STATE OF NEW JERSEY

In the Matters of Talaya Woods and Shauna Ingram, Trenton, Police Department CSC DKT. NOS. 2018-3116 and 2018-3226 OAL DKT. NOS. CSV 06795-18 and CSV 08556-18 (Consolidated)	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: SEPTEMBER 4, 2024

The appeals of Talaya Woods and Shauna Ingram, Public Safety Telecommunicators, Trenton, Police Department, removals, effective April 10, 2018, on charges, were heard by Administrative Law Judge Dean J. Buono (ALJ), who rendered his initial decision on July 24, 2024. Exceptions were filed on behalf of the appellants.

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, the Civil Service Commission, at its meeting of September 4, 2024, accepted the Findings of Fact and Conclusions and his recommendation to uphold the removals.

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).

In this regard, the ALJ found:

> Conversely, both appellants' testimony was not credible at all and in fact assisted the respondent in proving the facts of the case by a preponderance of the evidence. Though the record is replete with the fact that they should have handled it differently, it is equally devoid of them expressing any remorse for their actions. That allows me to believe that they fail to understand the gravity of their action, or more appropriate, inaction, for not complying with the rules. They further detracted from any degree of credibility when each attempted to deflect blame, which further showed that they failed to grasp the gravity of their actions.
>
> After hearing the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, that the Messina rule prevented public safety telecommunicators from leaving the communications building for lunch or any other reason which would require being away for an extended period of time. (R-13.) I **FURTHER FIND** that at no time was the Messina Order rescinded. I **FURTHER FIND** that both appellants left the communications center for extended periods of time without permission. I **FURTHER FIND** that upon occasions when both appellants left the communications center for extended periods of time without permission, 911 calls went unanswered or were diverted to other municipalities.

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.

The appellants also cite to *In the Matter of Simonne Ali* (CSC, decided December 7, 2022), *aff'd by, In the Matter of Simonne Ali,* Docket No. A-001585-22 (App. Div. August 15, 2024) in support of their assertions that they should not be disciplined due to the "equivocal and contradictory nature" of the appointing authority's policy. The Commission disagrees. Initially, the ALJ's found, based on the credible evidence in the record, that the policy was, in fact, in effect and clear to all involved, and violated by the appellants. Moreover, *Ali, supra,* while somewhat factually similar, is unpersuasive. Ali was faced with a "catch-22" scenario where she had multiple duties that were to be performed concurrently and the evidence showed that the appointing authority had conflicting "policy" as to what was required of her in that situation. In that matter, the ALJ found that the credible evidence in the record supported the "equivocal and contradictory nature" of the "policy" such that, Ali did not, in fact, neglect her duties but rather acted in accordance with her

training. In this matter, the appellants were clearly not faced with such a work scenario, and the ALJ found their professed ignorance of the validity or their misinterpretation of the "Messina Order" was not credible.

Regarding the penalty, 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).

In this matter, the Commission agrees with the ALJ that removal is the only appropriate penalty. While the appellants are not law enforcement officers, they worked for a law enforcement agency and their positions dealt specifically with the public's safety and welfare. The seemingly abject indifference the appellants demonstrated in this matter via their actions seriously jeopardized the public safety and placed the appointing authority in an exceedingly vulnerable situation. While the actual misconduct may appear benign, to countenance such action with anything less than removal from employment would be wholly inappropriate. As indicated by the ALJ, "[i]t is difficult to contemplate a more basic example of conduct that could destroy public respect in the delivery of governmental services than the image of public safety telecommunicators walking around the city for more than an hour on their shift. On 166 occasions, 911 calls went unanswered or were diverted to other municipalities. This type of behavior is intolerable and unacceptable." The Commission agrees that such egregious misconduct is inimical to what the public expects, and indeed, should demand from public employees. As such, the Commission finds the penalty of removal for the appellants' actions 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 appellants was justified. The Commission therefore upholds that action and dismisses the appeals of Talaya Woods and Shauna Ingram.

