



STATE OF NEW JERSEY

In the Matter of Justin Varga,
Clifton, Department of Public Safety

CSC DKT. NO. 2024-584
OAL DKT. NO. CSV 09740-23

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: JULY 24, 2024

The appeal of Justin Varga, Police Officer, Clifton, Department of Public Safety, 60 working day suspension, on charges, was heard by Administrative Law Judge R. Tali Epstein (ALJ), who rendered her initial decision on June 14, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of July 24, 2024, accepted the Findings of Fact and Conclusions of the ALJ as well as her recommendation to uphold the 60 working day suspension.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore upholds that action and dismisses the Justin Varga.

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 24TH DAY OF JULY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09740-23

AGENCY DKT. NO. 2024-584

**IN THE MATTER OF JUSTIN VARGA,
CITY OF CLIFTON, DEPARTMENT OF
PUBLIC SAFETY.**

Charles J. Sciarra, Esq., for appellant Justin Varga (Sciarra & Catrambone, LLC,
attorneys)

Michael J. Montanari, Esq., for respondent City of Clifton, Department of Public
Safety (Montanari Law Group, LLC, attorneys)

Record Closed: May 1, 2024

Decided: June 14, 2024

BEFORE R. TALI EPSTEIN, ALJ:

STATEMENT OF THE CASE

Appellant, Justin Varga ("Varga"), a patrol officer employed by respondent, City of Clifton, Department of Public Safety ("Clifton"), used eighteen unexcused sick days during a five-month period. Did the way in which Varga used his sick-leave time violate Clifton's rules and regulations and the New Jersey Administrative Code? Yes, Varga's absenteeism was chronic or excessive, demonstrated a neglect of duty, and was subject to progressive discipline. N.J.A.C. 4A:2-2.3(a) (4), and (7).

PROCEDURAL HISTORY

On August 23, 2023, Clifton issued a Final Notice of Disciplinary Action (FNDA) sustaining charges brought against Varga in an August 28, 2019, Preliminary Notice of Disciplinary Action (PNDA)¹ for violation of N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties), N.J.A.C. 4A:2-2.3(a)(4) (chronic or excessive absenteeism or lateness), N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty), and Clifton Police Department Rules and Regulations, Chapter 3:1.7 (neglect of duty). The penalty issued under the FNDA was a sixty-working-day suspension.

On August 31, 2023, Varga filed an appeal with the Civil Service Commission. The matter was transmitted from the Civil Service Commission to the Office of Administrative Law, where on September 21, 2023, it was filed for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

I held the hearing on February 12, 2024, and closed the record upon receipt of the parties' written summations on May 1, 2024.

FACTUAL DISCUSSION

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

Varga was employed by Clifton as a patrol officer in January 2010 and continued in that position at all times relevant to this proceeding. During his tenure with Clifton, Varga received two major disciplines, a twenty-five-working-day suspension in 2012 and a fifty-working-day suspension in 2013. (R-13 and R-16, respectively.) Varga pled guilty to the two charges that led to the 2013 major discipline, i.e., neglect of duty and incompetency, inefficiency, or failure to perform duties, and entered into a settlement

¹ A copy of the FNDA was attached to the transmittal. Although requested, a copy of the PNDA was not produced by the parties nor provided to the tribunal by the transmitting agency.

agreement with Clifton that reduced the penalty to a forty-working-day suspension. (R-17.)

Varga's disciplinary history also includes three performance deficiency notices, two received in May 2012 and one in January 2017. (R-14, R-15, and R-18, respectively.) In the January 2017 performance deficiency notice (the Attendance Warning), Varga was cited for using "twenty-five (25) unexcused sick days, which is above the Platoon average of 19 days," in the previous year. The Attendance Warning further put Varga on notice of a "15-day threshold" for unexcused sick-leave time. Sick time is "excused" with a doctor's note. (Hearing Transcript ("Tr.") at 28:1–3.)

While Varga disagreed that he had violated any "policy," he signed the Attendance Warning acknowledging the statement in capital letters that he "READ THIS PERFORMANCE DEFICIENCY NOTICE AND UNDERSTAND[S] IT." (R-18.) The Attendance Warning also explicitly cautioned Varga that "should [the] incident occur again . . . [p]rogressive discipline should apply" (*Ibid.*) Varga did not receive a penalty at that time. He was, however, counseled for his attendance deficiency, and I **FIND** that Varga was fully aware that future excessive use of unexcused sick time—more than fifteen days over the period of a year—would be subject to progressive discipline.

Nevertheless, when Det. Lt. Maurice Scardigno ("Scardigno") investigated Varga's use of sick time during the first half of 2019, Scardigno documented eighteen unexcused absences in that short period of time. Further, ten of the eighteen sick days extended Varga's regular days off and five were on a Saturday or Sunday when Varga was assigned to work. Varga also used twelve of the eighteen sick days when he knew his platoon was already operating at minimum manpower. (R-12.) During those days, referred to as "no time off" days, if an officer called in sick the department was forced to incur overtime expenses to ensure that the manpower requirement to operate the shift was met. (Tr. at 9:23–10:6.)

