



## STATE OF NEW JERSEY

In the Matter of Calvin Engine,  
Judiciary – Mercer Vicinage

CSC DKT. NO. 2022-1472  
OAL DKT. NO. CSV 00775-22

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: SEPTEMBER 4, 2024

The appeal of Calvin Engine, Judiciary Clerk 3, Judiciary, Mercer Vicinage, removal, effective December 18, 2021, on charges, was heard by Administrative Law Judge Joseph A. Ascione (ALJ), who rendered his initial decision on July 29, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission, at its meeting of September 4, 2024, accepted the Findings of Fact and Conclusions and the ALJ's 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, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on his assessment of the credibility of the testimony of the witnesses. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such

determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004).

The appellant filed various exceptions, many not requiring extensive comment, while others can be considered, in essence, attacks on the ALJ's assessment of the credibility of the witnesses' testimony, and more specifically, the appellant's testimony. In this regard, the ALJ found:

Engime's testimony is less than credible. From the start of the proceeding, he continued to read a bound book while the other witnesses were testifying. He reflected a total disregard of the proceedings. During his testimony he regularly covered his mouth, and he displayed his nervousness by regularly responding to cross-examination questions with argumentative answers. His communications with the administrative staff of the J-MV were also regularly argumentative. Engime doubtless abhorred the Judiciary vaccination/weekly-testing policy. This tribunal cannot say it is because of religious reasons or purely personal-freedom reasons. Engime has failed to support his religious objections with any factual information.

While the exceptions point to the appellant's written statement as to his objections to both the vaccination and testing requirement and argue that this factually demonstrates his sincere religious beliefs buoying his refusal to submit to testing, the Commission is not persuaded. Here, the ALJ considered the appellant's testimony regarding his objections to the testing requirement and did not find it credible. As such, while not explicitly stated, it is clear that the ALJ implicitly found the documentary evidence did not overcome the appellant's lack of credible testimony. Further, upon its review, the Commission finds nothing in the record or the appellant's exceptions to demonstrate that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As there was not a preponderance of credible evidence in the record that the appellant had a sincerely held religious belief that prohibited him from engaging in the weekly testing requirement, his refusal to undertake such testing was clearly in violation of the appointing authority's policy and worthy of sanction.

Further, in its review of the penalty imposed, the Commission agrees with the ALJ that the appellant's infraction was blatant and egregious and worthy of removal. Similar to its review of the underlying charges, the Commission's review of the penalty is *de novo*. 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).

Here the ALJ found removal to be the proper penalty since "[a] lesser penalty than removal would send the wrong message." The Commission agrees as the overwhelmingly serious potential safety and health consequences of the appellant's actions warrants removal without regard to the appellant's prior history and is neither disproportionate to the offense nor shocking to the conscious.

### ORDER

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

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 4<sup>TH</sup> 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  
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Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 00775-22

AGENCY DKT. NO. 2022-1472

**IN THE MATTER OF CALVIN ENGINE,  
SUPERIOR COURT OF NEW JERSEY,  
MERCER VICINAGE.**

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**Rebecca Petersen, Esq.**, for appellant Calvin Engine (Murray-Nolan Berutti,  
attorneys)

**Susanna J. Morris, Esq.**, for respondent Superior Court of New Jersey, Mercer  
Vicinage

Record Closed: May 23, 2024

Decided: July 29, 2024

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

**STATEMENT OF THE CASE**

On September 20, 2021, appellant, Calvin Engine (Engine), timely appealed a September 14, 2021, Preliminary Notice of Disciplinary Action providing for his termination as a judiciary clerk 3, Financial Division, by the Judiciary–Mercer Vicinage (J-MV) on charges of violation of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of New Jersey Judiciary Policy on COVID-19 Vaccination or Weekly

Testing ("Judiciary Policy"). A Final Notice of Disciplinary Action was served on December 2, 2021, sustaining the charges and terminating Engine effective September 15, 2021. Appellant disputes the dismissal, maintaining that his religious objections to compliance with the Judiciary Policy have not been accommodated.