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 4TH DAY OF SEPTEMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
(CONSOLIDATED)

IN THE MATTER OF TALAYA WOODS,	OAL DKT. NO. CSV 06795-18
CITY OF TRENTON, POLICE DEPARTMENT.	AGENCY DKT. NO. 2018-3116

And

IN THE MATTER OF SHAUNA INGRAM,	OAL DKT. NO. CSV 08556-18
CITY OF TRENTON, POLICE DEPARTMENT.	AGENCY DKT. NO. 2018-3226

George T. Dougherty, Esq., for appellants, Talaya Woods and Shauna Ingram (Katz and Dougherty, LLC, attorneys)

Charles R.G. Simmons, Esq., for respondent, City of Trenton, Police Department (Simmons Law, LLC, attorneys)

Record Closed: July 8, 2024 Decided: July 24, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellants Talaya Woods and Shauna Ingram challenge their dismissal from the City of Trenton Police Department, where they worked as emergency communicators.

On April 12, 2018, appellants were found guilty of the charges against them and terminated from the police department. Appellants filed appeals with the Civil Service Commission, which were transmitted to the Office of Administrative Law (OAL). N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Woods' appeal was filed on May 10, 2018, under OAL DKT. NO. CSV 06795-18 and assigned to the Hon. Joseph Ascione, ALJ, and Ingram's appeal was filed on June 11, 2018, under OAL DKT. NO. CSV 08556-18 and assigned to the Hon. David Fritch, ALJ. On September 19, 2018, the matters were consolidated under Judge Fritch at the request of both parties.

On November 25, 2022, Judge Fritch was appointed to the Superior Court, and the matter was then reassigned to me pursuant to N.J.A.C. 1:1-14.13. This matter came before me on a motion for summary decision as to whether the official declaration appellants are alleged to have violated, the Messina Order, was indeed a valid and enforceable declaration at the time of violation or whether the appellants' sergeant, Sergeant Zappley, overruled the Messina Order through verbal communications. Appellants proffered circumstantial evidence of fellow dispatchers no longer following the Messina rule; however, respondent submitted testimony from Sergeant Zappley himself stating he did not overrule the Messina Order. I denied the motion on April 28, 2023, as this was clearly a disputed material fact, and therefore, summary decision was inappropriate.

This case was heard on March 18, 19, and 20, 2024. After the hearing, the parties agreed to discuss and agree on a date for supplemental closing arguments and notify the judge. Transcripts and closing summations were received by May 1, 2024. The record was reopened as I requested clarification from both parties on the exhibits admitted at the hearing. This was due to the fact that many of the exhibits were identified but not admitted. A telephone conference call was held on May 30, 2024, wherein only the respondent's counsel appeared. A telephone conference call was held on June 10, 2024, wherein only the petitioner's counsel appeared. Respondent counsel was the only one who responded to the request. After reviewing the transcript, I discerned the exhibits admitted. Additional time was provided to all parties, absent a response from appellants' counsel the record was closed on July 8, 2024.

FACTUAL DISCUSSION

As found in the motion for summary decision, appellants Talaya Woods and Shauna Ingram worked as public safety telecommunicators for the City of Trenton Police Department. In 2016, appellants were charged with violating the "Messina Order," and despite their otherwise clean disciplinary records, they were both terminated on April 18, 2018, because of the charges. The Messina Order, enacted by Lieutenant Paul Messina in 2011, provided in relevant part that telecommunicators are "not to leave the communication building for lunch or any other reasons which would require being away for an extended period of time." According to the charges, appellants "left the Communications Center, while on duty . . . against department rules and regulations and in Violation of [the Messina Rule]."

Appellants' central argument is that the Messina Order was no longer valid because it was never enforced, and Sergeant Zappley "overruled" it through verbal communications. According to appellants, they were advised by Sergeant Zappley at the outset of his appointment as their police supervisor that they were welcome to spend their meal breaks and other breaks beyond the confines of the communications center for exercise outdoors or in the police exercise room. As a result, many dispatchers from all squads used their meal breaks for exterior walking exercise.

