



STATE OF NEW JERSEY

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

CSC DKT. NO. 2024-585
OAL DKT. NO. CSR 09349-23

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: JULY 24, 2024

The appeal of Justin Varga, Police Officer, Clifton, Department of Public Safety, removal, effective August 23, 2023, on charges, was heard by Administrative Law Judge R. Tali Epstein (ALJ), who rendered her initial decision on June 14, 2024. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission, 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 removal.

Upon its *de novo* review of the ALJ's initial decision as well as the entire record, including the exceptions filed by the appellant and the reply, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses and her assessment of that testimony in light of the video of the incident. In this regard, while the exceptions argue that the ALJ's findings are contrary to the evidence in the record, especially in light of the appellant's testimony, the Commission is not persuaded. The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes

the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, there is nothing in the record or the appellant's exceptions to demonstrate that the ALJ's credibility determinations or her determinations as to the credible evidence in the record, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

The other issue in this matter is the proper penalty to be imposed. Upon its *de novo* review of the ALJ's determination in that regard, the Commission agrees with the ALJ's determination to uphold the removal. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer, such as a Police Officer, is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also, *In re Phillips*, 117 *N.J.* 567 (1990).

In this matter, the ALJ found that the appellant's infractions were egregious and warranted removal. She also found that even if the infractions were insufficient on their own to support removal, the appellant's previous disciplinary history also supports the removal under the tenets of progressive discipline. The Commission agrees. In this regard, the ALJ stated:

Varga actions and omissions in connection with Williams' arrest and the events that followed in the early morning hours on November 25, 2021, violated numerous rules, policies, procedures and regulations. Varga's misconduct displayed a dereliction of duties and absence of good judgment that fell far below the stricter standard of conduct to which police officers are held (citations omitted). The seriousness of the

violations Varga committed created dangerous circumstances that put his life, the lives of fellow officers, other CPD employees, and those of the public, at risk.

Safety and security are defining concepts that underlie a police officer's duties and responsibilities. Varga's conduct demonstrated a casual disregard of, and lackadaisical approach to, his employer's rules, policies and procedures.

Considered on their own, the gravity of the violations here warrant Varga's removal from employment as a police officer (citation omitted). A review of his disciplinary history does not support a different result.

Even if this tribunal's simultaneously issued decision against Varga—sustaining charges of major discipline and imposing a sixty-working-day suspension—is not considered, Varga's disciplinary history includes two major disciplines (R-13, R-16), three performance deficiency notices (R-14, R-15, R-18) and a "last chance agreement." (R-17.) Given that I **CONCLUDE** that Varga's removal is appropriate based only on his violations of the multiple charges sustained herein, I need not reach questions concerning the application or interpretation of the "last chance agreement." Nevertheless, Varga's disciplinary history is notable in that he did not have "a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions." [*In re*] *Herrmann*, 192 N.J. [19] at 33.

The ALJ's penalty analysis is appropriately on point as the appellant's infractions are egregious for a Police Officer entrusted to uphold the law and the safety of the citizenship. The Commission finds that those infractions are likely to undermine the public trust and support the penalty of removal, which is neither disproportionate to the offenses nor shocking to the conscious. The Commission finally notes that even if the infractions were not sufficiently egregious to support removal, the appellant's prior disciplinary history¹ would also clearly support his removal based on progressive discipline.

ORDER

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

¹ This is true even not taking into account the 60 working day suspension that was levied at the same time as the removal, as it would not be appropriate to consider that suspension for progressive disciplinary purposes. In this regard, receiving that suspension concurrent to the removal would not serve the purpose of previous discipline, namely, to warn an employee that future misconduct could lead to more severe future penalties.

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

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 09349-23
AGENCY DKT. NO. 2024-585

**IN THE MATTER OF JUSTIN VARGA,
CITY OF CLIFTON.**

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

Michael J. Montanari, Esq., for respondent, City of Clifton (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 police officer employed by respondent, City of Clifton (Clifton), failed to follow policy and procedures when conducting a search incident to arrest and while the arrestee remained under his supervision and in possession of a loaded handgun. As the arresting officer, did Varga's actions and omissions warrant termination of his employment? Yes. When the job involves public safety, and the misconduct causes a risk of public harm, progressive discipline is contrary to the public interest. In re Herrmann, 192 N.J. 19 (2007).

PROCEDURAL HISTORY

On December 17, 2021, Clifton served Varga with a Preliminary Notice of Discipline and Statement of Charges (PNDA) seeking Varga's removal. (J-10.) Varga requested a hearing which was held on June 1, 2023, and July 6, 2023. A Final Notice of Discipline (FNDA) was issued on August 23, 2023, sustaining five of the six charges in the PNDA (charges one and three through six), dismissing the second charge, and terminating Varga's employment with Clifton, effective August 23, 2023. (J-11.)¹

Varga appealed his removal on August 31, 2023. On September 15, 2023, the matter was filed simultaneously with the Civil Service Commission and the Office of Administrative Law under the expedited procedures of N.J.S.A. 40A:14-202(d), for 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.

By letter dated December 13, 2023, appellant's counsel memorialized appellant's agreement to waive the time between December 13, 2023, and January 31, 2024, as it relates to the requirement under N.J.S.A. 40A:14-201(b)(1) that a final decision be issued within 180 calendar days of appellant's suspension without pay (the 180-day rule). On February 12, 2024 (the final day of the hearing), appellant's counsel represented to the tribunal that appellant agreed to a further, indefinite, waiver of time such that the time counting against the 180-day rule would not begin to run again until after the issuance of this tribunal's initial decision.

I held the hearing on December 12, 2023, January 31, 2024, and February 12, 2024,² and closed the record upon receipt of the parties' written summations on May 1, 2024.

¹ The FNDA transmitted with the file refers to the decision of the departmental hearing officer for a recitation of the sustained charges. As this is a de novo hearing, the parties provided a redacted copy of the hearing officer's decision identifying the sustained charges and further stipulated on the record that the nature of the charges mirrors those as more fully identified in the Statement of Charges attached to the PNDA. (J-10).

² Earlier hearing dates were adjourned and rescheduled at the parties' request and in accordance with witness availability.

