



STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

In the Matter of Kevin Newsom

 CSC Docket No. 2015-2238
 OAL Docket No. CSR 11040-23
 (on remand CSR 1620-15 and
 CSR 10686-19)

ISSUED: SEPTEMBER 25, 2024

The appeal of Kevin Newsom, a former Correctional Police Sergeant with New Jersey State Prison, Department of Corrections, of his removal, effective December 30, 2014, on charges, was before Administrative Law Judge Joseph A. Ascione (ALJ), who rendered his initial decision on August 22, 2024. No exceptions were filed.

Having considered the record and the attached initial decisions, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 25, 2024, accepted the Findings of Fact and the Conclusions therein and the recommendation of the ALJ to uphold the appellant's removal.

DISCUSSION

The long, tortured history of this matter is as follows. The appellant was removed, effective December 13, 2014, on charges of conduct unbecoming a public employee, other sufficient cause, and violation of departmental policies. Specifically, the appointing authority asserted that the appellant knowingly caused serious bodily injury by using excessive force in striking an inmate in the head several times with a metal baton while handcuffed, shackled, and offering no resistance. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing.

The ALJ originally rendered an initial decision on February 24, 2016, upholding the appellant's removal. However, due to the lack of quorum and consent from all parties to extend the time, the Commission was unable to act on the matter

within the allotted time for determination. Therefore, the ALJ's original initial decision was deemed adopted as the Commission's final decision. *See In the Matter of Kevin Newsom* (CSC, deemed adopted April 25, 2016). The appellant did not request reconsideration of the decision or pursue an appeal to the Superior Court of New Jersey, Appellate Division (Appellate Division).

However, in a letter dated January 9, 2018, the appellant requested that the matter be reopened due to a videotaped statement of the inmate which he claimed exonerated him of the disciplinary charges. The request was denied as an untimely petition for reconsideration. The appellant then appealed this determination to the Appellate Division, which reasoned that the 45-day time period to request reconsideration of a decision was not applicable. Accordingly, the court remanded the matter for the Commission to consider the appellant's request. *See In the Matter of Kevin Newsom*, Docket No. A-3194-17T1 (App. Div. July 30, 2019). The matter was then remanded to the OAL for further proceedings.

In the second initial decision rendered February 14, 2020, the appellant moved for summary decision, arguing that the findings in a federal matter constituted *res judicata* and that the appointing authority was collaterally estopped from removing him from his position. However, the ALJ determined that *res judicata* and collateral estoppel were not applicable. Further, the ALJ found that the appellant's alleged exculpatory evidence from the inmate's interview after the incident was not credible since the inmate gave three different responses as to who perpetrated the assault. Further, the ALJ indicated that the testimony and statements of the other officers in the original proceeding that the appellant struck the inmate were credible. Therefore, the ALJ reaffirmed the prior determination and found that the appointing authority met its burden of proof and recommended the appellant's removal. Upon its *de novo* review of that matter, the Commission agreed and affirmed the ALJ's initial decision in its entirety. *See In the Matter of Kevin Newsom* (CSC, decided March 12, 2020).

The appellant again appealed this determination to the Appellate Division, which found in *In the Matter of Kevin Newsom*, Docket No. A-3273-19 (App. Div. January 7, 2022) that the ALJ did not "address the precise and limited issue we required to be considered on remand. That is, the ALJ did not consider or decide whether Newsom's order to show cause supported vacatur of the Commission's April 25, 2016 decision and a reopening of the disciplinary proceeding." The Appellate Division, therefore, remanded that matter once again to the Commission for a determination as directed above. The Commission thereafter again remanded the matter to the OAL for further proceedings.

In his current initial decision, the ALJ reviewed the full videotaped statement containing the alleged exculpatory evidence, as well as other evidence. Ultimately, the ALJ found:

appellant has failed to persuade this tribunal that the newly discovery evidence can justify the vacatur of the Final Decision of April 25, 2016. The tribunal considered all cogent evidence, and made a determination based on the tribunal's review and interpretation of such evidence, and *N.J. Ct. R. 4:50-1(a)*, in accordance with this tribunal's role as the finder of fact and law. The evidence provided was cumulative and would have been considered if available during the hearing but would not have altered the findings or conclusions. Accordingly, this tribunal must **CONCLUDE** that appellant's application to vacate the Final Decision of April 25, 2016, fails.