Respondent argues that appellants have misstated the scope of the Messina Order as well as the facts suggesting Sergeant Zappley overruled it. Respondent claims that some of appellants' evidence can be accounted for by the fact that the Messina Rule does not prohibit all excursions from the communications center, only departures without permission and for an extended period. More importantly, however, respondent claims that appellants' evidence is misleading, self-serving, and incorrect.

Talaya Woods was terminated from her position as public safety telecommunicator supervisor after a hearing on March 20, 2018, for violating the following:

- N.J.A.C. 4A:2-2.3(a)(1), General Causes—incompetency, inefficiency or failure to perform duties
- N.J.A.C. 4A:2-2.3(a)(6), General Causes—conduct unbecoming a public employee
- N.J.A.C. 4A:2-2.3(a)(7), General Causes—neglect of duty
- N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Failure to Supervise) (for violating Memorandum Order COM: 2011-026, leaving the building during meal breaks; Memorandum 08-102, Communications Standard Operating Procedure Section XV(c); and Order ADSVC: 2011-002)
- N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Violating Department Orders) (for violating Memorandum Order COM: 2011-026, leaving the building during meal breaks; Memorandum 08-102, Communications Standard Operating Procedure Section XV(c); and Order ADVSC: 2011-002) (R-1).

Appellant Shauna Ingram was terminated from her position as public safety telecommunicator ("dispatcher") after a hearing on March 20, 2018, for violating the following:

- N.J.A.C. 4A:2-2.3(a)(1), General Causes—incompetency, inefficiency or failure to perform duties
- N.J.A.C. 4A:2-2.3(a)(6), General Causes—conduct unbecoming a public employee
- N.J.A.C. 4A:2-2.3(a)(7), General Causes—neglect of duty
- N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Violating Department Orders) (for violating Memorandum Order COM: 2011-026, leaving the building during meal breaks, and Memorandum 08-102, Communications Standard Operating Procedure Section XV(c)) (R-26).

Testimony

Respondent

Chief Grace Cruz-Acosta has been chief of the public telecommunicators safety division in Trenton since 2019. She applied for the job of a telecommunicator to answer 911 calls and direct public safety, which includes police, fire, or EMS, to callers. She has been on the job in the telecommunicator division for thirty-two years.

She described that the communications center is a twenty-four-hour-a-day operation, but each person works a ten-hour shift. The individuals eat lunch and take breaks at their consoles. They get paid for the ten-hour shift, in which lunch is not included. She continually recited that it is set up this way and is different from most other forms of employment because "those calls need to be answered." "If you can get a break, you get a break but we are essential." She did note that workers can take short breaks in the kitchen or lounge area, which is proximate to everyone's consoles.

She was very familiar with the appellants and recalls that Ingram brought Woods into the job. She stated that the fact that both of those individuals walked during their breaks and "left the building" is "disgusting." After reviewing R-29 to explain that it showed the breakdown of 360 911 calls, 14 of which went unanswered, she explained that she did not know if any of those calls were bounced to other townships or if there was a delay in response. She was presented with R-13, which is the policy currently in effect that prohibits leaving the building because of the serious nature of their job.

On cross-examination, Chief Acosta explained that no one ever violated the "Messina rule" under her supervision. Prior to her becoming chief, individuals were permitted to go across the street and obtain food from the store, but they were required to immediately return. It was at those times that other individuals would cover their shift. After obtaining the food, they were required to eat at their desk console. At no time did anybody go outside and eat in their car.

The Messina rule had been around since 1992 and had never been rescinded. Frankly, the only people who ever broke this rule were the appellants, and she

described their conduct as "gross neglect." Appellants work in operation or emergency personnel, and their work is very serious. Individuals are required to respond to the taxpayers who are in need. The fact that Woods was a supervisor and took two other people off the floor is disturbing. Chief Acosta described this as "disgusting." In fact, if Chief Acosta were aware that someone were walking out, she would not confront them because she would believe they were under the influence of drugs. She would simply discipline them through normal procedures. The actions of the appellants show "disgusting behavior" and "theft of services."