### **PROCEDURAL HISTORY**

On September 14, 2021, a Preliminary Notice of Disciplinary Action (PNDA) (R-27) was issued against Engine, with the specifications identified above. A departmental hearing was held on October 19, 2021. On December 2, 2021, a Final Notice of Disciplinary Action (FNDA) (R-28) was issued terminating Engine effective September 15, 2021. After issuance of the FNDA and notice of appeal, this matter was transmitted to and filed with the Office of Administrative Law (OAL) on February 1, 2022, by the Civil Service Commission for determination 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. A hearing was held on February 8, 2024. The parties were afforded the opportunity to submit closing memorandums and statements, and the record closed on May 1, 2024. An extension to file the initial decision was granted on June 11, 2024.

### **FACTUAL DISCUSSION**

#### **Undisputed Facts**

In March 2020 the COVID-19 epidemic closed down many of the Judiciary's in-person functions. The Judiciary did not re-open fully until August 7, 2021 (R-1). On August 11, 2021, a Judiciary Policy required all employees to either have received a COVID-19 vaccine or agree to weekly COVID-19 testing (R-3; R-4). The policy was to be effective on August 20, 2021.

**Testimony**

**Deirdre Hartman<sup>1</sup> (Hartman)**

In August 2021, Deirdre Hartman was an employee of the J-MV serving as the Director of Human Resources. She started working with the J-MV as legal counsel in 2002, and later became chief of Labor and Employment in 2018. As Director of Human Resources she oversaw five departments within the Mercer Vicinage encompassing 8,300 employees. She also served as the head Human Resources person for all the vicinages.

Hartman related that the Judiciary was closed from March 2020 through the summer of 2021. She identified R-1 as a July 16, 2021, announcement that the Judiciary facilities would reopen on August 2, 2021. She identified R-4 as the Judiciary Policy dated August 11, 2021, requiring employees to be vaccinated for COVID-19 or provide weekly negative testing to continue working past the policy's effective date of August 20, 2021. She claimed that the rationale was to protect the public and/or the employees.

Hartman's involvement with this matter resulted from an initial e-mail sent on August 12, 2021, to her by Engine, complaining of the Judiciary Policy (R-6). She responded on August 13, 2021, by e-mail (R-7). Her response reflected that she viewed Engine's request as a remote-work request. The response informed him that consideration of such a request was not contemplated. Engine was directed to make application within the normal Human Resources channels. No mention of a religious accommodation was made in the initial e-mail. Thereafter, Hartman had limited involvement as legal counsel and Human Resources took over, and the disciplinary action was undertaken. She has no memory of further involvement, but acknowledges that she may have been copied on e-mail exchanges.

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<sup>1</sup> Deirdre Hartman, now known as Deirdre Hartman-Zohlman, is presently an administrative law judge (ALJ) in the Trenton office of the OAL. My sole interaction with Judge Hartman-Zohlman was to provide one hour of Lemon Law training during her first few weeks as an ALJ; I have had no other contact with her.

Hartman recognized that the policy regarding use of vacation, administrative, or sick time was not as clear as it could have been; her understanding was that vacation time would be used if someone tested positive for COVID-19 and could not work. To her recollection, she never had a request from the Americans with Disabilities Act coordinator regarding a religious or medical accommodation, for Engine or any employee during her tenure. She disputed that Engine asked for clarification. Hartman described Engine's communications as disjointed and rambling, as well as argumentative and confrontational. Engine mischaracterized the Judiciary Policy as a vaccine mandate. Hartman's available time limited her to engage any further with Engine.

**Michael Tomasello (Tomasello)**

Tomasello is an employee of the J-MV. He serves as an administrative supervisor I for the Finance Department. He has worked for the J-MV for thirty-two years in the Probation and Filing Fees area. Engine reported to him, and worked in the Witness, Child-Support, and Probation area as a financial clerk. The job required him to attend to members of the public who were making payments at a window. Prior to the COVID-19 pandemic, Engine did good work. On March 18, 2020, most services were shut down; each division was allowed two hours per week. Engine served during the pandemic on Mondays. At some point during the pandemic many State financial functions went electronic. There was limited work for window clerks.

In the summer of 2021 the Judiciary Policy regarding vaccination or weekly testing was issued. Engine sent Tomasello a text message on Friday, August 13, 2021, at 9:13 p.m. advising him to call back an employee named Corin, as Engine was not going to be there after August 24 (R-9). Corin was a new, not completely trained clerk that had been loaned to another department. The text message further stated Engine's dislike of the vaccine mandate. Tomasello had little interaction with Engine after receipt of this communication.