In making this determination, the ALJ found that the credible testimony of the officers involved in the incident, identifying Newsom as the individual who struck the inmate, was not overcome by the inmate's videotaped statement, which the ALJ found not as persuasive or credible. The Commission agrees.

With regard to credibility, 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 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). Nevertheless, upon review, the Commission finds that the ALJ's credibility determinations in this respect in the current matter, as well as in the past matters, were proper and that this strict standard has not been met. Accordingly, the Commission finds there is no basis to vacate its April 25, 2016, final decision.¹

Further, in the current initial decision, the ALJ stated that "This decision will not readdress the issues of *res judicata* or collateral estoppel effects, and incorporates the Initial Decision of February 14, 2020, in its entirety." As indicated in its March 20, 2020 affirmance of that decision, the Commission agreed with the ALJ's analysis regarding the application of *res judicata* or collateral estoppel.

Accordingly, given the above, along with affirming the current initial decision in its entirety, the Commission reaffirms its April 25, 2016 decision, and the March

¹ As noted previously, the April 25, 2016, decision was a "deemed adopted" decision. As such, the decision was, in essence, a full affirmance of the ALJ's February 24, 2016, initial decision.

20, 2020 decision regarding the ALJ's substantive findings and conclusions, as well as his findings pertaining to the issues of *res judicata* or collateral estoppel.² The Commission also upholds the penalty of removal. In that regard, as the Commission stated in its March 20, 2020, decision "the egregious nature of the offense and considering that the appellant was a Correction[al Police] Sergeant, it is clear that removal is the proper penalty."

ORDER

The Civil Service Commission finds that there is no basis for the vacatur of its April 25, 2016, final decision, and it therefore reaffirms that decision. Further, it reaffirms its March 20, 2020 final decision as per above, and finds that the appointing authority's action in removing the appellant was justified. Therefore, the Commission affirms that action and dismisses the appeal of Kevin Newsom.

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 25TH DAY OF SEPTEMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

² The Commission does not affirm any portions of the March 20, 2020, decision which were found to be in error by the Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 11040-23
AGENCY DKT. NO. 2015-2238
(ON REMAND CSR 01620-15 &
CSR 10686-19)

**IN THE MATTER OF KEVIN NEWSOM,
NEW JERSEY STATE PRISON,
DEPARTMENT OF CORRECTIONS.**

Donald C. Barbati, Esq., for appellant Kevin Newsom (Crivelli, Barbati &
DeRose, attorneys)

Jana R. DiCosmo, Deputy Attorney General, for respondent New Jersey State
Prison, Department of Corrections (Matthew J. Platkin, Attorney General of
New Jersey, attorney)

Record Closed: July 15, 2024

Decided: August 22, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter is back on remand for the second time. The Appellate Division asked that the matter be reviewed, not as the parties had requested – reconsideration, but rather as whether the discovery of newly discovered evidence warranted a vacatur of

the original Initial Decision, which became a Final Decision of the Civil Service Commission (CSC) as a result of the passage of time in the absence of a quorum of the CSC. Please excuse the repeated recitation of the procedural history from the earlier Initial Decision on Remand.

The initial remand resulted from the reversed denial by the Civil Service Commission (CSC) of appellant Kevin Newsom's application for reconsideration. The CSC based its denial of reconsideration upon the application's untimeliness. The Appellate Division reversed the CSC's decision and remanded for consideration of the appropriateness of reconsideration based upon recently discovered evidence.

The matter appellant seeks to have reopened, CSR 01620-15, involved appellant's suspension without pay on November 6, 2010, by respondent New Jersey State Prison based upon the use of excessive force on October 29, 2010. Criminal proceedings ensued. Those proceedings were eventually resolved by admission of appellant into a pre-trial intervention program. No allocution of the events of the incident occurred, and sometime in November 2014 the appellant satisfied the conditions of the pre-trial intervention. The above facts are related by appellant's counsel; no documents from that criminal proceeding were reviewed by this tribunal.