Annette Wallace is a public service telecommunicator who worked with Woods in 2016. She recalled that the appellants would leave the dispatch room as soon as they would get in at 9:00 a.m. They would leave for an hour to an hour and a half each day. Wallace described that the remainder of the dispatch area jobs would get harder because appellants' coworkers would have to cover for the people that were missing. Wallace described that it was well known that you are not permitted to leave the property or take extended walks unless approved by the chief or your supervisor. (R-13.)

On cross-examination, she stated that she never left during her ten-hour shift and never heard that the Messina rule was rescinded.

Venetian Frazier has also been a public safety telecommunicator for the past eighteen years. She recalled that the appellants left the dispatch area in 2016 daily for more than an hour, the longest of which was an hour and a half. She recalled that the Messina rule was in effect in 2016 as it is today. The Messina rule was never rescinded. You do not get a lunch break outside of the facility, only in the lunchroom or at your console in case anything happens. You are essentially "eating at your desk." When the appellants would take their daily walks, the workload would increase for the rest of the dispatchers. She explained that if you're not in the room connected to your headset, then there is no way to respond to the calls. The headset is attached to the phone system. There is no Bluetooth. Meal breaks were only granted if the communications division was fully staffed. She said, "When they left, we were short staffed."

Angel Lifton DeBlois is a public safety telecommunicator supervisor. She wrote a report (R-19) regarding the appellants that stated that they were not forthright because in one incident, there were two shootings and a fire that needed to be handled while they were out of the building. She said, "It's a safety issue." She noted that despite the fact that the shootings had no victims and the fire was ongoing, she would have set things up differently at the communications center to do her job correctly and handle both incidents efficiently.

DeBlois was aware that both appellants left the communications center as a major incident was occurring and later called in requesting information on "what was going on." This was unacceptable. At no time was the Messina rule rescinded, and their behavior was a "negative thing and [it was] unacceptable to be out of the room."

Detective Captain John Zappley retired from the Trenton City Police Department as of May 2023. He worked with the appellants in the communications center and propounded of the rules and orders that exist in the department. He stated that a lot of things could be disciplined, but the major discipline was what brought about the Internal Affairs investigation on the appellants. Both appellants were seen walking while on duty for extended periods of time. The walks were never approved by the police director. Although Zappley never saw the appellants walking in person, he did see the video. (R-9.) Zappley authored an administrative report regarding the incidents and chronicled the time-stamped footage of how long they were gone each day.

He recalled that the Messina Order was in effect from 2011 until the date of his retirement. Each of the telecommunicators are afforded one half-hour meal break and two fifteen-minute breaks. During those times, the employees can go to the conference room if the communications center is fully staffed; if not, they are required to remain at their computer consoles. Each individual is paid for a ten-hour shift.

There was a rumor that individuals were working out in the police gym, but it was only a rumor. There was never any investigation because it was simply a rumor. He

retired in May 2023 after receiving disciplinary charges of which he was required to pay back $96,000 in restitution to the city of Trenton.

On cross-examination, he admitted that he had knowledge of the law of progressive discipline. At no point in time did he ever explain to the appellants that they could not leave, or they would be disciplined. However, progressive discipline does not apply here because of the "serious nature" of the offense.

Appellants

Talaya Woods began working for Trenton in 1993 as a record clerk. Thereafter, in 1998 she moved over to the communications center as a dispatcher and then was promoted to supervisor later. She described that as a supervisor, they would have to discipline and investigate any violations of the rules or regulations.

In 1998, she would take her meal breaks as the "new girl" and leave without permission. In 2008, she would receive a thirty-minute meal break and two fifteen-minute breaks. It was "the way they were before" "not officially but everybody just did it." There were "no restrictions kinda sorta." She described that one squad had freedoms because the supervisor was dating a dispatcher, and once word got out "the general consensus" was by word of mouth, not by rule. Woods described that there was a relationship between Vazquez and Santiago, and that laid the groundwork for preferential treatment. She also noted that Grace Cruz-Acosta got preferential treatment in terms of off-the-books accounting and comp time, but nobody ever got in trouble for that except Zappley. Zappley was being "vindictive" here. This became an issue, and the squad was punished because some people were getting comp time and overtime, and others were not. When she got notice of the charges in this case, it was as if it was "put in a glass display" in the conference room.