FACTUAL DISCUSSION AND FINDINGS

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 is a patrolman with the Clifton Police Department (CPD). He was hired on January 5, 2010. His rank has not changed since he was hired. At the police academy, Varga was trained in search protocol. He also received field training and keeps current with CPD policy and procedures, as required, by reviewing the policies online, and all revisions, and acknowledging same with his electronic signature. Varga confirmed that he read and assumed responsibility for following each of the policies he electronically signed. Indeed, Varga signed and acknowledged each of the policies he is charged with violating. (R-5, R-6, R-7.) While employed as a police officer with the CPD, Varga estimates that he has made hundreds of arrests as an initiating officer or as a partner to other officers.

Shortly before midnight, on Thanksgiving eve, November 24, 2021, Varga was patrolling when he received a call about a disabled vehicle in the vicinity of Route 3 and Route 46. Varga arrived at the scene and observed a male on the side of the road, later identified as Rayhon Williams ("Williams") standing near the stopped vehicle. Based on Varga's discussion with Williams, Varga understood that the female in the car was Williams' wife and that the couple had been engaged in a verbal altercation prior to Varga's arrival. Varga continued conversing casually with Williams until Varga's partner ("Dalzell") arrived. When Dalzell arrived, he stayed with Williams while Varga interviewed the female as she sat inside the vehicle. She confirmed that the couple had an argument. Varga returned to his vehicle and entered the couple's information in his vehicle laptop. He is then advised by dispatch of a \$500 arrest warrant for Williams out of Hoboken. The outstanding warrant required that Williams be placed under arrest, and Varga became the "arresting officer." As such, CPD policy and procedures required that Varga perform specified duties and responsibilities regarding the search, transport and detention of the arrestee.

Despite the woman's pleas not to arrest Williams, Varga told the couple that he had no choice in the matter. Because of the outstanding warrant, Varga explained that he must arrest Williams, transport him to CPD headquarters, process Williams, and then the Hoboken Police Department (HPD) would be called to see if Hoboken wanted to take Williams into custody, transport Williams to the HBD, or release him on his own recognizance. The woman then asked to speak to Williams alone. As Varga testified, the woman's pleas not to arrest Williams, followed by her request to speak to Williams privately, did not arouse Varga's suspicions. Based on his understanding of the nature of the warrant, and Williams' unaggressive and cooperative demeanor, Varga did not perceive Williams as a threat.

At approximately 1:13 a.m. on November 25, 2021, Varga placed Williams under arrest for the outstanding warrant. Because Williams was being arrested, Varga was required to perform a "search incident to arrest." In accordance with CPD Policy and Procedures, Vol. 3, Ch. 6, Arrest and Transportation, Section VI.C.1. Varga was required to perform that search "contemporaneous to the arrest immediately after the person has been restrained."³ The search incident to arrest requires that "[t]he entire person of the individual taken into custody is to be searched for weapons, contraband, evidence and implements of escape, as is the area under the individual's immediate control. The search must be thorough enough to ensure the safety of the individual, the arresting officer, and other officers and persons the individual may come in contact with while in custody." (Id., Section VI.C.)

Both Williams and Dalzell wore body cameras that captured Varga's search of Williams from two angles. The video recordings provide a clear visual and audio account of what transpired during the search. (J-4, J-5.) Before proceeding with the physical search, Varga asked Williams, "You have nothing on you, right?" (Id.) Williams responded that he did not. Varga then handcuffed Williams' hands behind his back and began his search of Williams.

³ See also CPD Policy and Procedures, Vol. 5, Ch. 7, Temporary Detention, Section II.J. ("A 'Search Incident to Arrest' is a search of a prisoner at the location they are arrested.")

As clearly seen on the video footage, Varga began by patting Williams' coat pockets and asked Williams to confirm that the objects Varga felt were Williams' wallet and cigarettes. Varga did not put his hands inside Williams' pockets and did not remove any of the items to confirm if Williams was telling the truth. Then, Varga patted the outside of Williams' right pants pocket and stated, "That's your phone." Varga did not check the inside of Williams' pants pockets. Varga simply confirmed his assumption by making the declarative statement. Varga allowed Williams to keep the object in his pants pocket, based on Varga's assumption that the object was a phone. Varga patted Williams' left pants pocket and asked, "Is that a water bottle?" Without removing the object, Varga proceeded to run his hands up and down the outside of Williams' left and right legs to search for weapons. The video also shows that Varga passed his hand along the outside of Williams' waistband, on Williams' right side. Varga did not run his thumbs around the inside of Williams' waistband. Varga did not touch Williams' "privates" during the search, but neither did Varga run his hands up or down the inside of Williams' pants legs.

The video footage demonstrates that Varga's roadside search was limited to patting the exterior of Williams' clothing. Varga did not check inside any of Williams' pockets. Varga did not put his thumbs around the inside of Williams' waistband; he cursorily felt along the outside of the waistband. Varga ran his hands up and down the outside—but not the inside—of each of Varga's pants legs, lightly shaking Williams' left pant leg as he patted down toward Williams' knee. Following this cursory search and Williams' response to Varga's leading questions, Varga concluded the search. Varga then told Williams to watch his head, as he placed Williams in the police vehicle and drove back to CPD headquarters.

Upon arrival at the station, Varga entered the sally port. Department policy required that Varga was to wait until the sally port door closed before escorting Williams from the vehicle. Unbeknownst to Varga, the sally port door was accidentally tripped by Dalzell and reopened while Williams was outside the vehicle. Varga maintained control of that situation. Due to the accidental nature of the sally port door re-opening, the charge related to Varga's actions in the sally port area was dismissed following the departmental hearing and is not at issue in this proceeding.

Williams was then escorted by Dalzell from the sally port into the processing area of the station (alternatively referred to as the "booking room") and seated on a stool adjacent to a metal handcuff rail, in front of a small processing table. The events that transpired in the processing area were recorded by a wall-mounted surveillance camera. (J-6.) The footage provides a clear view of the processing area.

CPD Rules and Regulations govern the protocol for processing an arrestee upon arrival at the station. As relevant here, CPD Policy and Procedures, Vol. 3, Ch. 6, Arrest and Transportation, Section VI.N. provides that "[w]hen transportation terminates at this department, officers will bring the arrestee(s) into the booking area and secure them. Anytime an arrestee is placed into a temporary detention room subsequent to an arrest, he/she **shall be thoroughly searched by hand even if a previous search of any type was conducted elsewhere.**" (J-1, emphasis added.) This search is not discretionary.