On December 30, 2014, a Final Notice of Disciplinary Action was issued by respondent seeking the removal of appellant for violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(11),¹ other sufficient cause, specifically, HRB 84-17 as amended, C-11, conduct unbecoming an employee; HRB 84-17 as amended, C-3, physical or mental abuse of an inmate, patient, client, resident, or employee; and HRB 84-17 as amended, C-5, inappropriate physical contact or mistreatment of an inmate, patient, client, resident, or employee. Specifically, the incident is described as, "On 10-29-10 you were arrested by the Mercer County Prosecutor's Office for an incident where you knowingly caused serious bodily injury to Inmate B.P., to wit: you did use excessive force in striking B.P. in the head several times with a metal baton while B.P. was handcuffed, shackled and offering no

¹ Amended by R.2012, d.056, effective March 5, 2012; recodified former (a)(11) as (a)(12).

resistance.” Appellant appealed, and this tribunal found that appellant committed the charged offenses in In re Newsom, CSR 01620-15, Initial Decision (February 24, 2016), deemed adopted, CSC (April 25, 2016), <https://njlaw.rutgers.edu/collections/oal/>.

The victim of appellant’s actions, Bradley Peterson, had commenced a personal-injury action in the United States District Court against numerous defendants, including appellant herein. The victim’s personal-injury action resulted in a jury verdict of “no cause.” The jury found that the defendants had not violated the inmate’s civil rights. During those proceedings, and after the Initial Decision in CSR 01620-15 was deemed adopted, appellant became aware of a portion of a videotaped interview of the victim in which he claimed that “a tall, bald, white guy hit him with the expandable baton.” Appellant thereafter requested that the CSC reopen the earlier matter to consider that portion of the videotape. Appellant represented that the full videotape had not been previously disclosed to appellant during the earlier proceeding. The CSC deemed this as a request for reconsideration, and denied on procedural grounds. The Superior Court reversed the CSC’s decision and remanded for the CSC to consider appellant’s application to reopen the hearing. In re Newsom, No. A-3194-17T1 (App. Div. July 30, 2019).

The Civil Service Commission remanded this matter to the Office of Administrative Law (OAL) to comply with the order of the Superior Court. The OAL received the matter on October 18, 2023, to determine whether the Order to Show Cause should be granted vacating the prior CSC decision of April 25, 2016, and if granted, 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 -13.

The appellant now moves by order to show cause to vacate the prior final decision of April 25, 2016, removing appellant from public service arguing that the extended video tape of the victim Peterson and the jury findings in the federal action compel this tribunal to vacate its earlier decision.

Respondent opposes the application. The Appellate Division decision does not require a hearing, only consideration of whether the full videotaped statement of the

inmate would alter the earlier decision of this tribunal. The tribunal gave consideration to obtaining the testimony of the victim, who did not appear at the 2015 hearing. Respondent's counsel represented that the victim resides in Rhode Island. He is on probation and cannot leave the state of Rhode Island without a court order. A hearing had been scheduled for January 8, 2020; however, as Mr. Peterson, allegedly did not desire to come down to New Jersey; and, the parties were unable to compel his attendance, the hearing was cancelled. In light of the discussion below, and in an attempt to promptly address this matter, I did not reschedule a hearing, but reviewed the federal-court trial testimony of the victim, reviewed the videotape of the victim's interview, and closed the matter. The Initial Decision of February 14, 2020, addressed the rehearing of the matter and the motion for summary disposition. The CSC affirmed the Initial Decision on March 16, 2020. On appeal, the Appellate Division, on January 7, 2022, remanded the matter, as this tribunal and the CSC missed the direction from the initial remand. Specifically, does the newly discovered evidence meet the criteria to satisfy a vacatur of the 2016, Final Decision, pursuant to New Jersey Court Rule 4:50-1(b). This decision will not readdress the issues of res judicata or collateral estoppel effects, and incorporates the Initial Decision of February 14, 2020, in its entirety.

SOLE ISSUE TO BE RESOLVED

Does the existence of the extended videotaped interview of the victim by the prosecutor's office, his testimony in the civil action, or the jury verdict, warrant the vacatur of the Final Decision of April 25, 2016, pursuant to Rule 4:50-1(b)?

FACTUAL DISCUSSION

The new evidence is a videotape of an interview with the victim, conducted by the prosecutor's office within two days of a severe beating leaving him with numerous stitches across his forehead. During the interview the victim claimed that "a tall, bald, white guy" hit him with an expandable baton. Appellant does not fit that description, and could not be identified as a white guy. This is one of the basis, appellant seeks to vacate the previous Final Decision of April 25, 2016.