Woods found out she was being watched by Internal Affairs when they came to her and told her outright. She indicated that when she went for walks she would carry her cell phone and a radio from the station. She would routinely contact PSE&G to turn on lights on the route that they were taking. Also, while out on the walks she would call

in on the radio to find out what was going on at the communications center. When shown the video of the communications center (R-47), she articulated that it showed people simply sitting around "conversating," "6 people sitting with 3 of us gone." She indicated that "if something happened, we would have come back." She explained that the video shows "nobody doing anything productive." Woods testified that when they went walking, there were no phone calls and no jobs coming in, and at no time was she ever "called back."

On cross-examination, Woods admitted that calls must get answered because individuals need help, whether it be police, fire, or EMS. As a supervisor, it's her job to make sure all the calls get answered. She disputes the accuracy of R-29 that delineates the times they were out and calls went unanswered. Woods believes that she checked all the calls when they returned. However, she also admitted that she could not believe that 166 calls went unanswered because when she went "on walks she did not know everything that went on in the room." Woods reiterated that when the appellants would go on walks, there was "nothing going on."

The Messina Order was not specifically followed and was "disregarded continuously." Others are "doing what they are supposed to be doing for the most part" with the approval of Zappley. There is nothing in writing that rescinded the Messina rule. However, she is clearly being singled out because she complained about the comp time. She said, "I would have been nailed to the cross." She articulated that some of the walks that she took were in the parking lot, but some were out to Olden Avenue about a quarter of a mile away. Finally, she stated that she did not think leaving was the problem, but it was clearly the length of time that was the issue.

Debbie Parks has been the associate director of the American Federation of State, County, and Municipal Employees (AFCME) since 2002. She recalled that they were having issues at the communications center, and a meeting was set up between City Hall and the police. There was a discussion on the Messina rule, and it was a fact that the rule was not relevant because Messina retired. Although she couldn't recall the conversation, her recollection of the events of the meeting was better back then than it is today.

Shauna Ingram testified that she was a shop steward and present at the labor and management meeting when Captain Gonzalez expressed that the Messina rule was void. She explained that her recollection was better than Ms. Parks'. Captain Gonzalez stated that Messina no longer works, so the rule is null and void. Zappley was agitated. There was also a discussion about the use of the gym.

"It was common knowledge" that you had to ask permission to leave the station if there were active calls for action, including any shootings or fires. She also admitted that the communications division of the Trenton police is the "ultimate customer service job." "There was never anything said or outlined that you couldn't walk." In fact, she walked every day on meal breaks. Some individuals left, some worked out, and she walked. Other dispatchers walked with them. They did not have to contact any police for permission to walk. Everyone saw them walking. She stated that Woods carried a radio, and no one ever called on the radio for their assistance.

On cross-examination, Ingram admitted the size of the police and fire construct. It is very important to have a communications division because it is critical to the essential function of the city. She explained that without communications, much of the city would shut down essential services. If calls did not get answered, they would be bounced to Hamilton, Ewing, or Lawrence.

It made sense to her that with a new police supervisor, the old police supervisor's orders and rules would be discarded, and you would start anew. She said, "Nobody was enforcing anything" and "everyone is an adult"; that was the "culture of the room." However, she admitted that when the appellants walked, she was not "providing customer service." In fact, the time she was away from the communications center exceeded her allotted meal and break time, but this was the "culture of the room." On nine separate occasions, in fact, she admitted that occasionally they stayed too long on walks, but there was nothing going on at the time. R-29 was "made up" and just simply displays the worst of the worst. Ingram finally conceded that the point of the charges being filed against them was that the appellants were out of the building for a lengthy

period, not that there was "nothing going on." Nobody knows when something is going to happen or when a 911 call could occur.

Findings of Fact

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "'[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.'" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The testimony of the respondent's witnesses was especially credible and persuasive. Their testimony was clear and concise. It was obvious that they all had concerns about these incidents and the safety of their fellow police officers, firefighters, EMTs, and the citizens of Trenton. Also, they had concerns about the lack of respect that appellants had for their superiors and the citizens of Trenton. The testimony of Chief Cruz-Acosta was particularly compelling.

