeAzevedo with her fists clenched at her side. She then approached him and was told to step back, which she did. However, she stayed close and began cracking her knuckles. Officer Withers continued dialogue with her, but she stated that she did not like Officer DeAzevedo. She then clenched her fists and lunged at him and he "blocked her" with his left hand to maintain a distance and "at that point she hit her head against the wall". Then he and Officer Withers picked her up, placed her in the patrol car and brought her to headquarters.

He very quickly went through the events at headquarters, where she was "argumentative" and claimed that he had "bashed her head". She complained of pain and EMS was called. Officer DeAzevedo then stated that she began to "pick at her injury, and then it started bleeding." She had been searched by Officer Giunta, and both her and Officer Rengifo accompanied E.F. to the hospital, while he completed his report and the summons.

He did not recall E.F. claiming that she was an emotionally disturbed person or had PTSD at the hospital or claiming that she wanted to hurt herself, but he did recall that happening at headquarters.

Officer DeAzevedo admitted to not practicing any de-escalation techniques at the hospital, nor making a clicking noise with his mouth that seemed to disturb E.F. He recalled that he underwent training in the police academy regarding dealing with emotionally disturbed persons, but not the specifics of that training since "it was so long ago." He was also familiar with PowerDMS as well as the Attorney General's guidelines concerning de-escalation and use of force.

Officer DeAzevedo demonstrated what he meant when he wrote in his report that E.F. was standing with her fists in a cocked-back manner (although the view of the demonstration is blocked by counsel). He was about five feet away at that point and he was backed against the wall.

He used his left hand to block her and recalled her "striking the pillar" in the vestibule, after which she groaned and kept rubbing her head. He and Officer Withers then picked her up and put her in the patrol vehicle. He did not recall her falling to the side and saying "ow".

He admitted that once she was in handcuffs she was no longer a threat. Officer DeAzevedo did not ask if she was hurt or if she had sustained any injuries as a result of his use of force because at that point, she was already under arrest and was going to be transported back to headquarters. He acknowledged that he did not follow the guidelines that required him to check to see if she was injured after his use of force.

During transport and as he approached the sally port she was slumped over and he told her that she had to get up. He did not believe that she had passed out and could not recall when during the ride to headquarters she slumped over. There was then a discussion concerning monitoring the prisoner and the known dangers of positional asphyxiation (particularly how quick the onset can be), which he had been trained on in 2016.

Officer DeAzevedo stated that he was not going to stop in the middle of the road when he was already on the way back to headquarters. He also thought that "she was faking, to be honest with you." Officer DeAzevedo did not recall the exact sequence of events that occurred at headquarters that led to EMS being called. He did not recall when Officer Giunta removed E.F.'s hoodie or notice the blood inside the hood.

Officer DeAzevedo was not involved with the hospital transport or aware of the extent of her injuries.

He was not certain that Officer Withers was actually in the vestibule when his use of force occurred but seemed to recall seeing him out of the corner of his eye, leaving to get Officer Rengifo, then returning to help pick E.F. up off the floor.

It was then clarified by Captain Tilton and counsel that Officer DeAzevedo had not reviewed and was not permitted to review his BWC footage during an active Internal Affairs investigation.

The balance of the interview consisted of colloquy between counsel and Captain Tilton.

13. Rahway Police Department telephone and radio traffic (Exhibit 37)

There were only three calls that were relevant to this decision and even then, only tangentially. One audio file is the original call to the police regarding E.F.; another is the call from the hospital when E.F. returned.

The third is the audio from the phone call Officer Rengifo is seen making on his BWC concerning the events at the hospital. Prior to him relating E.F. coming out in handcuffs, he and the person on the other end of the call discussed the issue of transportation and that EMS will not transport a patient who is on hospital property to another hospital; and that if that was going to happen, she would have to be moved off-site. That discussion ended with the arrest.

The final relevant audio also involves Officer Rengifo when he notes that E.F. had threatened to harm herself.

CHARGES AND SPECIFICATIONS

Following the departmental hearing, respondent sustained the following charges listed in the PNDA (Exhibit J-A) in the FNDA (Exhibit C-1); violations of N.J.A.C. 4A:2-2-3(a)(1), incompetence; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. The "other sufficient cause" count referenced violations of "Rahway Police Department Policy G-15-19 (Use of Force Policy), specifically Sections V(A) and V(C), and New Jersey Attorney General Directive No. 2020-13 (Use of Force Policy), issued on

12/21/2020.” There were also “Violations of Rahway Police Rules and Regulations: 2:1.6 Neglect of Duty, 2:1.7 Performance of Duty.”