Additionally, CPD Policy and Procedures, Vol. 5, Ch. 7, Temporary Detention, Section XVIII.A.5. mandates that a "detainee will have one arm handcuffed to the metal rail during processing." (J-2.) If the detainee is being fingerprinted, photographed or otherwise processed in a manner that requires that the detainee not be handcuffed, CPD policy and procedures specify that two officers should be present when a detainee is unsecured. (Id., Sections XII.B.2, XII.D.3.) Further, it is the responsibility of the arresting officer (or their designee) to secure a detainee in the temporary detention room. (Id., Section VI.C.)

Notwithstanding the foregoing, as seen in the video (J-6), Dalzell immediately uncuffed Williams once he was seated. Varga did not handcuff Williams to the handcuff rail. Nor did Varga perform (or designate that Dalzell perform) any search of Williams' person. Instead, Varga began entering information at the computer adjacent to the processing table where Williams was seated, while casually conversing with Williams. Audio recording is captured by the officers' body worn cameras during this time. (J-4, J-5.) Both Dalzell and Varga are observed walking in and out of the processing area, leaving one or the other alone with Williams, who was uncuffed and unrestrained. Indeed, for nearly an hour, Williams remained uncuffed and unrestrained while in the

processing area, approximately five feet from the exit door to the sally port. While processing Williams, Varga learned that the Williams' warrant was, in fact, a "no bail" warrant, requiring that Williams be detained.

Accordingly, in addition to performing the search required for securing temporary detainees, Varga, as the arresting officer, was responsible for conducting a pre-incarceration search and inventory of Williams. Specifically, CPD policy and procedures directs that "[p]rior to confining an arrestee in a cell . . . , the arresting officer shall conduct a thorough search and inventory of the arrestee and his/her personal effects." (J-2, Section XIII.B.) Further, CPD Policy and Procedures, Vol. 3, Ch. 8, Pre-Incarceration Searches, Section II.B.2. requires a pre-incarceration search that "includes both the touching of the detainee's body through clothing, including hair, and a thorough examination into pockets, cuffs, seams, etc., and all personal property in the detainee's possession." (*Id.*, Section II, B.2.) No search of Williams' person was performed by Varga prior to his placement in a cell, nor did Varga designate a search of Williams' person to any other officer.

Varga purported to inventory Williams' property in the following manner: First, Varga allowed Williams to get up from the stool and take off his jacket. Williams then gave his jacket to Varga, who handed it to Dalzell. Dalzell removed items from the pockets. But Varga let Williams manage the rest of the process by permitting Williams to reach into his own pockets and remove property. Varga made no attempt to search Williams' person. Instead, Varga stood to the side as Williams, who was not restrained in any way, reached into his pants pockets for items and removed his belt, jewelry and headphones. Williams put the items he removed from his person and pockets on the processing table for Varga to inventory and bag.

Department policy dictates that Williams was allowed to wear only one layer of clothing when placed in a cell. When he was brought to the station, Williams was wearing a coat and a hooded sweatshirt over a thin, long-sleeved shirt. Williams chose to wear the large, hooded sweatshirt in the cell. To do so, Williams had to remove the sweatshirt first so he could take off the long-sleeved shirt underneath. Williams removed the bulky sweatshirt himself, one arm at a time. But, as captured on the video

footage, Williams had a difficult time removing the form-fitting, layered shirt. Rather than use both arms to lift the shirt over his head, Williams, who remained seated while undressing, bowed his head down, concealing the lower part of his body from Varga's view, and tried using his teeth to pull at his left shirt sleeve. Varga observed Williams struggling and helped Williams remove the shirt by pulling off the sleeve for him. Williams then quickly donned the bulky sweatshirt. It is evident from the video footage that Williams' maneuvering in removing the layered shirt was stilted and unnatural. Instead of arousing suspicion in Varga, Varga helped Williams remove the shirt.

Prior to placing an arrestee in a cell, another search is required by the arresting officer or the arresting officer's designee. (J-2.) It is undisputed that this search was not conducted by Varga. It is also undisputed that Varga failed to designate this duty to Dalzell, or any other officer, before leaving the processing area to complete the arrest paperwork at the front desk computer. Ordinarily, Varga would have used the computer in the processing room (also referred to as the "booking area"), but it was not working properly. When Varga's superior, Sergeant Robert Donski ("Donski"), entered the processing room and saw that Varga was having difficulty with the computer in the booking room, Donski told Varga that Varga would have to complete the arrest sheet using the computer in the front desk area. Varga left the processing room to do that. Officer Vincenzo Martino ("Martino"), who was posted at the front desk, was called by Donski to come to the processing room to stay with Dalzell while Varga was at the front desk. Martino arrived in the processing room shortly after Varga departed. Varga was not present when Dalzell and Martino later placed Williams in a cell, without performing the required pre-incarceration search. (J-8, J-9.)

Williams remained in the cell until the Hoboken officers came to collect him. Police officer Harry Montalvo ("Montalvo"), an eight-year employee of the HPD, was assigned to midnight patrol on November 25, 2021. Montalvo and his partner Officer Quinn ("Quinn") were called to the Clifton police station "to pick up a prisoner who had a warrant." (Tr. 3,⁴ 7:5-13.) Montalvo testified that in accordance with "normal procedure," once Hoboken takes the prisoner into custody, a search is completed. The

⁴ The transcripts of the proceedings held over three hearing days are referred to herein as follows: Tr. 1 - December 12, 2023, Tr. 2 - January 31, 2023, and Tr. 3 - February 12, 2024.

“regular search” performed as a “standard operating procedure” includes a “pat down” and check for weapons. (Id., 7:14-9:1.) To complete the search, the officer reaches inside the prisoner’s waistband, pats up and down the outside of a prisoner’s legs, and completes a “credit card swipe” up the inside of the pants legs. (Id.)

When Montalvo and Quinn entered the processing room at the Clifton station, they were given custody of Williams. Montalvo told Williams to put his hands against the wall and that he was going to conduct a search. As Montalvo performed the “credit card swipe” of Williams’ left leg, “something dislodged,” and a “a gun fell out” and “hit the floor.” (Id., 8:13-18, 14:22-15:8.) Montalvo further confirmed that “[t]he gun came down on the **inside** of [Williams’] pants,” the area that Varga admittedly did not search when he arrested Williams. (Id., 14:11-16, emphasis added.) Montalvo grabbed the gun, which measured approximately four inches, and carried it to an adjacent room while Quinn secured the prisoner against the wall. Williams was then charged with possession of a gun in Clifton and remained in the custody of the CPD. Before Montalvo and Quinn left the Clifton police station, Montalvo transferred custody of the gun to Martino. As seen in the processing room video and summarized in a report he authored (R-3), Martino secured the firearm, and removed the magazine, which contained three bullets. Martino also removed a loaded round in the chamber.