Conversely, both appellants' testimony was not credible at all and in fact assisted the respondent in proving the facts of the case by a preponderance of the evidence. Though the record is replete with the fact that they should have handled it differently, it

is equally devoid of them expressing any remorse for their actions. That allows me to believe that they fail to understand the gravity of their action, or more appropriate, inaction, for not complying with the rules. They further detracted from any degree of credibility when each attempted to deflect blame, which further showed that they failed to grasp the gravity of their actions.

After hearing the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, that the Messina rule prevented public safety telecommunicators from leaving the communications building for lunch or any other reason which would require being away for an extended period of time. (R-13.) I **FURTHER FIND** that at no time was the Messina Order rescinded. I **FURTHER FIND** that both appellants left the communications center for extended periods of time without permission. I **FURTHER FIND** that upon occasions when both appellants left the communications center for extended periods of time without permission, 911 calls went unanswered or were diverted to other municipalities.

LEGAL ARGUMENT AND CONCLUSION

Talaya Woods was terminated from her position as public safety telecommunicator supervisor after a hearing on March 20, 2018, for violating the following: N.J.A.C. 4A:2-2.3(a)(1), General Causes—incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), General Causes—conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), General Causes—neglect of duty; N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Failure to Supervise); and N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Violating Department Orders). (R-1.)

Appellant Shauna Ingram was terminated from her position as public safety telecommunicator after a hearing on March 20, 2018, for violating the following: N.J.A.C. 4A:2-2.3(a)(1), General Causes—incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), General Causes—conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), General Causes—neglect of duty; and N.J.A.C.

4A:2-2.3(a)(12), General Causes—other sufficient cause (Violating Department Orders). (R-26.)

I will address each individual charge for each individual appellant so there is no confusion. Some charges are duplicative for each appellant and will be dealt with together.

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). A civil service employee who commits a wrongful act related to his or her duties or gives other just cause may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellants. An appeal to the Civil Service Commission requires the OAL to conduct a hearing de novo to determine the appellants' 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). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellants were guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Respondent sustained charges against both appellants for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "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 which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." 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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

It is difficult to contemplate a more basic example of conduct that could destroy public respect in the delivery of governmental services than the image of public safety telecommunicators walking around the city for more than an hour on their shift. On 166 occasions, 911 calls went unanswered or were diverted to other municipalities. This type of behavior is intolerable and unacceptable. I **CONCLUDE** that both appellants' actions constitute unbecoming conduct. The charges of violating conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), are hereby **SUSTAINED**.

The respondent also sustained charges against both appellants for a violation of N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although

the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military & Veterans' Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Pub. Safety, 92 N.J.A.R. 2d (CSV) 214.

Again, it is difficult to contemplate a more basic example of neglect of duty than the image of a public safety telecommunications dispatcher doing as she so chooses by coming and going of her own volition while 911 calls are being unanswered. Ironically, Chief Cruz-Acosta stated it best during her testimony that the actions of both appellants were "such a neglect of duty, because we service the taxpayers," but "to leave the building and walk around and take two dispatchers with her brings a manpower shortage to the operation, to the shift, to the call taking, to the duties, so who's working their duties while they are walking around is beyond me." I **CONCLUDE** that both appellants' actions constitute neglect of duty. The charges of violating N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, are hereby **SUSTAINED**.

Here, Ingram has been charged with a violation of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties. The testimony, including her own, clearly establishes that she failed to follow the Messina rule when taking breaks for meals. In doing so, she clearly risked the lives of police officers, firefighters, EMS, and citizens. Incompetency abounds here when she fails to comprehend the gravity of her actions. Incompetency at this level is inexcusable. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of incompetency, inefficiency or failure to perform duties. The charges of violating N.J.A.C. 4A:2-2.3(a)(1) are hereby **SUSTAINED**.