The victim filed a complaint in federal court in an action for violation of civil rights against numerous defendants, including the appellant here and the administrator of New Jersey State Prison.² Appellant also bases his application on the fact that the jury in that action, specifically found that appellant did not strike Peterson.

Note the opinion from United States District Judge Freda L. Wolfson, 2017 U.S. Dist. LEXIS 66327 (D.N.J. May 2, 2017), in a decision on a summary-judgment motion by Bradley Peterson, the plaintiff therein, seeking to have collateral estoppel applied to the Department of Corrections and Kevin Newsom based upon the Initial Decision from this tribunal identified above. In Judge Wolfson's decision, the court recited the plaintiff's absence of knowledge of the person who hit him with the baton. The victim represented that he relied on Correction Officer Israel's testimony³.

These factors clearly place in question the victim's knowledge and credibility. The jurors' view of the victim's credibility could be the basis for the victim's "no cause" verdict in his action against the defendants. The rejection by the jury of the victim's right to recover does not logically create the fact that the defendants in the federal-court action did not commit the acts alleged. It only creates the fact that the victim could not prove his right to a claim for damages. The jury's finding that Newsome did not use an expandable baton to hit Peterson is significant. However, weighed against the testimony of Corrections Officer Israel, must yield to Corrections Officer Israel's testimony. There were likely other factors weighed in the findings of the jurors.

Finally, the appellant seeks vacatur on the basis of the New Jersey Attorney General's Office's decision to grant indemnification for appellant's legal fees in the defense of the federal court action.

² The entire earlier file was not remanded to the OAL, and the referred to document is not contained in this record. References are to submissions from the earlier initial decision of February 14, 2020. Peterson's August 21, 2017, pre-trial order's factual positions, paragraphs thirteen to twenty-three, represent that the appellant herein is the perpetrator of the attack with the expandable baton. See Resp't's Opposition to the Motion for Summary Decision, Exh. 3.

³ This is corroborated by the victim's testimony from the action. See Resp't's Opposition, Exh. 4 at 107, 133. He testified to vision issues even prior to the incident, and could only identify correction officers Albanese, Matlock, and Lewis. Id. at 129.

The undersigned's memory from the 2015 hearing includes allegations that the victim, a difficult inmate, provoked the actions of the correction officers by not being compliant with official directives.

Jurisdictionally, there is only the application for vacatur.

FACTUAL FINDINGS

Based upon due consideration of the prior Initial Decision, documentary video-taped evidence, the pre-trial order from the federal-court action, portions of the federal-court trial transcript of the victim's testimony, and the collateral-estoppel decision of Judge Wolfson, and having personally assessed the credibility of the victim in reviewing the videotape of his interview with the prosecutor's office and his federal-court trial testimony, I **FIND** the following **FACTS**:

1. Bradley Peterson, the victim of a severe beating in 2010, gave an interview with the Mercer County Prosecutor's office, that someone other than appellant committed an assault upon him.
2. Bradley Peterson, in a federal-court pre-trial order, represented that Kevin Newsom committed the assault upon him with an expandable baton⁴. This statement was not based upon his personal knowledge, but based upon Correction Officer Israel's testimony in the previous Civil Service Violation action.
3. At the federal trial, Bradley Peterson represented that he did not know who hit him with the expandable baton⁵. He testified to vision issues even prior to the incident, and could only identify correction officers Albanese, Matlock, and Lewis⁶.

⁴ See Resp't's Opposition, Exh. 3.

⁵ See Resp't's Opposition, Exh. 4 at 107, 133

⁶ See Resp't's Opposition, Exh. 4 at 129.