The incident was described thusly:

On 05/21/2021, PO DeAzevedo exercised a use of force that caused injury to a female victim at the Robert Wood Johnson University Hospital in Rahway, New Jersey. PO DeAzevedo's use of force caused the victim to fall backwards and strike her head. Following this incident, PO DeAzevedo walked the victim to his patrol vehicle without attempting to determine if the victim was injured and/or required medical attention. Thereafter, PO DeAzevedo transported the victim to Police Headquarters in the rear of his patrol car. During transport, PO DeAzevedo did not attempt to determine the victim's condition or whether she required medical attention. Upon arrival at Police Headquarters, PO DeAzevedo did not report his observations to fellow officers about the victim's condition or the possibility that she had a medical condition. Thus, fellow officers were unaware that the victim had sustained injuries due to PO DeAzevedo's use of force or the victim's condition during the period of transport in PO DeAzevedo's patrol car.

As a result of his failure to render medical aid to the victim after exercising a use of force, PO DeAzevedo violated multiple sections of Rahway Police Department Policy G-15-19 (“Policy G-15-19”), as well as the New Jersey Attorney General Directive No. 2020-13 (Use of Force Policy), issued on 12/21/2020. Specifically, PO DeAzevedo violated Section V(a) of Policy G-15-19, which provides: “Following the use of force, officers shall immediately evaluate the need for medical attention or treatment for the person upon whom the force was used and provide first aid to the extent of their training except where the application of first aid will expose the officer to immediate danger.” Further, PO DeAzevedo violated Section V(c) of Policy G-15-10, which provides: “Any person requesting and/or deemed in need of medical attention shall be transported to the nearest available emergency medical treatment center or hospital.” Additionally, PO DeAzevedo violated [sic] Section V(c)(2), which provides: “The extent of the injury and the treatment offered/provided shall be documented in the body of the Investigation Report.”

[Exhibit C-1.]

APPLICABLE LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his duties. N.J.S.A. 11A:1-2(a).

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). 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). Therefore, the tribunal must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is defined as: "The quality that makes something (as a witness or some evidence) worthy of belief." Black's Law Dictionary 463 (11th ed. 2019).

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's 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).

Accordingly, credibility does not mean determining who is telling the truth but rather requires a determination of whose testimony is "worthy of belief" based upon numerous factors. Credibility is not based on who presented the most witnesses. Instead, it is "the interest, motive, bias, or prejudice of a witness [that] 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). The process entails observing the witnesses' demeanor, evaluating their ability to recall specific details, evaluating the consistency of their testimony under direct and cross-examination, determining the significance of any inconsistent statements and otherwise gathering a sense of their candor with the court.

When determining the appropriate penalty to be imposed, the Board must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. West New York v. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 524. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4.

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an

appointing authority has a responsibility to encourage the development of employee potential. See generally, In re Stallworth, 208 N.J. 182 (2011).

The concepts of progressive and major discipline have no fixed definitions and are case specific, but in Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966), the court declared:

It must be recognized that 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.

These issues were also addressed in In re Carter, 191 N.J. 474 (2007):

Even so, we have not regarded the theory of progressive discipline as a fixed and immutable rule to be followed without question. Instead, we have recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Rawlings v. Police Dept of Jersey City, 133 N.J. 182, 197–98, 627 A.2d 602 (1993) (upholding dismissal of police officer who refused drug screening as “fairly proportionate” to offense). In doing so, we have referred to analogous decisions to discern the test to be applied. See Id. at 197, 627 A.2d 602. Thus, we have noted that the question for the courts is “whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness.” In re Polk License Revocation, 90 N.J. 550, 578, 449 A.2d 7 (1982) (considering punishment in license revocation proceeding) (quoting Pell v. Bd. of Educ., 34 N.Y.2d 222, 313 N.E.2d 321, 327, 356 N.Y.S.2d 833 (1974)).

[Id. at 484–85.]

Further, in matters involving the discipline of police and corrections officers, issues of public safety should be considered. Id. at 485. Officers are also held to a higher duty than a “normal” public employee given their duty to uphold and enforce the law. In re Disciplinary Procedures of Phillips, 117 N.J. 567, 576–77; see also, In re Emmons, 63 N.J. Super. 136, 142 (App. Div. 1960). As noted in In re Villanueva, 2019 N.J. Agen.

LEXIS 190, aff'd, 2019 N.J. Agen. LEXIS 332 (Apr. 5, 2019), aff'd, 2021 N.J. Super. Unpub. LEXIS 146 (Jan. 28, 2021), certif. denied, 246 N.J. 311 (2021):

This must especially be true in connection with the use of force, although here it is the case that deadly force was not involved. However, given the risks, legal consequences and impact of such use on the officers, recipients and the perceptions of the public, strict adherence to the policies must be required. Indeed, the ability of law enforcement to utilize force, whether physical, mechanical or deadly, is the most relevant reason for the insistence that they meet such a higher level of conduct.

[Id. at *23.]

Ultimately, however, “it is the appraisal of the seriousness of the offense which lies at the heart of the matter.” Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 35 N.J. 469 (1994).

RESPONDENT’S POSITION:

Respondent argues that the evidence clearly supports the findings made in the underlying disciplinary action that Officer DeAzevedo’s actions and inactions clearly violated both the policies and procedures of the Rahway Police Department, the Attorney General Guidelines on use of force and the Administrative Code.