Tomasello testified that there are eight clerks in the Finance Department, all level-three clerks. He represented that full remote work was not available in the Finance Department.

Discussions were held regarding Engine's 2020 performance review. Tomasello testified that the employees had to report the activities they performed during their remote work. Engine did not timely report his work activities. Engine's work in person was acceptable. However, due to his long commute, management determined not to require Engine to commute for a two-hour work shift. Engine on occasion forgot his face mask, which he was required to wear when working in person.

Tomasello was not aware of a request by Engine for an accommodation and did not participate in the determination of whether to grant an accommodation. He did not recall Engine being advised to take his vacation in order to satisfy his refusal to take weekly COVID-19 tests. Remote work, other than weather related, was limited to one day a week.

**Michelle Gilbert (Gilbert)**

Gilbert worked with the J-MV for thirty-two years, serving in Human Resources for twenty-four of those years, and as supervisor from 2014. Her responsibilities included supervision of 350 employees, being serviced by eight personnel, seven at the time of this incident. She advised and consulted with the Legal Department and Human Resources at the Central Judiciary.

Gilbert confirmed that the entire staff was sent home due to COVID-19 on March 18, 2020. The Judiciary Policy for a return to in-person work was not set until August 2021, at which time there was a choice to vaccinate or perform weekly COVID-19 testing by August 20, 2021. The Human Resources staff assisted employees in locating testing locations. The Human Resources Department was extremely busy on this return to work.

On August 13, 2021, Engine requested an accommodation (R-7). He did not specifically mention religious grounds, and did not offer to undergo COVID-19 testing; the request appeared to be for a permanent remote position.

On August 16, 2021, Engine first raised an accommodation on religious grounds (R-10). Gilbert's response was to request a letter from a religious leader explaining the



religious objections to vaccination/weekly testing (R-12; R-13). Engine responded to the request, complaining of the short time allowed to obtain the document. Engine also challenged its legality.

On September 7, 2021, Gilbert provided Engine notice that his accommodation on religious grounds would not be provided, as the weekly testing mandate, issued for the safety of the public and the employees, was an accommodation that provided for those that did not wish to be vaccinated (R-20). The letter further discussed other accommodations proposed by Engine. All proposed accommodations were not acceptable to the J-MV, as they could not assure the protection of the court personnel or the public. As a judiciary clerk 3, Engine was required to attend at a cashier window to process payments and field questions from the public.

On September 8, 2021, Gilbert provided Engine notice that he was prohibited from entering the building for failure to comply with the vaccine/testing mandate, and that a disciplinary proceeding could follow. Engine complained about the Judiciary Policy, and he was immediately suspended without pay (R-24).

On September 14, 2021, Gilbert provided Engine notice that he was suspended without pay for failure to comply with the vaccine/testing mandate, effective September 15, 2021, pursuant to N.J.A.C. 4A:2-2.5(a)(1) and (b) (R-26). Also on September 14, 2021, a Preliminary Notice of Disciplinary Action was issued for violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the New Jersey Judiciary Policy on COVID Vaccination or Weekly Testing (R-27).

On December 2, 2021, Gilbert provided Engine with a Final Notice of Disciplinary Action, effective September 15, 2021 (R-28).

Gilbert acknowledged that this was the first religious-accommodation request that she had received. She had processed requests for medical accommodations. Engine's e-mails were not clear as to a religious accommodation, so the response referred him to process a medical accommodation. When it became clear that a religious

accommodation was sought, documentation from a religious leader was requested. That requirement was abandoned by Gilbert; however, she did request an explanation of Engine's religious beliefs that would prevent him from testing weekly. None was provided.

Engine was seeking full-time remote work. That was not a consideration, as the policy did not anticipate complete remote work. Gilbert was not involved with whether Engine had the ability to use sick or vacation time. Once Engine had determined that he would not comply with the policy, Gilbert understood that he was no longer eligible to use sick or vacation time. There were no complete-remote-work positions for a judiciary clerk 3 in the Finance Department. Suggested accommodations by Engine to block him in a cubicle were not considered, as moving to and from an enclosed cubicle would have exposed the staff and public and violated the policy. The weekly-testing policy was the accommodation.