4. The previous statements conflict with each other and provide sufficient basis to question the credibility of the videotaped statement.
5. The testimonies from the OAL hearing in 2015 of Correction Officer Israel and Correction Officer Gundy created the preponderance of the evidence supporting the conclusions in the Initial Decision of February 24, 2016, and support the conclusion not to vacate the Final Decision of April 25, 2016.
6. Peterson's testimony is cumulative with the testimony of other corrections officers present at the time of the incident. They did not blame a tall, bald, white, man, but they could not testify clearly regarding the incident.
7. Nothing contained in the presentation of petitioner would justify vacating the Final Decision of the CSC. Even if some credibility were afforded to Peterson's testimony it would not be sufficient to move the preponderance of the evidence based upon Correction Officers Israel's and Gundy's testimony. The testimony of these officers resulted in sustaining the Civil Service Violations charged, resulting in Sargent Newsom's removal.
8. The jury's finding of "no cause" of action in favor of Peterson does not logically provide evidence which would support the vacatur of the Final Decision.
9. The New Jersey Attorney General Office's determination to reimburse the appellant for his legal defense expenses were consistent with other contractual agreements and policies, and in no way provides evidence supporting the vacatur of the Final Decision.
10. Petitioner's initial application for reconsideration was made some three years after the Final Decision issued on April 25, 2016.

ANALYSIS AND CONCLUSIONS OF LAW

Here, the tribunal issued the Initial Decision after eight days of hearing presented by experienced and competent counsel, seriously weighing the required preponderance of the evidence, burden of proof, absence of physical evidence connecting the appellant to the weapon, and testimony of the numerous witnesses. The victim was not one of those witnesses. However, the victim's recollection of the events of the incident had a limited bearing on the decision process. Numerous correction officers were present during the incident, and one was conscientious enough to identify appellant as the perpetrator of an assault after the victim had been restrained. Another identified the profusion of blood from the head wounds after the expandable baton made contact. These factual statements were afforded great credibility, as they were perceived by this tribunal as statements against the witnesses' own professional interests.

The new evidence of the full videotape did provide contradictory evidence to the conclusion of the Initial Decision. This evidence, though, can be afforded little credibility, as on the stand in the personal-injury trial the victim acknowledged his vision problems and the fact that he saw only the three officers who were involved in the initial contact with him, and no other individuals at the scene. He further acknowledged that the statements contained in the complaint were based upon the information provided by the witness to the incident, C.O. Israel.

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, I 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) (citation omitted).

The appellate division remanded the matter a second time to the New Jersey Division of Prisons, as it found the standard applied by this tribunal was incorrect. This

tribunal considered petitioner's motion for reconsideration. The appellate division found that this tribunal needed to review the application as a motion to vacate the prior Final Decision pursuant to N.J. Ct. R. 4:50-1(b), based upon the newly discovered evidence and whether that would be sufficient to alter the Final Decision.

N.J. Ct. R. 4:50-1(a) provides, "On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: ... (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; ..."

N.J. Ct. R. 4:50-2 provides, "The motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken.

Under the standards of R. 4:50-1(b) vacatur can only be granted if appellant demonstrates that the evidence would "probably have changed the result, that it was unattainable by the exercise of due diligence for use at the trial, and that the evidence was not merely cumulative." *DEG, LLC v. Twp of Fairfield*, 198 N.J. 242, 264 (2009) quoting *Quick Chek Food Stores v Twp of Springfield*, 83 N.J. 438, 445 (1980). All three of these requirements must be met to justify relief from a final order.

Relief under R. 4:50-1 is "granted sparingly," and in exceptional circumstances. *F.B. v. A.L.G.*, 176 N.J. 201, 207, 821 A.2d 1157 (2003). See *State v. Carrington*, 2023 N.J. Super. Unpub. LEXIS 1888.

The initial remand occurred well past the one year mark from the Final Decision.

Turning to the appellant's arguments, there is no logic to accept the jury's findings of "no cause" in Peterson's claim for violation of civil rights, as newly discovered evidence. Peterson was a difficult inmate, many factors are present which justifies the jury deciding against Peterson. In a Hohfeldian analysis the jury verdict denied

Peterson a right, it did not create any factual finding regarding the actions of the appellant.

B.P. said at the beginning of the video that "they hit me with batons upside the head," id. at 5:19, that he sustained multiple hits to his face, id. at 5:50, from both kicks and batons, id. at 7:02, and that he could not see everyone who was attacking him because he was keeping his head down to try to avoid further strikes to his face, id. at 8:00. B.P. asserted that even more baton strikes to his face occurred in the elevator on the way to the infirmary after the main assault. (Id. at 8:28).

Peterson's testimony was inconsistent, whether motivated by his calculation of which statements were in his best interests or whether he truly did not know all of the persons who inflicted injuries upon him. His testimony would not have altered the original fact findings in this matter. It would have been cumulative with other corrections officers who claimed they did not see things during the incident.