More specifically, it was argued that after the clear use of force by Officer DeAzevedo, he failed to check her for injuries in even a cursory manner as required when the victim displayed multiple signs and symptoms of potential injury. It was also pointed out that even after returning to police headquarters, he failed to advise anyone that she had struck her head but rather effectively feigned ignorance as to “what (maybe) wrong with her.” It was also pointed out that Officer DeAzevedo acknowledged that he was aware of both Rahway Police Department Policy G-15-19 and New Jersey Attorney General Directive No. 2020-13 concerning after-action responsibilities subsequent to a use of force but consciously disregarded the same.

As to potential discipline, Rahway argues that given Officer DeAzevedo's extensive history, which includes eleven verbal warnings, three written warnings, three minor suspensions and one major suspension, termination is the only appropriate outcome. This is particularly true in the case of a law enforcement officer, who is held to a higher standard of conduct. In re Carter, 191 N.J. at 485-86; see also, In re Emmons, 63 N.J. Super. at 142.

Here, where Officer DeAzevedo not only failed to evaluate the subject of his use of force but also attempted to conceal the source of E.F.'s injury, his disciplinary history mandates his termination. It is argued that he has long failed to meet the heightened standards demanded of a police officer and that, particularly in cases involving a use of force, strict disciplinary standards must be enforced. As noted in respondent's brief:

DeAzevedo's conduct illustrates a disregard for the safety of the public and of his obligation to exercise a degree of caution and care appropriate to the extraordinary powers he exercises as an officer of the law. DeAzevedo's disregard for rules and regulations designed to ensure the protection of the public and his effort on May 21, 2021 to withhold facts about [E.F.'s] injuries even though disclosure may have assisted in a medical evaluation of her condition, illustrate that his violation of the Use of Force policy's after-action obligations was serious and warranted termination.

[Resp't's Br. at 22.]

PETITIONER'S POSITION:

Petitioner makes a multi-pronged argument concerning Officer DeAzevedo's innocence of the charges. First, he points to the chaotic nature of the Rahway Police Department's disciplinary procedures, as well as Director Parham's alleged interference with/undue influence over the proceedings. This included the decision not to charge Officer Withers with any violations, as well as his "Monday morning quarterbacking" of both the guilty finding on the failure to evaluate the charge as well as recommending Officer DeAzevedo's termination rather than the reprimand/re-training that was recommended.

Concerning the event itself, counsel argues that Officer DeAzevedo clearly “evaluated” E.F. immediately after she struck the wall and thereby met the standard of the department’s Use of Force Policy G-15-19. Noting that an “evaluation” is by definition less extensive than an “examination,” he argues that the evidence credibly demonstrated that he was evaluating her, citing to when he commanded her to “get up,” which she was able to do, and noting that E.F.’s complaint of pain “is certainly not conclusive as to whether medical attention is needed,” since that is often used as a defensive technique. Officer DeAzevedo then continually evaluated her from the walk to his vehicle, the trip to the police station, her exit from the vehicle, and her entry into the station.

It is argued that merely because that evaluation may have been incorrect (as evidenced by the injury documented in her medical records), that does not mean that the evaluation was not performed and the guidelines were not complied with. He points out that the EMTs failed to detect the injury found in the hospital, so it was not unreasonable that Officer DeAzevedo did not detect it either.

As to potential punishment, if Officer DeAzevedo is found guilty of any of the charges, counsel makes two primary points. First, that the disciplinary system in Rahway has been and clearly remains “flawed” and that Director Parnham’s reliance “on a very suspect disciplinary history to ‘predominately’ decide that termination was the appropriate punishment” was both improper and unfair. This is particularly true given the relatively minor nature of the prior disciplinary history and

that DeAzevedo’s investigation was within the sole purview of a person who was found to have not followed accepted standards commensurate with internal affairs investigations and was removed by the Police Director after the DeAzevedo investigation was concluded.

[Pet’r’s Br. at 58.]

Officer DeAzevedo argues that, assuming a finding of guilt, a suspension of forty-five days should be considered, followed by a restoration of his position as a police officer. Ibid.

FINDINGS OF FACT

The testimony and evidence in this case covered a wide swath of issues, many of which are ultimately irrelevant to the base question of whether Officer DeAzevedo is guilty of one or more of the charges against him. In fact, after hearing four days of testimony and examining the evidence, the base guilt/innocence question is the easier of them to answer.

This is, in reality, a relatively basic case. If I accept the "I was always evaluating" argument from respondent, he will be found not guilty, and this case will end. If I do not, then, no matter how many of the charges are ultimately sustained, my decision shifts focus, effectively and realistically, to whether Officer DeAzevedo's termination should be upheld, or whether he should receive a 180-day suspension.

The guilt/innocence question in this case is not complicated; after the use of force, did Officer DeAzevedo comply with Rahway Police Department policy/Attorney General Guidelines and evaluate E.F. for a potential injury? Once that question is answered, all of the other issues raised, at least as to his guilt on the charges, are irrelevant.