Engine had been given three deadlines to comply with the policy. He chose not to. That conduct resulted in his suspension. Gilbert did not get involved in use of vacation or sick time. There was no consideration of progressive discipline. Engine never provided a basis for refusing to undergo weekly testing, other than linking the vaccine to his religious beliefs, and disputing the policy.

### **Calvin Engine**

Engine testified that he is thirty-three years of age. He had some college education but did not obtain a degree. He worked for a bank for a period of time, but began working for the J-MV in 2015, initially as a judiciary clerk 2, and at the time of the incident a judiciary clerk 3. He had one written reprimand for lateness, but no other disciplinary charges. He identified a writing he created days before the hearing; he had never delivered this statement to Human Resources or to the J-MV prior to its submission to this tribunal. He explained that he never delivered this statement because he understood from his communications with Human Resources that it would not be considered.

Engine argues that he understood that his request for an accommodation would not be considered, so he never bothered to give further support for his religious objections to what he perceived as a vaccine mandate. He viewed the accommodation of weekly testing as insulting, as there was no showing that it was effective.

Engine's objection to vaccination relates to his belief that the vaccines were developed with the use of embryonic enzymes derived from aborted fetuses. He objects to the weekly testing as medically invasive, ineffective, and inconvenient.

Engine maintains that he was not out of compliance, as he could have been used for remote work, and if remote work were not available, his administrative, vacation, and sick time could have been exhausted before any disciplinary charges were brought. Engine maintains that the time between the notice and implementation of the policy was too short.

Engine denies that his responsibility was customer service. He maintains that there were long periods when he did not perform customer service. Engine viewed the Judiciary Policy as a vaccine mandate accompanied by a harassment/bullying policy of weekly testing to ensure compliance with the vaccine mandate.

Engine understood that his religious accommodation would not be considered without third-party documentation from a religious leader. He acknowledged that no one specifically said that his request would not be considered without documentation from a religious leader.

Engine maintains that he asked Tomasello about using his vacation time, and that use of vacation time was very liberal. He did not obtain any permission to use his vacation time.

### **Findings of Fact**

When witnesses present conflicting testimony, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is

the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973).

However, the finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony "must not only proceed from the mouth of a credible witness but must be credible in itself." Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954) (quoting In re Perrone, 5 N.J. at 521). The evidence presented and the credibility of the witnesses will assist in resolving whether the charges should be sustained and discipline imposed, or whether there are mitigating circumstances that should impact the charges and the penalty. Mitigating circumstances must be taken into consideration when determining whether there is just cause for the penalty imposed.

In this matter, the respondent presented three administrative personnel who were performing their duties in the normal course under extraordinary circumstances. I accept that their testimonies are honest and credible. Engime's testimony is less than credible. From the start of the proceeding, he continued to read a bound book while the other witnesses were testifying. He reflected a total disregard of the proceedings. During his testimony he regularly covered his mouth, and he displayed his nervousness by regularly responding to cross-examination questions with argumentative answers. His communications with the administrative staff of the J-MV were also regularly argumentative. Engime doubtless abhorred the Judiciary vaccination/weekly-testing policy. This tribunal cannot say it is because of religious reasons or purely personal-freedom reasons. Engime has failed to support his religious objections with any factual information.

Based on the testimony, an assessment of the witnesses' credibility, and the documentary evidence provided, I **FIND** the following **FACTS**:

1. The Judiciary promulgated a Judiciary Policy on COVID-19 Vaccination or Weekly Testing on August 11, 2021, to be effective on August 20, 2021. See R-4.
2. On August 13, 2021, Engine informed his supervisor, Tomasello, that he should not anticipate Engine's return to work on August 24, 2021, and that Tomasello should seek to obtain the return of another employee loaned to a different department to perform Engine's duties. See R-9.
3. Engine exchanged a series of e-mails with Human Resources personnel seeking an accommodation from the Judiciary Policy. See R-6; R-7; R-8; R-10; R-11; R-12; R-13; R-15; R-19.
4. Engine sought entirely remote work. The J-MV declined any accommodation other than weekly testing. See R-20.
5. On September 8, 2021, Engine received a notice advising him that he had failed to comply with the Judiciary Policy and advising him that he was precluded from entering the building, would not be able to work remotely, and would be subject to disciplinary action. See R-22.
6. On September 13, 2021, Engine received a Notice of Suspension without pay. See R-24.
7. On September 14, 2021, Engine received a Preliminary Notice of Disciplinary Action seeking termination of employment for insubordination, neglect of duty, and failure to comply with the Judiciary Policy. See R-26; R-27.
8. On December 2, 2021, Engine received a Final Notice of Disciplinary Action imposing termination of employment as of September 15, 2021, for

insubordination, neglect of duty, and failure to comply with the Judiciary Policy. See R-28.