Approximately two hours later, at 6:30 a.m., on November 25, 2021, CPD Lieutenant Robert Bracken (“Bracken”) arrived at work and was advised of the incident. As related to him by Domski, Bracken learned that during the process of transferring a prisoner to the custody of Hoboken police, a loaded handgun fell from the prisoner’s person while Hoboken police were conducting a search.

Bracken notified Captain Kester of the incident. An administrative investigation followed. In connection with the investigation, Bracken spoke with Williams. Bracken summarized his conversations with Domski and Williams in an email to Captain Kester. (R-10.) In a follow-up email to Captain Kester, Bracken provided further detail about his conversation with Williams. The email related that Bracken was informed by Williams that during the roadside encounter, the gun was concealed inside his waistband. According to Bracken, Williams related that he “was able to move the weapon

downward in the direction of his genitals while the search [by Varga] was being conducted.” (R-11.) While the emails themselves are hearsay, Bracken testified that the statements in the email accurately reflected his discussion with Williams. The fact that Williams had a concealed weapon inside his pants is also corroborated by Montalvo’s firsthand observation and testimony, and the processing room surveillance footage. Thus, I **FIND** as fact that, at all relevant times, Williams had a gun concealed inside his pants that was not discovered by Varga.

On December 6, 2021, Varga was interviewed by Detective Lieutenant Maurice Scardigno (“Scardigno”) and Detective Tim Kaminsky (“Kaminsky”) in connection with an internal affairs (IA) investigation of the incident (IA Investigation). Scardigno is the commanding officer of the CPD special investigation division and has over twenty years of policing experience. The primary function of his current assignment is IA. Kaminsky acted as the senior investigator in the IA Investigation. Scardigno worked alongside Kaminsky and supervised the IA investigation. At the conclusion of the IA Investigation, Kaminsky prepared a report, which Scardigno reviewed, approved and signed. (R-1.)

Varga attended the IA interview with his lawyer. In the recorded interview (J-7), Varga described the roadside search that he performed as a “search incident to arrest.” Varga also acknowledged that the arresting officer conducting that type of search would run his thumbs around the arrestee’s waistband to search for weapons. The body camera footage, however, demonstrates that Varga only patted the outside of Williams’ waistband.

During the IA interview, Varga also affirmed that, if performed properly, a “search incident to arrest” requires that an arresting officer put his hands inside an arrestee’s pockets. (Id.) In the IA interview, Varga stated that he thought he searched inside Williams’ pockets, but admitted at the hearing that he “misspoke.” (Tr. 3, 114:16-23) The body camera footage clearly shows that Varga did not search inside Williams’ pockets. (J-4, J-5.) On cross-examination, Varga also admitted that he “missed the upper part of [Williams’] body” when performing the roadside search. (Tr. 3, 126:1-5.) Accordingly, I further **FIND** that Varga understood how to conduct a “search incident to arrest,” but failed to do so on the night in question.

ANALYSIS AND CONCLUSIONS OF LAW

It is of paramount importance to the operation of quasi-military settings, including police departments, that adherence to rules and discipline is maintained. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 142 N.J. 446 (1995); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). In such settings, the primary duty of the officers and supervisors is the safety and security of the facility. A police officer's duty of safety and security also extends to the public. In that regard, police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Exercise of good judgment is a critical aspect of the job. (*Ibid.*) The specifications upon which the charges against Varga are based strike at the very core of these standards.

Under N.J.A.C. 4A:2-2.3(a)(1), an incompetent employee unable to execute his job responsibility is subject to termination. Absence of judgment alone can be sufficient to terminate an employee in a sensitive position that requires the public trust in that judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker without prior discipline terminated for waving a lit cigarette in the face of a five-year-old); see also Vavosa v. Borough of Hillsdale, 2009 N.J. Super. Unpub. LEXIS 3239, *18 (officer terminated following incident where he exhibited bad judgment that presented a dangerous situation).

N.J.A.C. 4A:2-2.3(a)(6) provides an additional ground for discipline for "conduct unbecoming a public employee." As broadly defined by caselaw, "unbecoming conduct" encompasses conduct that adversely affects the morale or efficiency of a governmental unit, or that tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). The complained-of conduct and its attending circumstances need only "be such as to offend publicly accepted standards of decency." *Id.* at 555 (quoting In re Zeber,

156 A.2d 821, 825 (1959)). As relevant here, conduct unbecoming a police officer need not “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

Removal of a police officer may also be warranted where a neglect of duty is established in violation of N.J.A.C. 4A:2-2.3(a)(6). “Duty” intends conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (internal citation omitted). Neglect of duty arises from an omission or failure to perform a task imposed upon a public employee that indicates a deviation from usual standards of conduct. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

In addition to the above regulations, CPD promulgated Rules and Regulations (Rules, and each a Rule) as well as departmental Policies & Procedures (Policies, and each a Policy) that members and employees must follow.

The following Rules pertain here: Rule 3:1.1, which mandates that members and employees shall conduct their professional lives in a manner to “avoid bringing the department into disrepute.” Rule 3:1.5(10) addresses the exercise of authority consistent with the obligations of the office and “in conformance with the policies of the department.” Rule 3:1.5(15) requires duties to be performed “promptly, faithfully, [and] diligently.” Rule 3:1.7 sanctions against any act or omission that constitutes neglect of duty. Rule 3:1.10 requires that every member establish and maintain a working knowledge of all laws and the rules and policies of the department and, “[i]n the event, of improper action . . . presume[s] that the member was familiar with the law, rule or polic[ies] in question.” Rule 3:1.11 mandates that duties shall be performed as directed by law, departmental rule, policy, or order. Rule 3:1.13 dictates that all laws, ordinances, rules, policies, and procedure, and directives of the department shall be obeyed. Rule 3:1.36 provides that employees are expected to always perform their duties to the best of their abilities.

Additionally, as referenced in the factual discussion, infra at pages 4-8, Varga's [mis]conduct invoked Policies concerning Arrest and Transportation (J-1, Sections VI.C., VI.N.), Temporary Detention (J-2, Sections XVIII.A.5., VI.C., XII.B.2., XIID.3. and XIII.B.) and Pre-Incarceration Searches (J-3, Section II.B.2).