Ultimately, this case is not about whether petitioner's use of force was justified (a departmental hearing determined that it was, and that issue is not before me)⁹ or whether Officers Withers and/or Rengifo should have been charged. It is also not about whether E.F. was actually injured, and it is not about the structure of the Rahway Police Department's Internal Affairs Unit or Director Parham's role in the disciplinary decision process.

Rather, the etiology of these charges is whether Officer DeAzevedo violated Section V(a) of Rahway Police Department Policy G-15-19, which provides:

Following the use of force, officers shall immediately evaluate the need for medical attention or treatment for the person upon whom the force was used and provide first aid to the

⁹ And I do not necessarily disagree with that assessment.

extent of their training except where the application of first aid will expose the officer to immediate danger.

[Exhibit R-B.]

In conjunction with the Rahway regulation, the Core Principle Six of the New Jersey Attorney General's Use of Force Policy states:

Duty to Render Medical Assistance. After any use of force, and when the environment is safe, officers shall promptly render medical assistance to any injured person consistent with the officer's training and shall promptly request emergency medical assistance for that person, if needed or requested. Officers also have a duty to monitor individuals for potential medical intervention after any officer uses force.

- 6.1 An officer's duty to render medical assistance and monitor for potential medical intervention is particularly important following any use of force. When the force involves the use of OC spray, officers shall take immediate action to address the effects of the OC spray, consistent with training.
- 6.2 The duty to render medical assistance and monitor applies to all officers on scene and continues throughout any transportation and custody of the individual.
- 6.3 Officers shall pay particular attention to persons reasonably believed to be pregnant, children, the elderly, physically frail individuals, and those experiencing a mental health or substance use crisis.

[Exhibit R-D.]

All of the other charges made against petitioner arise out of this alleged violation. While Director Parham cited four separate occasions where Officer DeAzevedo could have/should have performed an assessment of E.F.'s condition, given the evidence, the guilt phase of this case begins and ends for petitioner in the Rahway Hospital emergency room. The second that E.F.'s head hit the corner of that wall, Officer DeAzevedo had an obligation to check on her and "evaluate" whether she was injured, and I **FIND** that he did

not. Regardless of whether his use of force was justified, she hit that wall hard and he was fully aware of that.

After assessing his testimony and demeanor, the videos depicting E.F. and the testimony of the other officers, it is clear that Officer DeAzevedo made a very quick determination that she was "fine" and, at most, a little "dinged up", but between her psychiatric and possible alcohol/drug-related conditions, she was not hurt and could be transported back to headquarters.

I **FIND** that what he did was not an "evaluation" after a use of force but rather a snap "determination" that was not in compliance with Policy G-15-19 or the Attorney General Guidelines. Even if he was accurate concerning her subsequent behavior (be it that she was passively resisting or was simply being uncooperative), the policy is clear that the first step to be taken after a use of force and any danger eliminated is for the officer to evaluate the prisoner to determine whether she was injured and then to document it.

I also **FIND** that Officer DeAzevedo concluded quite quickly that this arrest could be problematic, both for his use of force and any potential injury sustained by E.F. His professed ignorance of what could potentially be wrong with her and his omission of the fact that her head had hit the wall did not strike me as inadvertent errors in recounting the events of the day, but rather as deliberate omissions with the purpose of minimizing the significance of the encounter.

Whether E.F. was actually injured or not, or whether Officer DeAzevedo's snap judgment was accurate or understandable, is unimportant. Even if he had missed the cut on E.F.'s scalp (like the EMTs did), as long as there was evidence that he had legitimately evaluated her for a potential injury and documented his use of force, he would not be facing these charges.

Given both the Rahway policy and the Attorney General Guidelines, even if you do not "really" believe that a person is injured following a use of force, an assessment must be performed, and I **CONCLUDE** that Officer DeAzevedo failed to do so.

CHARGES

As detailed above, Officer DeAzevedo was found to have committed four separate violations: incompetence, conduct unbecoming a public employee, neglect of duty and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(1), (6), (7) and (12). The “other sufficient cause” count referenced violations of “Rahway Police Department Policy G-15-19 (Use of Force Policy), specifically, Sections V(A) and V(C), and New Jersey Attorney General Directive No. 2020-13 (Use of Force Policy), issued on 12/21/2020.” He was also found to have violated Rahway Police Department Rules and Regulations 2:1.6 (Neglect of Duty) and 2:1.7 (Performance of Duty).

INCOMPETENCE

In general, incompetence, inefficiency, or failure to perform duties exists where the employee’s conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Once again, the Administrative Code provides no specific definition of these terms. N.J.A.C. 4A:2-2.3(a.) However:

(C)ase law has determined incompetence is a “lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position.” Sotomayer v. Plainfield Police Dept, CSV 9921-98, Initial Decision (December 6, 1999), adopted, Merit Sys. Bd. (January 24, 2000), <http://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf> (citing Steinel v. City of Jersey City, 7 N.J.A.R. 91 (1983); Clark v. New Jersey Dept of Ag., 1 N.J.A.R. 315 (1980).)