9. No evidence was produced by Engine that he was entitled to use vacation time or administrative time for his absence from work.

10. Engine introduced no evidence to support his claim of religious beliefs that prevented him from complying with weekly testing.

11. Engine chose to object to the the Judiciary Policy by voluntarily resigning his position by his text message of August 13, 2021. See R-9.

12. Engine has failed to show that his objection to complying with the Judiciary Policy is other than his voluntary personal decision not to comply with either vaccination or weekly testing.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the employee's guilt or innocence, as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

The burden of persuasion falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Here, appellant has been charged with violation of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the New Jersey Judiciary Policy on COVID-19 Vaccination or Weekly Testing.

"Neglect of duty" has been interpreted to mean "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, initial decision (Feb. 5, 2009) (citation omitted), adopted, Civ. Serv. Comm'n (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the present case, respondent has met its burden of proof by a preponderance of the evidence. Engine's actions were the intentional determination that he was not going to comply with the policy requiring a COVID-19 vaccination or weekly testing. It is

evidenced by his text message to his supervisor that as of August 25, 2021, he was no longer going to report for duty. While he attempted to get a work-at-home accommodation, he had no medical illness to support such a demand. He merely had his objection to the Judiciary Policy. He did not see weekly testing as an accommodation to those who for religious or other medical reasons desired not to obtain a COVID-19 vaccination. He perceived weekly testing as an unacceptable alternative to vaccination, designed solely to make the policy a mandate for vaccination. His perception is not a religious belief, it is an obstinance to accepting the policy. He is entitled to make the decision to neither get vaccinated nor obtain weekly testing. He made that decision. It was not forced upon him. He determined that he was not going to perform his duties. The failure to perform his duties constitutes neglect of duty.

Engine's argumentative e-mail responses to the Human Resources personnel constitute insubordination. Engine's refusal to comply with the policy is also an indication of insubordination. Once respondent has met its burden, the burden shifts to Engine to substantiate his defense by a preponderance of the evidence. Engine has not met that burden.

Engine has asserted that he has a religious objection to obtaining a vaccination. He has failed to establish the basis for the religious objection. He has failed to establish that his rejection of the choice of weekly testing is based upon religious beliefs, rather than his view that testing would be an inconvenience. He has failed to provide any evidence that he was not paid for his vacation time at the time of his severance from service.

I **CONCLUDE** that respondent has met its burden of proof by a preponderance of the evidence that Engine violated N.J.A.C. 4A:2-2.3(a)(2), insubordination, N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the New Jersey Judiciary COVID-19 Vaccination/Weekly Testing Policy.



### **PENALTY**

When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the proofs and penalty on appeal based on the charges presented must be evaluated. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. West New York v. Bock, 38 N.J. at 522–24. Major discipline may include removal, disciplinary demotion, and suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. Here, Engine has no prior negative disciplinary history.

Engine continues to dispute the legality of the Judiciary Policy on COVID-19 Vaccination or Weekly Testing. Engine provided no evidence to this tribunal to support the claim of illegality of the policy. Engine is disgruntled, but he has not shown that the J-MV acted inconsistent with the goal of public safety. There was no evidence introduced by Engine that supports his claim that the vaccinations were produced from aborted fetuses. His unsupported belief is not a religion, and does not mitigate his violations. A lesser penalty than removal would send the wrong message.

Accordingly, I **CONCLUDE** that removal is the appropriate penalty.

**ORDER**

I **ORDER** that Engine's appeal is **DENIED**.

I further **ORDER** that Engine be removed from his employment with the Judiciary–Mercer Vicinage.