Appellants have also been charged with violations of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Specifically, Talaya Woods is charged with violations of failure to supervise and violating departmental orders. Shauna Ingram was charged with violating departmental orders. It is noted that the Final Notices of Disciplinary Action (R-1; R-26) indicate the sustained charges. I **CONCLUDE** that consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) will

be limited to the regulations, rules, and general orders specifically enumerated in the Final Notices of Disciplinary Action. (R-1; R-26.)

The charge of "other sufficient cause," in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically involves violations of the "Messina Rule." One of the key issues debated at the hearing was the February 14, 2011, Order from Paul D. Messina (the "Messina Order"). The Messina Order was admitted into evidence without objection as R-13. The Messina Order forbids dispatchers from leaving the communications building for extended periods of time on meal breaks. Respondent's witnesses all testified that the Messina Order was in effect during the time in question here. Testimony from the appellants indicated that it made sense that the new police supervisor would institute their own rules and any of the rules from the previous supervisor would be simply nonexistent. Both appellants testified that it was their "belief" that "nobody was enforcing anything." However, this is not a lucid thought nor a practical application of rules of civility, nor is it even a cognizable application of common sense. There is no evidence whatsoever to indicate that the Messina rule was not in effect. The perception that both appellants are simply the victims of a plot against them is misguided. Disturbing is that the testimony from both individuals indicates that even to this day, neither appellant recognizes the potential for disaster if the communications center is not properly manned. I **CONCLUDE** that the respondent has met its burden of proof on the charges against both appellants for violating N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) and that the charges are hereby **SUSTAINED**.

PENALTY

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). 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. Henry v. Rahway State Prison, 81 N.J. 571 (1980); In re Herrmann, 192 N.J. 19, 33–34 (2007). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather,

it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid. (Appellants also cite In re Stallworth, 208 N.J. 182, 195–96 (2011), and Feldman v. Irvington Fire Department, 162 N.J. Super. 177 (App. Div. 1978), to support progressive discipline, particularly consideration of the mitigating factors.)

Respondent relies principally on the egregiousness of both appellants' conduct and the policies and procedures that both appellants failed to adhere to in asserting that progressive discipline is not warranted, and that termination is appropriate for this discipline, particularly because the facility is operated as a paramilitary organization, and, as such, rules and regulations are to be strictly followed. Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority are not to be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The charges here are particularly egregious, in that a public safety telecommunicator is akin to a law-enforcement officer who is held to a higher standard of conduct than other employees and expected to act in a responsible manner, honestly, and with integrity, fidelity, and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. East Jersey State Prison, 97 N.J.A.R. 2d (CSV) 166.

Appellants seek a reduction of the penalty from termination to suspension based on mitigating circumstances, urging that their conduct was acceptable under the circumstances because they "thought" the rule was not in effect any longer and no one got hurt. Appellants cite cases in support of progressive discipline and cases about civilian civil-service employees who avoided removal.

Here, the respondent seeks removal of the appellants because of the underlying conduct. The appellants have been employed as public safety telecommunicators and

do not have any other disciplinary history. The aggravating factors as articulated above are significant, and the mitigating factors nonexistent.

Having weighed the aggravating and mitigating factors and the proofs presented, I **CONCLUDE** that appellants' misconduct was so egregious as to warrant removal, and respondent's action of removing the appellants from their positions was appropriate. I **CONCLUDE** that the action of the appointing authority removing appellants for their actions should be affirmed.

ORDER

I **ORDER** that the charges against Talaya Woods for violations of N.J.A.C. 4A:2-2.3(a)(1), General Causes—incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), General Causes—conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), General Causes—neglect of duty; N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Failure to Supervise); and N.J.A.C. 4A:2-2.3(a)(12), and General Causes—other sufficient cause (Violating Department Orders) be **SUSTAINED**. I **FURTHER ORDER** respondent's action terminating Talaya Woods is hereby **SUSTAINED**, and her appeal be **DISMISSED**.

I **ORDER** that the charges against Shauna Ingram for violations of N.J.A.C. 4A:2-2.3(a)(1), General Causes—incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), General Causes—conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), General Causes—neglect of duty, and N.J.A.C. 4A:2-2.3(a)(12), General Causes—other sufficient cause (Violating Department Orders) be **SUSTAINED**. I **FURTHER ORDER** respondent's action terminating Shauna Ingram is hereby **SUSTAINED**, and her appeal be **DISMISSED**.