[In re Ciuppa, 2014 N.J. AGEN LEXIS 206, *55 (May 16, 2023).]

CONDUCT UNBECOMING A PUBLIC EMPLOYEE:

Under N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to major discipline for conduct unbecoming a public employee. Although not strictly defined by the Administrative Code, “conduct unbecoming” has been described as an “elastic” phrase which encompasses conduct that “adversely affects the morale or efficiency” of the public entity or tends “to destroy public respect for [government] employees and confidence in the operation of [government] services.” Karins v. City of Atl. City, 152 N.J. 532, 554 (quoting Emmons, 63 N.J. Super. at 140); see also In re Teel, 2012 N.J. Super. Unpub. LEXIS 667 (App. Div. March 27, 2012).

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 Zeber Appeal, 156 A.2d 821, 825 (1959)).

NEGLECT OF DUTY

Neglect of duty is one of the grounds for disciplinary action in a civil service matter under N.J.A.C. 4A:2-2.3(a)(7). Although not defined by the regulation, it generally means that a person is not performing their job. The person may have failed to perform an act that the job requires or may have been negligent in the discharge of a duty. The duty may arise from specific statutes, post orders, policies, or the very nature of the job itself. See generally In re Calio, 2018 N.J. Super. Unpub. LEXIS 2706 (App. Div. December 11, 2018); Bock, 38 N.J. 500.

OTHER SUFFICIENT CAUSE

N.J.A.C. 4A:2-2.3(a)(12) does not define “other sufficient cause”, but this phrase is generally interpreted to mean violations of rules, regulations, policies and procedures such as post orders. In this case, that includes the Attorney General directive, the Rahway Use of Force directive and the Rahway Police Department rules and regulations. In re Calio.

CONCLUSIONS

As is often the case in police discipline cases that involve what is essentially a contained, time-limited event, there is overlap in the charges. While I **CONCLUDE** that Officer DeAzevedo is guilty of all four charges brought against him, for the purposes of the penalty, the number of guilty findings is only a minor factor (this will be detailed below).

In reviewing the evidence, I **FIND** that respondent has proven by a preponderance of the credible evidence that Officer DeAzevedo demonstrated an inability to meet the standards for adequate performance of his job and therefore acted in an incompetent manner. He was admittedly aware of both the use-of-force guidelines and his duties after force had been used and while his actual use of force was found to be appropriate, he completely failed to meet his post-force duties and, frankly, appeared not to give them a second thought until E.F. loudly and continually voiced her complaints at the police station.

I also **FIND** that it has been proven by a preponderance of the credible evidence that Officer DeAzevedo acted in a manner unbecoming of a public employee on May 21, 2021. His conscious disregard of the potential injury to E.F. when he knew that she had hit the corner of the wall hard and his overall demeanor during the entire encounter reflected poorly on him and the Rahway Police Department and clearly had the potential “to destroy public respect for [government] employees and confidence in the operation of [government] services.” Karins, 152 N.J. at 555.

I **FIND** that Officer DeAzevedo let his annoyance and frustration with E.F. and her behavior cloud his judgment. I also **FIND** that his behavior during this entire encounter fell below that expected of a police officer. In re Carter, 191 N.J. 474.

Based on the above, I therefore **CONCLUDE** that Officer DeAzevedo acted in a manner unbecoming a public employee on May 21, 2021.

I also **FIND** that respondent has proven by a preponderance of the credible evidence that Officer DeAzevedo neglected his duty as a police officer on the day in question. As detailed above, he clearly had a duty to evaluate E.F. for a potential injury given his use of force combined with the severity and location of E.F.'s impact on the wall. He was the one who used the force in question and he admittedly saw where she hit and was just a few feet away from the impact. His annoyance and frustration with a problematic member of the public do not excuse his failure to act in a professional manner in compliance with known guidelines. Officer DeAzevedo had a duty to evaluate E.F. for injury immediately (for all intents and purposes) after the incident occurred and he failed to do so. I therefore **CONCLUDE** that he neglected his duty as a police officer.

Finally, as to the charge of "other sufficient cause", I also **FIND** that same has been proven by a preponderance of the credible evidence. While the actions that comprise this charge are encompassed within the other three charges, those violations are largely based on my finding that Officer DeAzevedo failed to comply with Rahway Police Department Policy G-15-19, as well as New Jersey Attorney General Directive No. 2020-13 (Use of Force Policy). I therefore **CONCLUDE** that respondent has proven by a preponderance of the credible evidence that there is other sufficient cause to support a finding of Officer DeAzevedo's guilt.¹⁰

PENALTY

PRIOR DISCIPLINARY HISTORY:

The extent of Officer DeAzevedo's disciplinary history is largely uncontested.¹¹ Per N.J.A.C. 4A:2-3.1(a), "minor discipline is formal written reprimand or a suspension or fine of five working days or less." Discipline greater than minor discipline is deemed "major discipline" and can include removal, demotion, suspensions and fines of up to six months or termination. See generally, N.J.A.C. 4A:2-2; N.J.A.C. 4A:2-2.4(a).