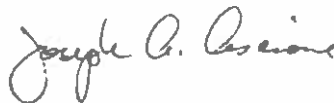
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

July 29, 2024

DATE



\_\_\_\_\_  
**JOSEPH A. ASCIONE, ALJ (Ret., on recall)**

Date Received at Agency:

July 29, 2024

Date Mailed to Parties:  
cc

July 29, 2024

**APPENDIX**

**WITNESSES**

**For appellant:**

Calvin Engine

**For respondent:**

Deidre Hartman-Zohlman

Michael Tomasello

Michelle Gilbert

**EXHIBITS**

**For appellant:**

- |          |  |
|----------|--|
| A-1/J-32 | Performance review of Calvin Engine, 2018                      |
| A-2/J-33 | Performance review of Calvin Engine, 2019                      |
| A-3/J-34 | Performance review of Calvin Engine, 2020                      |
| A-4/J-35 | Judiciary Support Staff Band Specification, Revised 01/29/2018 |

**For respondent:**

- |     |   |
|-----|---|
| R-1 | Notice to the Bar and Public - Court Access All State Court Locations to Reopen to the Public as of Monday August 2, 2021; On-Site Staff Presence to Increase to 100% as of September 7, 2021 - July 16, 2021 |
| R-2 | Broadcast Message - All Judiciary Staff and State Court Judges to be Vaccinated or Tested Weekly for COVID-19 - August 6, 2021  |
| R-3 | Broadcast Message - Judiciary Policy on Vaccination or Weekly Testing of State Court Judges and Staff for COVID-19 - August 11, 2021  |

- R-4 New Jersey Judiciary Policy on COVID-19 Vaccination or Weekly Testing - August 11, 2021
- R-5 Employee Q&A on the Judiciary COVID-19 Vaccination and Testing Policy
- R-6 Emails from Calvin Engine - August 12 and August 13, 2021
- R-7 Email from Deirdre Hartman - August 13, 2021, 10:38 a.m. and email from Calvin Engine - August 13, 2021, 10:47 a.m.
- R-8 Email from Deirdre Hartman - August 13, 2021, 10:55 a.m.
- R-9 Text Message from Calvin Engine to Michael Tomasulo - August 13, 2021, 9:13 p.m.
- R-10 Email from Calvin Engine - August 16, 2021, 8:47 a.m.
- R-11 Email from Michelle Gilbert - August 16, 2021, 5:03 p.m., and email from Calvin Engine - August 17, 2021, 8:28 a.m.
- R-12 Email from Michelle Gilbert - August 25, 2021, 3:53 p.m., and email from Calvin Engine - August 25, 4:40 p.m.
- R-13 Email from Michelle Gilbert - August 26, 2021, 7:25 a.m., and email from Calvin Engine - August 26, 2021, 8:58 a.m.
- R-14 Broadcast Message - Remote Work Policy (August 26, 2021)
- R-15 String email between Calvin Engine and Deirdre Hartman - August 26, 2021
- R-16 Judiciary Leave Policy - July 17, 2020
- R-17 Calendar for August 2021
- R-18 Broadcast Message - Judiciary Staff Remote Work Acknowledgment - September 2, 2021
- R-19 Emails between Michelle Gilbert and Calvin Engine - September 7, 2021
- R-20 Letter to Calvin Engine from Michelle Gilbert - September 7, 2021
- R-21 Remote Work Program for Judiciary Staff September 7, 2021 - August 31, 2022
- R-22 Email from Michelle Gilbert - September 8, 2021, 12:40 p.m. and email from Calvin Engine - September 8, 2021, 1:26 p.m.

- R-23 Broadcast Message - Clarifying Revisions to Judiciary Policy on Extended Remote Work in Exceptional Circumstances - September 8, 2021
- R-24 Notice Immediate Suspension Without Pay - September 13, 2021
- R-25 Email from Calvin Engine - September 14, 2021
- R-26 Notice Decision—Immediate Suspension Without Pay - September 14, 2021
- R-27 Preliminary Notice of Disciplinary Action – September 14, 2021
- R-28 Final Notice of Disciplinary Action – December 2, 2021
- R-29 Declaration of Calvin Engine – December 20, 2022
- R-30 Calendar for September 2021
- R-31 Major Disciplinary Appeal Form Mercer Vicinage – September 20, 2021