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.

July 24,2024
DATE

DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/onl/cb

APPENDIX

WITNESSES

For appellants

Talaya Woods

Debbie Parks

Shauna Ingram

For respondent

Chief Grace Cruz-Acosta

Annette Wallace

Venetian Frazier

Angel Lifton DeBlois

Detective Captain John Zappley

EXHIBITS

For appellants

A-7; Certification of Det. Captain John Zappley

For respondent

R-1 FNDA and Classification, dated April 12, 2018 (Talaya Woods)

R-2 Trenton Police Suspension Notice, dated September 21, 2016 (Talaya Woods)

R-3 Shauna Ingram Statement, dated July 27, 2017 - Signed

R-4 Talaya Woods Statement, dated April 26, 2018 - Signed

R-5 Tapia Report

R-6 Swan Report, dated September 27, 2016

R-7 Zappley Memo, dated October 2, 2014 – "Stacked Calls"

R-8 Trenton Police Department Administrative Report by R. Inverso

R-9 Trenton Police Department Administrative Report by J. Zappley

R-11 Astbury Administrative Report, dated September 11, 2016

R-13 P. Messina Order, dated February 14, 2011
R-15 Johnson-Riley Disciplinary History
R-16 Woods Disciplinary History
R-17 Ingram Disciplinary History
R-18 SOP Regarding Breaks
R-19 Trenton Police Department Administrative Report, dated August 16, 2016 - Angel Lifton
R-20 CAD Report: Trenton Police and Fire, dated August 12, 2016
R-26 Ingram FNDA, dated April 12, 2018
R-29 Abandoned Calls Log 2016
R-34 Woods Ingram Dropped Calls 1
R-35 Woods Ingram Dropped Calls 2
R-36 Woods Ingram Dropped Calls 3
R-37 Woods Ingram Dropped Calls 4
R-38 Woods Ingram Dropped Calls 5
R-39 Woods Ingram Dropped Calls 6
R-40 Woods Ingram Dropped Calls 7
R-41 Woods Ingram Dropped Calls 8
R-42 Woods Ingram Dropped Calls 9
R-43 Woods Ingram Dropped Calls 10
R-44 Woods Ingram Dropped Calls 11
R-45 Woods Ingram Dropped Calls 12
R-46 Woods Ingram Dropped Calls 13
R-47 Trenton Police HQ Communications Cameras, August 10, 2016
R-48 Trenton Police HQ Communications Cameras, August 3, 2016
R-49 Trenton Police HQ Communications Cameras, August 10, 2016 - Night Channel 4
R-50 Talaya Phone Call, August 11, 2016
R-51 Trenton Police HQ Communications Cameras, August 11, 2016
R-52 IA16-0110, August 15, 2016
R-53 Pole Camera, August 16, 2016
R-54 Communications IA16-0110, August 16, 2016
R-55 Trenton Police HQ Communications Cameras, August 22, 2016

R-56 Trenton Police HQ Communications Cameras, August 21, 2016

R-57 Trenton Police HQ N. Clinton Ave and Perry St. IA16-0110

R-58 Trenton Police HQ N. Clinton Ave and Perry St., August 22, 2016

R-59 Trenton Police Communications Cameras, August 29, 2016

R-60 Trenton Police Communications Cameras, August 23, 2016

R-61 Trenton Police HQ Communications Cameras, August 27, 2016

R-62 Trenton Police GQ N. Clinton Ave and Perry St., August 27, 2017

R-63 Trenton Police #2 HQ N. Clinton Ave and Perry St., August 28, 2016

R-64 Headquarters Front, September 3, 2016

R-65 Headquarters Front, September 2, 2016

R-66 Trenton Police HQ Communications Cameras, August 10, 2016 - Night Channel 1, 2, & 3

R-67 Trenton Police HQ Communications Cameras, August 4, 2016

R-68 Trenton Police HQ Communications Cameras, August 11, 2016 - Channel 4