¹⁰ The alleged violation of the Rahway Police Department rules and regulations is duplicative of the other guilty findings. For the sake of completeness, I also **FIND** that he has been proven guilty of same by a preponderance of the credible evidence.

¹¹ There was a dispute during the hearing concerning the admissibility of the verbal reprimands issued to Officer DeAzevedo. They were admitted over his objection.

MINOR DISCIPLINE:

- August 26, 2017—motor vehicle accident with patrol vehicle—improper use of overhead lights (verbal)
- September 24, 2017—tardiness to DMV detail—side job (verbal)
- October 16, 2017—failure to safeguard the scene of a motor vehicle accident and failure to issue summons (verbal)
- February 12, 2018—failure to properly activate a body-worn camera (verbal)
- March 17, 2018—wearing an improper winter hat (verbal)
- May 10, 2018—failure to address a parking issue when ordered by supervisor (verbal)
- September 13, 2018—failure to obey an order to conduct commercial building checks (verbal)
- September 30, 2018—failure to obtain necessary equipment and failure to inspect patrol vehicle (verbal)
- October 10, 2018—late to work (written)
- December 13, 2018—late to work (written)
- December 18, 2018—late to work (written)
- December 29, 2018—late for work (one-day suspension)
- February 17, 2019—improper completion of documents (retraining)
- March 17, 2019—improper handling of DWI investigation (retraining)
- April 27, 2019—failure to secure shotgun in patrol vehicle—neglect of duty, insubordination (three-day suspension)
- May 28, 2019—use of cellphone while driving (verbal)

- July 16, 2019—use of cellphone and improper conduct while working side job (verbal and retraining)
- October 3, 2019—left BWC at a convenience store (one-day suspension)
- May 21, 2020—variety of charges involving side job at a retail store, including improper conduct towards the public (two-day suspension and permanent bar from working at location)¹²
- January 13, 2021—failure to activate BWC (verbal)

MAJOR DISCIPLINE:

- February 10, 2021—neglect of duty, performance of duty (seven-day suspension)

Both the concept and application of progressive discipline were explored in great detail in In re Stallworth, 208 N.J. 182 (2011). There, the Court noted that a worker's disciplinary history can be used to "ratchet-up" or "support" the imposition of a more severe penalty or to mitigate that penalty. Id. at 196 (citing In re Herrmann, 192 N.J. 19, 30-33). While there are "major" cases where the conduct is so egregious that the progressive disciplinary system may be bypassed, when it does not reach that level of severity, the system must be applied. Id. at 196-97 (citing Bock, 38 N.J. at 522-23); see also In re Carter, 191 N.J. 483-84.

Vitality:

Under the concept of *progressive discipline*, one act of misconduct may result in "minor discipline" merely because it was a first offense, whereas the same misconduct, if repeated, could justify the imposition of "*major discipline*," including, termination. In other words, different penalties can be imposed for the same misconduct depending on the

¹² This discipline was imposed after the discipline imposed in the case at bar. (Exhibit R-18.)

employee's record. Thus, the contextual nature of the prior offenses is a relevant consideration when analyzing an employee's disciplinary record and renders incomplete and inadequate the Commission's imposition of discipline based on a summary conclusion that the employee's prior disciplinary record contains "only" one incidence of "major" disciplinary action.

[Stallworth, 208 N.J. at 198-99.]

This is an extremely difficult decision. After all of the testimony and discussion concerning respondent's disciplinary process and Officer DeAzevedo's unimpressive history, one thing that became clear is that Director Parham was brought into Rahway to "clean house" and bring some semblance of order to the department, particularly concerning the disciplinary process. Part of that mandate was to rid the force of people he determined to be "bad" cops. Clearly, he thought Officer DeAzevedo was one of those, and he was determined that DeAzevedo was "going to go."

Did he make the right call?

My trepidation in making the ultimate determination as to whether Officer DeAzevedo should be terminated stems from the chaotic, conflict-ridden disciplinary process in place prior to Director Parham's arrival. However, in reviewing the same, it appears as if Officer DeAzevedo was a beneficiary of the system, not a victim. Vital to this analysis is the fact that he did not dispute the substance of any of the offenses he was convicted of. In other words, there is no evidence that this is a case where a corrupt disciplinary system wrongfully targeted a clean (or even imperfect) officer in order to ruin his career.

Rather, what the disciplinary history demonstrates is a careless, undisciplined officer who failed to adjust his behavior despite a multitude of chances. While some of the infractions seem to border on the frivolous (improper winter hat), others raise clear warning flags (chronic tardiness, failure to activate BWC, failure to secure a weapon, failure to secure BWC, improper conduct on a side job). It must also be noted that pending disciplinary actions can be considered as part of the decision-making process.