Although there was no written policy regarding sick time, and officers were entitled to "unlimited sick time," it was understood that it would be an abuse of sick leave to call out sick for reasons other than mental or physical health. (*Id.* at 17:1–16.) Indeed, Varga

similarly expressed his understanding of the proper use of sick leave: "If you were feeling ill [or] mental health day ill[ness] . . . you call in sick." (Id. at 52:8–12.)

None of the sick days that Varga used during the period that Scardigno investigated were "excused." Varga could not specify on which of the eighteen sick days he claims to have suffered from the physical ailments of "diarrhea, fevers [and] food poisoning . . . [to] name a few" and which of the unexcused sick days were "in correlation" to his feeling depressed. (Id. at 50:12–17.) Varga did not seek medical care and was not being treated for depression at any time prior to, or during, the investigation period. Nor did Varga seek treatment from any doctor for any physical ailment at any time during the investigation period, including the four months (January–April) when he took consecutive sick days during the first two days of his shift each month. (Id. at 51:8–11.) Further, Scardigno had access to Varga's medical file and confirmed that "[n]othing in [his] review indicated to [him] that [Varga's] absences were due to any medical reason." (Id. at 20:19–22:1.)

Based on the factual findings above, I further **FIND** Varga's claim that he was sick on each of the eighteen days at issue inherently improbable and inconsistent with common experience. The pattern of Varga's sick-day use, as presented by Clifton, displayed an abuse of the process that was not overcome by Varga's testimony.

CONCLUSIONS OF LAW

The Civil Service Act and regulations promulgated thereunder govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:2-1.1 to 4A:2-6.3. Civil service employees who commit a wrongful act related to their duties or who give other just cause may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.A.C. 4A:2-2.3. Employees who fail to perform, or are neglectful of, their duties and/or demonstrate chronic or excessive absenteeism are subject to discipline. N.J.A.C. 4A:2-2.3(a)(1), (4), and (7).

Attendance at work is the most basic duty of an employee, especially in the area of public safety. It is well established that among public employees, police officers are

held to a higher standard of duty. See, e.g., In re Kines, 2013 N.J. CSC LEXIS 507, at *9 (July 31, 2013). That is so because the primary duty of a police officer is to enforce and uphold the law. Ibid. “A police officer represents law and order to the citizenry and must present an image of personal integrity and dependability” In re Dwyer, City of E. Orange Police Dep’t, 2014 N.J. AGEN LEXIS 801, at *43 (Dec. 19, 2014).

Chronic and/or excessive employee absenteeism undeniably has a negative impact on workplace morale and productivity. Ibid. In this case, it also created a hardship for Clifton, requiring that Clifton incur overtime expenses for Varga’s absences on “no time off” days. While a single instance may not be sufficient, “numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty.” West New York v. Bock, 38 N.J. 500, 522 (1962); see also In re Carter, 191 N.J. 474, 483 (2007). “Such conduct is particularly serious on the part of employees whose job is to protect the public safety and where the [employees] serve precise shifts to afford continuous protection.” Bock, 38 N.J. at 522.

Varga did not dispute that on ten occasions during the limited investigation period, his use of sick days resulted in the extension of his regular days off. Nor did he dispute that on five days during that period the days he called out sick fell on a Saturday or Sunday that he was scheduled to work. Varga further acknowledged that, on the twelve days he called out sick when he was aware that his platoon was operating on a “no time off” basis, Clifton had to find another officer to cover for Varga and incur the expense of paying overtime rates. (Tr. at 51:4–15.)

Further, Varga conceded that he did not seek medical attention for any physical or mental ailment at any time during the five-month period that his sick-leave history was reviewed. He was unable to recall which sick days he took “in correlation” to his feelings of (undiagnosed and untreated) depression and which unexcused absences related to an assortment of maladies that Varga “d[id]n’t want to go into detail [about],” but included “diarrhea, fevers, [and] food poisoning,” to “name a few.” (Id. at 50:12–18.) Based on these and other findings of fact recited above, I found Varga’s claim—that he was sick on each of the eighteen days that form the basis of the charges against him—not credible. But Clifton did not have to prove that Varga was not sick to sustain the charges. See,

e.g., Weil v. Atlantic Cnty. Dep't of Pub. Safety, 97 N.J.A.R.2d (CSV) 413 (removal appropriate for excessive unauthorized absences even if those absences are related to medical condition).

Since January 2017, Varga was on notice that if he took more than fifteen sick days in a year he would be subject to progressive discipline. (R-18.) He signed the Attendance Warning acknowledging his understanding and received attendance counseling. He also knew that his prior disciplinary record, albeit several years earlier, included major discipline and a "last-chance agreement." While the terms of that agreement did not address conduct of the sort charged in the FNDA, Varga knew that his previous issues with attendance would be considered if he were to again use sick leave to take off more than fifteen days of work. Nevertheless, almost two years after he received a written warning and was counseled on how not to use sick leave, Varga began to accumulate unexcused sick days that quickly eclipsed his prior sick-leave use, in half the time.