The material evidence against Varga is his own admissions—at the hearing and during the IA investigation interview—as supported by inherently credible sources of video footage and audio recording. Indeed, Varga does not question the credibility of this evidence.

CHARGE 1

With respect to the first charge, the preponderance of the credible evidence, as set forth in the factual findings above, establishes that Varga failed to perform a proper search of Williams incident to his arrest. The video and audio-taped footage from Varga's and Dalzell's body cameras confirm the missteps and deficiencies in Varga's roadside search of Williams' person. What is clearly seen in the body camera footage, coupled with Varga's admissions—both during his IA Investigation interview and at the hearing—leave no room for doubt that Varga knew how to properly perform a search incident to arrest but neglected to do so in connection with the roadside arrest.

In response to questions from Scardigno at the IA Investigation interview, Varga acknowledges that searching the inside of an arrestee's pockets and waistband is characteristic of a search incident to arrest. Indeed, as Varga explains to Scardigno, he thought he had done that but later admits that he "missed" parts of the search. The video footage establishes that in addition to not searching the inside of Williams' pockets or the interior of Williams' waistband, Varga also failed to run his hands up and down the inside of Williams' pants legs. Put simply, Varga failed to conduct a proper search of Williams incident to his roadside arrest.

The testimony presented at the hearing by Varga's expert, Dr. Rosell, does not support a different conclusion. Dr. Rosell concedes that Varga did not perform a search incident to arrest. (Tr. 2, 90:13-24.) Rather, he defends Varga's roadside search as a

proper "Terry stop protective frisk." (Tr. 2, 117:9-16.) Because Dr. Rosell's opinion is based on the incorrect premise that Varga was not required to conduct a search incident to arrest after he arrested and handcuffed Williams (Tr. 2, 118:19-23, 126:6-9), I give it no weight.

Accordingly, based on my factual findings, I **CONCLUDE** that the roadside search of Williams performed by Varga was deficient and in violation of CPD Policies and Rules. Specifically, I **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga failed to follow CPD Policy and Procedures, Vol. 3, Ch. 6, Arrest and Transportation, Section VI.C. and VI.C.1., as charged.

I further **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga also failed to follow CPD Rules and Regulations, Chapter 3, General Rules and Regulations regarding standard of conduct (3:1.1); general responsibilities to exercise authority consistent with obligations and in conformity with department policies and perform duties promptly, faithfully and diligently (3:1.5(10) and (15), respectively); performance and neglect of duty (3:1.11 and 3:1.7, respectively); knowledge of laws and regulations (3:1.10); obedience to laws and regulations (3:1.13) and work expectations (3:1.36).

Thus, as to the first charge in the FNDA, I **CONCLUDE** that Clifton has sustained its burden of proving, by a preponderance of the legally competent evidence, that Varga's failure to properly perform a search incident to arrest, thereby placing his life, the lives of other police officers, and members of the public, at risk, displayed incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

Although the PNDA also charges Varga with a "catch-all" violation of N.J.A.C. 4A:2-2.3(a)(12) for "other sufficient cause," given my conclusions of law regarding the foregoing charges, I **CONCLUDE** that the preponderance of the credible evidence does not support a separate violation of 4A:2-2.3(a)(12), and that charge is dismissed as redundant.

CHARGE 2

The second charge was dismissed in the FNDA and, thus, is not addressed by the tribunal.

CHARGE 3

As to the third charge, the preponderance of the credible evidence, as set forth in the factual findings above, establishes that Varga failed to search and secure the prisoner when his handcuffs were removed by another officer in the processing room. Indeed, there is no dispute regarding the credibility of the video footage from the processing area confirming that no search of Williams' person occurred when he was brought into the station from the sally port and immediately uncuffed for the duration of time that he spent in that area before being placed in a cell.

CPD Policy and Procedures explicitly dictate the processes that must be followed when an arrestee first arrives at the station. "When transportation terminates at this department, officers will bring the arrestee(s) into the booking area and secure them. Anytime an arrestee is placed into a temporary detention room subsequent to an arrest, he/she shall be thoroughly searched by hand even if a previous search of any type was conducted elsewhere." (J-1, V.1.N.) Accordingly, this search was required notwithstanding that Williams was searched previously, albeit improperly, at the scene of his arrest. Varga's failure to do so was in clear contravention of department policy, created an opportunity for Williams to escape, and resulted in a mortally dangerous situation that put Varga's life, the lives of everyone in the station and the public, at risk.

Varga points to no policy or procedure that excuses his failure to perform a search of Williams' person in the processing room because Varga believed—as it turns out incorrectly—that Williams would be released on his own recognizance. Nor am I persuaded by Varga's argument that no such search was required in the processing room because it was not specifically indicated on the Cell Block Inspection Form that was in use when the incident occurred. (A-1.) Similarly, the fact that a subsequent version of the Cell Block Inspection Form (A-2) provides a checklist requiring officers to

indicate that they "searched with metal detector in processing area," does not change the indisputable fact that CPD Policy and Procedures, Vol. 3, Ch. 6, Arrest and Transportation, Section VI.N. by its clear terms requires that this search be performed. (J-1.) Indeed, during his direct testimony, Varga admitted that "being wanded" with a metal detector was "part of the protocol before," even though it was not specified on the prior form. (Tr. 3, 96:12-17.) Regardless, Varga is charged with knowledge of this policy and adherence thereto. (R-5.)

Accordingly, based on my factual findings, I **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga failed to follow CPD Policy and Procedures, Vol. 3, Ch. 6, Arrest and Transportation, Section VI.N., as charged.

I further **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga also failed to follow CPD Rules and Regulations, Chapter 3, General Rules and Regulations regarding standard of conduct (3:1.1); general responsibilities to exercise authority consistent with obligations and in conformity with department policies and perform duties promptly, faithfully and diligently (3:1.5(10) and (15), respectively); performance and neglect of duty (3:1.11 and 3:1.7, respectively); knowledge of laws and regulations (3:1.10); obedience to laws and regulations (3:1.13) and work expectations (3:1.36).

Thus, as to the third charge in the FNDA, I **CONCLUDE** that Clifton has sustained its burden of proving, by a preponderance of the legally competent evidence, that Varga's failure to search and secure Williams' in the processing area when his handcuffs were removed, thereby creating an opportunity for the prisoner to escape and placing his life, the lives of other police officers, and members of the public, at risk, displayed incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

Although the PNDA also charges Varga with a "catch-all" violation of N.J.A.C. 4A:2-2.3(a)(12) for "other sufficient cause," given my conclusions of law regarding the foregoing charges, I **CONCLUDE** that the preponderance of the credible evidence does

not support a separate violation of 4A:2-2.3(a)(12), and that charge is dismissed as redundant.