In re Johnson v. State of New Jersey, Dep't of Corr., Adult Diagnostic & Treatment Ctr., No. A-4382-99T4 (App. Div. July 3, 2001). While the discipline had come down in the interim between the filing of charges in this case and this hearing, there was nothing improper in it being considered by respondent, even if those actions were still under appeal. See also, In re Adams, City of Newark, Police Dep't, 2021 N.J. Agen. LEXIS 608 (March 4, 2021), aff'd, 2022 N.J. Super. Unpub. LEXIS 1722 (App. Div. Sept. 19, 2022).

There are certainly arguments against termination in this instance. The offense itself is "understandable" (not defensible) to some degree. You have a member of the public (whom your partner had already dealt with earlier in the day) who appears to be under the influence and is acting unreasonably, obnoxiously and aggressively for no apparent reason. This is the type of encounter that would engender sympathy for the officer from the public (i.e., "look what they have to put up with").

However, it is also the type of encounter that often separates a good officer from a poor one. What was even more troubling than Officer DeAzevedo's attitude (and admitted failure to de-escalate the situation) was that he absolutely knew why E.F. may have been complaining (he confirmed that he knew that she had hit her head on the wall joint "striking the pillar") and consciously professed ignorance to his superior officer when they returned to the police station. Even when it was clear that E.F.'s complaints were persisting, he decided to try and shield himself rather than protect the prisoner's health. If he had come clean to Sergeant Rayack and told him that E.F. had hit the wall, I might have gotten a sense that at least he was trying to do the right thing, i.e., he realized that she might actually be injured (even if he didn't think so) and provided information that could prove important to the EMTs in assessing her.

In reviewing this case, I kept looking for reasons why Officer DeAzevedo should not be terminated and simply could not come up with any that could overcome his failures (past and present). From the beginning, he did not handle this encounter well. From the passive-aggressive initial contact to his cavalier post-accident conduct and ultimately to his actions/inactions in the police station, the poor judgment demonstrated here seems to be the culmination of the multitude of disciplinary sanctions that Officer DeAzevedo had amassed in his approximately five years on the force.

The bottom line is this. Officer DeAzevedo is not a problem waiting to happen; rather, he is a problem that has already happened. While the dysfunction of the Rahway Police Department Internal Affairs Unit prevented his discipline from progressing in the neat, linear fashion that would have been ideal, he has had more than enough notice that he needed to clean up his act. There was simply no indication that he was ever so inclined.

While I **CONCLUDE** that he does not appear to go out looking for trouble, I also **CONCLUDE** that Officer DeAzevedo seems to be incapable of avoiding it and it is understandable that Director Parham recommended his termination. I would also note that it is effectively irrelevant for the purposes of this decision whether the Director's recommendation was correct or not or what he reviewed in coming to that determination. This tribunal reviews the case de novo and if it were found that the evidence did not support a finding of guilt or that a penalty less than termination was appropriate, that is what the decision would have been.¹³

I **FIND** that this incident in and of itself, when viewed in conjunction with a more limited disciplinary history, would not warrant dismissal, but may support the forty-five-day suspension suggested by appellant. However, when combined with not only the number of prior incidents, but also the nature of many of them, I **CONCLUDE** that the City of Rahway Police Department has proven by a preponderance of the credible evidence that termination is the appropriate discipline.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner, Mark DeAzevedo, be terminated from his employment as a police officer in the City of Rahway, effective September 10, 2021.

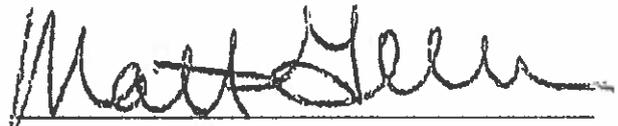
¹³ I would also note that the decision not to charge Officer Withers was a legitimate judgment call. While this is purely *dicta*, after having heard the testimony and reviewed the evidence, I cannot fault the discretionary decision to treat him as a witness.

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.

April 11, 2024
DATE



MATTHEW G. MILLER, ALJ

Date Received at Agency: April 11, 2024

Date Mailed to Parties: April 11, 2024

MGM/sej

APPENDIX

WITNESSES

For Petitioner:

EMT Thomas Kane
EMT Ryann Scoles
Officer Mark DeAzevedo

For Respondent:

Officer Alysa Guinta
Officer Philip Withers
Officer Kenneth Rengifo
Lieutenant Scott Rayack
Director Jonathan Parham

EXHIBITS

Court:

C-1 Final Notice of Disciplinary Action (January 20, 2022)

For Petitioner:

P-1 May 20, 2021, Linden Fire Department Incident Report
P-2 May 2021, Office of the Attorney General, State of New Jersey Body Worn Camera Policy
P-3 December 4, 2019, Attorney General, State of New Jersey Law Enforcement Directive No. 2019-4
P-4 May 21, 2021, Rahway Emergency Squad Report

For Respondent:

- R-A Internal Affairs Internal Summary (July 14, 2021)
- R-B Rahway Police Department Directive G-15-19
- R-C Attorney General Law Enforcement Directive No. 2020-13-Directive Revising Use of Force Policy (December 21, 2020)
- R-D Attorney General Use of Force Policy (December 2020)
- R-E Letter from Union County Prosecutor's Office to Rahway Police Department declining to prosecute Officer DeAzevedo (June 9, 2021)
- R-F Email covering Exhibit R-E (June 9, 2021)
- R-G Internal Affairs Report form from J.R. concerning the incident in question (May 21, 2021)
- R-H Rahway Police Department Operations Report authored by Lt. Jeffrey Urban (May 21, 2021)
- R-I Rahway Police Department Investigation Report authored by Officer DeAzevedo (May 21, 2021)
- R-J E.F. Arrest Report (May 21, 2021)
- R-K E.F. Complaint-Summons (May 21, 2021)
- R-L Officer DeAzevedo Narrative Report (May 21, 2021)
- R-M Supplemental Investigation Report authored by Officer DeAzevedo (May 21, 2021)
- R-N Online Report/Use of Force Report submitted by Officer DeAzevedo (May 21, 2021)
- R-O Rahway Police Department Operations Report authored by Officer Rengifo (May 21, 2021)
- R-P Rahway Police Department Supplemental Investigation Report authored by Det. Anthony Tilton (July 8, 2021)
- R-Q E-mail confirming evidence pick-up by appellant counsel (July 8, 2021)
- R-R E..F's post-incident pictures

- R-S E.F.'s executed medical release form with records from Rahway Hospital and Trinitas Hospital (May 25, 2021)
- R-T Rahway Police Department Use of Force Training
- R-U John Stamler Police Academy Basic Course of Police Officers (January 2016)
- R-V Preliminary Notice of Disciplinary Action (August 25, 2021)
- R-W Notice of Loudermill Hearing (August 25, 2021)
- R-X Suspension letter from Capt. David DeSordi to Officer DeAzevedo (August 25, 2021)
- R-Y Rahway Police Department Operations Report authored by Sgt. Andrew Webb (August 25, 2021)
- R-Z Email confirming service of the PNDA to Officer DeAzevedo (August 26, 2021)
- R-1 Rahway Police Department Supplemental Investigation Reports authored by Sgt. Shawn Ganley and Sgt. Andrew Webb (August 25, 2021)
- R-2 Return of Equipment Log for Officer DeAzevedo (August 25, 2021)
- R-3 Letter from the Rahway Police Department to J.R. and E.F. confirming receipt of the Internal Affairs complaint (May 24, 2021)
- R-4 Letter from Det/Lt. Jonathan Tilton to Officer DeAzevedo advising that an Internal Affairs complaint had been filed against him. (May 24, 2021)
- R-5 Email confirming service of R-4 to Officer DeAzevedo. (May 25, 2021)
- R-6 Witness letter from Det/Lt. Tilton to Officer Withers with email confirming service (June 14, 2021)
- R-7 Witness letter from Det/Lt. Tilton to Officer Rengifo (June 14, 2021) with email confirming service (June 21, 2021)
- R-8 Witness letter from Det/Lt. Jonathan Tilton to Sgt. Rayack (June 15, 2021) with acknowledgment of service (June 29, 2021)
- R-9 Witness interview letter from Lt. Tilton to Officer DeAzevedo (June 14, 2021)
- R-10 Letter from appellant's counsel requesting rescheduling of Officer DeAzevedo's interview and acknowledgment of the investigation form (unsigned) (June 28, 2021)

- R-11 Rescheduled witness interview letter from Lt. Tilton to Officer DeAzevedo with email confirmation (July 6, 2021)
- R-12 Rescheduled witness interview letter from Lt. Tilton to Officer DeAzevedo (July 7, 2021)
- R-13 Email confirming service of R-4 to Officer DeAzevedo (July 7, 2021) with email chain between Lt. Tilton, Capt. DeSordi, appellant's counsel and respondent's counsel (July 8, 2021)
- R-14 Letter from respondent's counsel to appellant's counsel concerning discovery (July 8, 2021)
- R-15 Signed acknowledgement of investigation form (July 9, 2021)
- R-16 Signed Weingarten representative form (July 9, 2021)
- R-17 Letter from Lt. Tilton to Officer DeAzevedo advising of the outcome of the Internal Affairs investigation (July 14, 2021)
- R-18 Final Notice of Disciplinary Action, January 26, 2020 incident (August 26, 2021)
- R-19 336-382 Rahway Hospital records (E.F.)
383-401 Trinitas Hospital records (E.F.)

DVD Exhibits:

- R-20 Officer DeAzevedo BWC
- R-21 MVR 808 rear-facing camera
- R-22 Officer Withers BWC
- R-23 Officer Rengifo BWC (part 1)
- R-24 Officer Rengifo BWC (part 2)
- R-25 Photos of E.F.
- R-28 Officer Guinta BWC
- R-33 Officer Withers interview (June 15, 2021)
- R-34 Sgt. Rayack interview (June 29, 2021)
- R-35 Officer DeAzevedo administrative interview (June 29, 2021)
- R-36 Officer DeAzevedo administrative interview (July 9, 2021)

R-37 Police telephone and radio transmissions (May 21, 2021)

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.