Now, Varga claims that Clifton cannot meet its burden of proof because there was no rule or policy specifying the maximum number of unexcused sick days. Varga's claim is disingenuous. Varga was on notice that Clifton considered more than fifteen days of unexcused sick leave to be excessive. Indeed, Varga signed the deficiency notice acknowledging that he would be subject to progressive discipline if he were to again exceed the fifteen-day threshold for unexcused sick leave. Incidentally, the Attendance Warning also refers to future occurrences of the offending conduct as violation of "policy." (R-18.) Accordingly, Varga's citation to the unpublished Appellate Division case, In the Matter of Moncho, 2008 N.J. Super. Unpub. LEXIS 310 (Oct. 16, 2008), is inapposite. Cf. Moncho, 2008 N.J. Super. Unpub. LEXIS 310 at *4, *6 (reversing decision that sustained charges against an "otherwise exemplary employee" when the "allegations in the specifications . . . are not supported by the requisite level of proof").

When viewed as a whole, the dubious pattern displayed by Varga's eighteen unexcused absences in a five-month period, which took place after Varga was specifically warned that he would be subject to progressive discipline if he again exceeded fifteen days of unexcused sick leave, supports a finding of chronic and excessive absenteeism.

Accordingly, I **CONCLUDE** that Clifton met its burden of establishing by a preponderance of competent evidence that Varga's use of sick leave was a violation of N.J.A.C. 4A:2-2.3(a)(4).

Further, when the above factors are considered together with Varga's knowledge that, on twelve of the days he called out sick, his platoon was so short-staffed that it could not operate with sufficient capacity unless another officer were found to cover for Varga at overtime rates, I **CONCLUDE** that Varga's conduct also constituted a neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7) and Clifton Police Department Rules and Regulations, Chapter 3:1.7.

Regarding the charge of incompetency, inefficiency, or failure to perform duties (N.J.A.C. 4A:2-2.3(a)(1)), however, I **CONCLUDE** that there is insufficient evidence in the record to sustain that charge. Scardigno, the only witness presented by Clifton, conceded on cross-examination that he had no knowledge of any complaints about Varga's "ability to do the job." (Tr. at 22:2–6.) Further, in response to questioning from Varga's counsel, Scardigno agreed that he "didn't have a problem with [Varga] as an officer or his work—his work ethic, or any of that." (*Id.* at 30:4–13.) Aside from Scardigno's testimony—which did not support a violation of N.J.A.C. 4A:2-2.3(a)(1)—Clifton presented no evidence that Varga's eighteen unexcused absences demonstrated Varga's incompetence or inability to perform his duties efficiently, or at all.

Having determined that Varga's conduct violated N.J.A.C. 4A:2-2.3(a)(4) and (7), and Clifton Police Department Rules and Regulations, Chapter 3:1.7, I consider his past record, including prior disciplinary actions, in assessing the appropriate penalty. See Bock, 38 N.J. 500. This past record includes "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously called to the attention of and admitted by the employee." *Id.* at 524. Varga was given ample notice of the consequences for repeating, and his current infractions are not an aberration in an otherwise unblemished career.

As stated above, in addition to the prior deficiency notices, including the Attendance Warning, Varga received two major disciplines. While neither of the major

disciplines was issued for attendance deficiencies, the penalties were progressive in nature, increasing from a twenty-five-day suspension to a fifty-day suspension. (R-13; R-16.) Indeed, the last major discipline that Varga received, albeit in 2013, was the subject of a settlement agreement that contained language referencing a "last-chance agreement." (R-17.) As written, the terms of that settlement agreement do not mandate termination based on the charges here, but the agreement is relevant in that Varga agreed to settle a fifty-day suspension by serving a forty-day unpaid suspension, among other things.

Given Varga's disciplinary history, I **CONCLUDE** that a sixty-working-day suspension is not unreasonable under the circumstances and is supported by the application of progressive discipline.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the charges of chronic or excessive absenteeism, neglect of duty, and violation of Clifton Police Department Rules and Regulations, Chapter 3:1.7, are **SUSTAINED**, and that the charge of incompetence, inefficiency, or failure to perform duties is **DISMISSED**. I further **ORDER** that based on the sustained charges, Varga is suspended for sixty working days.

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.

June 14, 2024

DATE



R. TALI EPSTEIN, ALJ

Date Received at Agency:

June 14, 2024

Date Mailed to Parties:

June 14, 2024

APPENDIX

WITNESSES

For Appellant:

Officer Justin Varga

For Respondent:

Detective Lieutenant Maurice Scardigno

EXHIBITS

For Appellant:

None

For Respondent:

- R-12 Special Investigations Memo, dated 7/31/19
- R-13 FNDA, dated 4/2/12
- R-14 Performance Deficiency Notice, dated 5/3/12
- R-15 Performance Deficiency Notice, dated 5/9/12
- R-16 FNDA, dated 4/1/13
- R-17 Settlement Agreement Disciplinary Matter
(re 2/19/13 Charges and Specifications)
- R-18 Performance Deficiency Notice, dated 1/17/17

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