CHARGE 4

As to the fourth charge, the preponderance of the credible evidence, as set forth in the factual findings above, establishes that Varga failed to secure the prisoner to the handcuff rail in the processing room after another officer removed the prisoner's handcuffs. As with the previous charge, the video footage from the processing room demonstrates Varga's failure to secure the prisoner to the handcuff rail at any time while the prisoner was in the processing area. Varga does not dispute the credibility of the video footage.

Rather, Varga attempts to justify his inaction. Varga claims that he did not handcuff Williams to the wall "[b]ecause he was immediately going to be – start being processed by [Varga]." (Tr. 3, 91:24-92:3.) Varga's testimony is that Dalzell uncuffed Williams "when [Varga] sat at the computer to start the processing." (*Id.*) Varga's rendition of the facts, however, is belied by the video footage, which clearly shows Dalzell in the process of uncuffing Williams before Varga enters the processing area. (J-6.) The video footage further demonstrates that Williams was unrestrained the entire time he was in the processing area—nearly an hour—before he was placed in a cell. Varga's purported justification that he was about to begin processing Williams (by entering information in the computer) is indefensible, contrary to departmental policy and another demonstration of Varga's bad judgment.

The policy and procedures governing the management of a detainee upon arrival from the sally port to the processing area states that "[t]he detainee will have one arm handcuffed to the metal rail during processing." (J-2, Section XIII, A.8.) The policy and procedures regarding processing further mandate that "detainee[s] shall be handcuffed and secured **unless they are presently being fingerprinted, photographed or tested.**" (*Id.*, Section XII.B.1., emphasis added.) There is no dispute that Varga did not have Williams handcuffed by one arm to the rail, nor had he secured both of Williams' hands in handcuffs at any point while Williams was in the processing area. Varga is

charged with knowledge of the above policies and adherence thereto. (R-6.) Varga's belief that Williams "was being cooperative, non-combative, [and] not aggressive" (Tr. 3, 92:3-6) does not provide a valid basis for Varga's disregard of and/or failure to adhere to policy.

Finally, Varga's claim that Donski must have seen that Williams was unrestrained in the processing room and did not report Varga for violating any policy, or instruct that Varga do anything differently, is of no consequence to the determination I must make in these proceedings, namely, whether Clifton met its burden of proof that this charge should be sustained against Varga.

Accordingly, based on my factual findings, I **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga failed to follow CPD Policy and Procedures, Vol. 5, Ch. 7, Temporary Detention, Section XVIII.A.5., as charged.

I further **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga also failed to follow CPD Rules and Regulations, Chapter 3, General Rules and Regulations regarding standard of conduct (3:1.1); general responsibilities to exercise authority consistent with obligations and in conformity with department policies and perform duties promptly, faithfully and diligently (3:1.5(10) and (15), respectively); performance and neglect of duty (3:1.11 and 3:1.7, respectively); knowledge of laws and regulations (3:1.10); obedience to laws and regulations (3:1.13) and work expectations (3:1.36).

Thus, as to the fourth charge in the FNDA, I **CONCLUDE** that Clifton has sustained its burden of proving, by a preponderance of the legally competent evidence, that Varga failed to secure Williams by having Williams' arm handcuffed to the wall at any time while Williams was in the processing area, thereby creating an opportunity for the prisoner to escape and placing his life, the lives of other police officers, and members of the public, at risk, displayed incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

Although Clifton also charges Varga with a "catch-all" violation of N.J.A.C. 4A:2-2.3(a)(12) for "other sufficient cause," given my conclusions of law regarding the foregoing charges, I **CONCLUDE** that the preponderance of the credible evidence does not support a separate violation of 4A:2-2.3(a)(12), and that charge is dismissed as redundant.

CHARGE 5

As to the fifth charge, the preponderance of the credible evidence, as set forth in the factual findings above, establishes that Varga left an unrestrained prisoner alone in the processing room with another officer. As discussed above, the uncontroverted video footage from the processing area demonstrates that Williams was uncuffed from the time he was escorted into the process room until he was placed in a cell, nearly an hour later. Equally clear from the video footage are the multiple times that Varga leaves Dalzell alone with the unrestrained prisoner during the processing period while Varga exits and re-enters the processing room. The video also records instances where Varga is left alone with the unrestrained prisoner during the processing period while Dalzell is seen exiting and re-entering the processing room. Additional instances of Dalzell and/or Martino being left alone with the unrestrained prisoner in the processing room are also recorded. Varga does not dispute the credibility of the video footage.

The policy and procedures governing the management of a detainee during processing dictates that "[w]hen a detainee is unsecured, there be two officers present in processing, whenever available." (J-2, Section XII.B.2.) That policy is repeated Section XII.D.2. in the context of addressing the arresting officer's responsibility with respect to detainee escape prevention: "When possible, there should be two officers present, whenever a detainee is not secured, for the purpose of processing or when allowing the detainee to make a telephone call." (*Id.*, Section XII.D.3.) As discussed above, Varga violated the policy requiring that a detainee be secured, unless being fingerprinted, photographed or tested. Under Section VI.C., as the arresting officer, Varga, or his designee, was "responsible for monitoring unattended detainees" in accordance with the above provisions. (*Id.*, Section V.I.C.) There is no evidence in the record that Varga complied with any of the foregoing policies, or that he delegated his

responsibilities to a designee. To the contrary, the preponderance of the evidence, as captured by the processing room video camera, establishes Varga's multiple violations of the foregoing policies.

Varga argues that he cannot be charged for violations that occurred when he was not in the processing room because he was entering information at the front desk computer, at Domski's direction. As a preliminary matter, Varga's excuse does not cover the multiple times that he and Dalzell exit and re-enter the processing room, leaving one or the other officer alone with the unsecured prisoner, **before** Varga departs the processing area to enter information at the front desk computer. Indeed, each of those times comprises a separate violation of the policy that two officers be present in processing when a detainee is unsecured.

Varga's excuse fares no better for the times that only one officer was present with the unsecured prisoner **after** Varga departed the processing area to enter information at the front desk computer. Varga claims that as the Watch Commander, Domski also had responsibility for the supervision of "all detainees held within the facility" under Section VI.B. That assertion, however, does not excuse Varga's violations of Sections V.I.C., XII.B.2 or XII.D. Nor is Varga being charged with a violation of Section VI.B.