The fact that the State chose to reimburse appellant for his defense legal fees, was likely the result of the jury's finding of "no cause" and contractual agreements under the union contract. This also provides no basis to vacate the Final Decision.

The testimony of Corrections Officer Israel was not refuted on cross examination, nor recanted. He was an individual whose duty compelled him to testify honestly, despite the professional implications to his testimony.

In determining whether evidence would probably change the result of a case, "[t]he rule is that the newly discovered evidence should 'be so persuasive as to scarcely leave it debatable that the verdict is wrong.'" *Miller v. Ross*, 43 N.J.L. 552; see also, *State v. Hunter*, 4 N.J. Super. 531, 537 (App. Div. 1949)(accord); *Reid v. N. Park & Dodd Tr. Co.*, 10 N.J. Misc. 469, 472 (1932)(accord). Additionally, the court must be satisfied that the evidence is credible. *Tovey v. Public Service Railway Co.*, 95 A. 265.

Ultimately, appellant has failed to persuade this tribunal that the newly discovery evidence can justify the vacatur of the Final Decision of April 25, 2016. The tribunal

considered all cogent evidence, and made a determination based on the tribunal's review and interpretation of such evidence, and N.J. Ct. R. 4:50-1(a), in accordance with this tribunal's role as the finder of fact and law. The evidence provided was cumulative and would have been considered if available during the hearing but would not have altered the findings or conclusions. Accordingly, this tribunal must **CONCLUDE** that appellant's application to vacate the Final Decision of April 25, 2016, fails.

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.

August 22, 2024
DATE


JOSEPH A. ASCIONE, ALJ (Ret., on recall)

Date Received at Agency:

August 22, 2024

Mailed to Parties:

August 22, 2024

APPENDIX

Witnesses

For appellant:

None

For respondent:

None

Exhibits

For appellant:

- A-1 Notice of Motion to Vacate the Civil Service Commission's April 25, 2016 Final Decision and Order, dated 4/19/24
Memorandum of Law, dated 4/19/24
Certification of Donald C. Barbati, Esq., dated 4/19/24
- Exhibit A - Initial Decision issued by Judge Joseph A. Ascione, dated 2/24/16
 - Exhibit B - Letter from Henry Maurer, Director, New Jersey Civil Service Commission, dated 4/25/16
 - Exhibit C - Appellant's Order to Show Cause, dated 1/9/18
 - Exhibit D - Appellant's Correspondence to the Civil Service Commission, dated 1/31/18
 - Exhibit E - Final Administrative Action of the Civil Service Commission, dated 2/8/18
 - Exhibit F - Opinion authored by the Honorable Freda Wolfson, U.S.D.J., dated 5/2/17
 - Exhibit G - Jury verdict sheet in the companion civil case filed in the United State District Court, District of New Jersey

- Exhibit H - Order entered by the Honorable Anne E. Thompson, U.S.D.J., dated 12/15/17
- Exhibit I - Excerpts of Volume I of the deposition of the Plaintiff, inmate Bradley Peterson in connection with the companion civil case, dated 9/25/14
- Exhibit J - Excerpts of Volume II of the deposition of the Plaintiff, inmate Bradley Peterson in connection with the companion civil case, dated 9/26/14
- Exhibit K - Bradley Peterson's Statement to the Mercer County Prosecutor's Office, dated 3/3/11
- Exhibit L - Correspondence from the Attorney General's Office, dated 8/8/22/19
- Exhibit M - Superior Court of New Jersey, Appellate Division's Opinion, dated 7/30/19
- Exhibit N - Initial Decision issued by Judge Joseph A. Ascione, dated 2/14/20
- Exhibit O - Final Administrative Action of the Civil Service Commission, dated 3/16/20
- Exhibit P - Superior Court of New Jersey, Appellate Division's Opinion, dated 1/7/22
- Exhibit Q - Joint correspondence submitted by the Appellant and Respondent, dated 2/15/24
- Exhibit R - Videotape is the full-length interview of inmate Bradley Peterson, dated 7/10/15

Proof of Service, dated 4/19/24

Proposed Form of Order, submitted 4/19/24

A-2 Reply Brief, dated 6/28/24

For respondent:

R-1 Letter Brief in Opposition to Appellant's Motion to Vacate, dated 6/14/24