Varga also argues that he should not be charged with violating the two-officer mandate, because Sections XII.B.2 and XII.D.3 contain the qualifying language "whenever available" and "when possible," respectively. Yet Varga offers no evidence that it was not possible for him to find two officers who were available to be present in the processing room with the unsecured prisoner before he left for the front desk. Indeed, Martino was available to cover as the second officer. Further, Varga could have remedied the issue by simply restraining Williams to the handcuff rail before departing for the front desk. He neglected to do so. Whether or not Varga believed (incorrectly) that Domski's instruction that Varga use the front desk computer relieved Varga of his responsibilities as the arresting officer is immaterial. Varga is charged with knowledge of his responsibilities under the above policies and adherence thereto. (R-6.)

Finally, as with the prior charge, Varga's claim that Domski did not report Varga for violating any policy, or instruct that Varga do anything differently, on the night in question, is of no consequence to the determination I must make in these proceedings, namely, whether Clifton met its burden of proof that this charge should be sustained against Varga.

Accordingly, based on my factual findings, I **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga failed to follow CPD Policy and Procedures, Vol. 5, Ch. 7, Temporary Detention, Sections VI.C., XII.B.2. and XII.D.3., as charged.

I further **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga also failed to follow CPD Rules and Regulations, Chapter 3, General Rules and Regulations regarding standard of conduct (3:1.1); general responsibilities to exercise authority consistent with obligations and in conformity with department policies and perform duties promptly, faithfully and diligently (3:1.5(10) and (15), respectively); performance and neglect of duty (3:1.11 and 3:1.7, respectively); knowledge of laws and regulations (3:1.10); obedience to laws and regulations (3:1.13) and work expectations (3:1.36).

Thus, as to the fifth charge in the FNDA, I **CONCLUDE** that Clifton has sustained its burden of proving, by a preponderance of the legally competent evidence, that after the prisoner's handcuffs were removed by another officer, Varga's action in leaving the officer alone with the unsecured prisoner in the processing room, thereby creating an opportunity for the prisoner to escape and placing his life, the lives of other police officers, and members of the public, at risk, displayed incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

Although Clifton also charges Varga with a "catch-all" violation of N.J.A.C. 4A:2-2.3(a)(12) for "other sufficient cause," given my conclusions of law regarding the foregoing charges, I **CONCLUDE** that the preponderance of the credible evidence does

not support a separate violation of 4A:2-2.3(a)(12), and that charge is dismissed as redundant.

CHARGE 6

As to the sixth charge, the preponderance of the credible evidence, as set forth in the factual findings above, establishes that Varga failed to properly inventory the prisoner's personal effects and further failed to search the prisoner prior to incarceration in a cell. The video footage from the processing area, coupled with Varga's testimony, the recording of his IA Investigation interview, and further corroborated by the recorded IA Investigation interviews of Dalzell and Martino, demonstrate that Varga did not conduct a proper inventory of Williams' personal effects and failed to conduct the required search of Williams' person prior to Williams' placement in a cell.

As seen in the video footage and acknowledged by Varga in his testimony and during his IA Investigation, Varga permitted Williams to freely remove his own property from inside his pockets and his person. In what can only be described as a complete reversal of roles and abdication of responsibility, Varga relinquishes his obligation to conduct a thorough inventory of the prisoner's personal effects to Williams, the prisoner Varga arrested on a no-bail warrant.

At the hearing, Varga defended his lax approach to the pre-incarceration inventory process. He volunteered that it is his practice in such situations that "if [prisoners] are being fully cooperative and calm, they can take out their own pockets and stuff. . . ." (Tr. 3, 106:16-107:3.) On its face, Varga's approach is plainly contrary to a police officer's duty to promote safety and it is a quintessential example of conduct unbecoming the office. It also does not align with the pre-incarceration policy and procedures that mandate a "thorough examination into pockets, cuffs, seams, etc. and all personal property in the detainee's possession." (J-3, Section II.B.2.)

There is also no dispute that Varga failed to perform a thorough, much less, any search of Williams prior to his placement in a cell. During his IA Investigation interview, Varga concedes that had it been performed, the non-discretionary, pre-incarceration

search would have been the most invasive search of the evening. Indeed, as referenced above, in addition to the "thorough examination into pockets, cuffs, seams, etc.," Section II.B.2 also requires "a pat search . . . touching . . . the detainee's body through clothing, including hair."

Varga also acknowledged that, as the arresting officer, he could have designated his responsibility to perform the pre-incarceration search to Dalzell or Martino, or requested assistance from another officer, but he did neither. Rather, Varga simply assumed that the search would be performed while he was entering information at the front desk computer.

Under the policies and procedures governing pre-incarceration searches, it was Varga's obligation, as the arresting officer, to "conduct a thorough search and inventory" of Williams prior to confining him in a cell. (J-3, Section XIII.B.) Contrary to Varga's assertion, the fact that Domski told Varga that Varga would have to complete the arrest paperwork at the front desk does not relieve Varga from his responsibilities as the arresting officer.

Varga points to the clause in the relevant policy which states that "if circumstances prevent the arresting officer from conducting this search and inventory, then the Watch Commander shall ensure that another officer conducts the search." (Id.) But there is no evidence in the record that circumstances "prevented" Varga from returning to the processing area and conducting the pre-incarceration search after he completed the arrest paperwork at the front desk. Nor was Varga prevented from designating that responsibility to another officer. Varga's post-hoc attempt to shift his responsibility to Domski's shoulders and avoid the inescapable conclusion that his dereliction was a clear violation of the pre-incarceration search policy fails. In any event, Varga is charged with knowledge of his responsibilities under the above policies and adherence thereto. (R-7.)

Accordingly, based on my factual findings, I **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga failed to follow CPD Policy

and Procedures, Vol. 3, Ch. 8, Pre-Incarceration Policies, Sections XIII.B. and II.B.2., as charged.

I further **CONCLUDE** that a preponderance of the legally competent evidence demonstrates that Varga also failed to follow CPD Rules and Regulations, Chapter 3, General Rules and Regulations regarding standard of conduct (3:1.1); general responsibilities to exercise authority consistent with obligations and in conformity with department policies and perform duties promptly, faithfully and diligently (3:1.5(10) and (15), respectively); performance and neglect of duty (3:1.11 and 3:1.7, respectively); knowledge of laws and regulations (3:1.10); obedience to laws and regulations (3:1.13) and work expectations (3:1.36).

Thus, as to the sixth charge in the FNDA, I **CONCLUDE** that Clifton has sustained its burden of proving, by a preponderance of the legally competent evidence, that Varga's failure to perform a thorough search and properly inventory the prisoner's personal effects prior to placing him in a cell, thereby creating an opportunity for the prisoner to escape and placing his life, the lives of other police officers, and members of the public, at risk, displayed incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

Although Clifton also charges Varga with a "catch-all" violation of N.J.A.C. 4A:2-2.3(a)(12) for "other sufficient cause," given my conclusions of law regarding the foregoing charges, I **CONCLUDE** that the preponderance of the credible evidence does not support a separate violation of 4A:2-2.3(a)(12), and that charge is dismissed as redundant.

DISCIPLINE

Progressive discipline requires consideration once it is determined that an employee violated a statute, regulation, or rule concerning his employment. W. New York v. Bock, 38 N.J. 500 (1962). Where the underlying conduct is egregious, however,

imposing a penalty up to and including removal is appropriate, regardless of an individual's disciplinary record. In re Herrmann, 192 N.J. 19 (2007).

As discussed above, Varga actions and omissions in connection with Williams' arrest and the events that followed in the early morning hours on November 25, 2021, violated numerous rules, policies, procedures and regulations. Varga's misconduct displayed a dereliction of duties and absence of good judgment that fell far below the stricter standard of conduct to which police officers are held. See, e.g., In re Phillips, 117 N.J. 567, 576–77 (1990) (explaining that police officers are held to a higher standard of conduct than other public employees); In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6, 465 N.J. Super. 111, 147 (App. Div. 2020), aff'd as modified, 246 N.J. 462 (2021). The seriousness of the violations Varga committed created dangerous circumstances that put his life, the lives of fellow officers, other CPD employees, and those of the public, at risk.

Safety and security are defining concepts that underlie a police officer's duties and responsibilities. Varga's conduct demonstrated a casual disregard of, and lackadaisical approach to, his employer's rules, policies and procedures.

Considered on their own, the gravity of the violations here warrant Varga's removal from employment as a police officer. See In re Carter, 191 N.J. 474, 484 (2007) (quoting In re Polk, 90 N.J. 550, 578 (1982)) (penalty of removal appropriate where it was not "so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness.") A review of his disciplinary history does not support a different result.

Even if this tribunal's simultaneously issued decision against Varga—sustaining charges of major discipline and imposing a sixty-working-day suspension—is not considered,⁵ Varga's disciplinary history includes two major disciplines (R-13, R-16), three performance deficiency notices (R-14, R-15, R-18) and a "last chance agreement." (R-17.) Given that I **CONCLUDE** that Varga's removal is appropriate

⁵ See In the Matter of Justin Varga, CSV 09740-23, Initial Decision (June 14, 2024).

based only on his violations of the multiple charges sustained herein, I need not reach questions concerning the application or interpretation of the "last chance agreement." Nevertheless, Varga's disciplinary history is notable in that he did not have "a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions." Herrmann, 192 N.J. at 33.

Where, as here, the charged and established infractions "go to the heart of [a police officer's] capacity to function appropriately," and in considering Clifton's "need to maintain order and discipline" within its police department, the penalty of termination is appropriate. Id. at 34.

ORDER

Based on my findings of fact and conclusions of law, I **ORDER** that Charges 1, 3, 4, 5 and 6 as set forth in the Statement of Charges (J-10) are **SUSTAINED**, except for the charges under 4A:2-2.3(a)(12) for other sufficient cause, which are **DISMISSED**, and Charge 2, which was dismissed previously. I further **ORDER** that based on the sustained charges, Varga is removed from his position as a police officer with Clifton.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

June 14, 2024

DATE



R. TALI EPSTEIN, ALJ

Date Received at Agency:

June 14, 2024

Date Mailed to Parties:

June 14, 2024

rte/cc

APPENDIX

LIST OF WITNESSES

For Appellant:

Officer Justin Varga
Dr. Richard G. Rosell

For Respondent:

Lieutenant Robert Bracken
Detective Lieutenant Maurice Scardigno
Officer Harry Montalvo

LIST OF EXHIBITS IN EVIDENCE

Joint Exhibits:

- J-1 CPD Policy and Procedures, Arrest and Transportation Policy
- J-2 CPD Policy and Procedures, Temporary Detention Policy
- J-3 CPD Policy and Procedures, Pre-Incarceration Search Policy
- J-4 Varga Body Worn Camera Footage
- J-5 Dalzell Body Worn Camera Footage
- J-6 Processing Room Camera Footage (no audio)
- J-7 Audio and Video Recording of Varga's IA Investigation Interview
- J-8 Audio and Video Recording of Dalzell's IA Investigation Interview
- J-9 Audio and Video Recording of Martino's IA Investigation Interview
- J-10 PNDA (and Statement of Charges)
- J-11 FNDA (and Redacted Decision of Department Hearing Officer)
- J-12 2020 AG Guidelines
- J-13 2022 AG Guidelines

Appellant's Exhibits:

- A-1 Prior Cell Block Inspection Form
- A-2 Current Cell Block Inspection Form

A-3 Report of Dr. Richard G. Rosell, dated 11/21/23

A-4 Demonstrative - Scaled Graphic of Handgun

Respondent's Exhibits:

R-1 Special Investigations Report

R-2 Incident Report by Varga, dated 11/25/21

R-3 Supplemental Report by Martino, dated 11/25/21

R-4 Property Report, dated 11/25/21

R-5 Varga Signature Summary Page, Arrest and Transportation Policy

R-6 Varga Signature Summary Page, Temporary Detention Policy

R-7 Signature Summary Page, Pre-Incarceration Searches Policy

R-8 Not in evidence

R-9 IA Administrative Investigation Form, signed by Varga on 12/6/21

R-10 Email from Lt. Bracken to Captain Kester, 11/25/21

R-11 Follow-Up Email from Lt. Bracken to Captain Kester, 11/25/21

R-12 Not in evidence

R-13 Varga Disciplinary Records

R-14 Varga Disciplinary Records

R-15 Varga Disciplinary Records

R-16 Varga Disciplinary Records

R-17 Varga Disciplinary Records

R-18 Varga Disciplinary Records

R-19 Mandatory In-Service Law Enforcement Training