



STATE OF NEW JERSEY

In the Matter of Jorge Flores,
Camden County, Sheriff's
Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2024-645
OAL Docket No. CSV 09665-23

ISSUED: FEBRUARY 5, 2025

The appeal of Jorge Flores, Sheriff's Officer, Camden County, Sheriff's Department, 30 working day suspension, on charges was heard by Administrative Law Judge Rebecca C. Lafferty (ALJ), who rendered her initial decision on December 23, 2024. Exceptions and a reply were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on February 5, 2025, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to uphold the 30 working day suspension and demotion.

In the appellant's exceptions, he argues that based on his prior record as well as the sustained infractions, that a 30 working day suspension is too harsh a penalty. The Commission disagrees. In this regard, the Commission agrees that the originally imposed suspension is appropriate for the sustained infractions. In this regard, similar to its assessment of the charges, the Commission 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). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a Sheriff’s Officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990).

In this matter, in recommending upholding the 30 working day suspension, the ALJ stated:

The penalty sought by the respondent is a thirty working day suspension without pay. Turner testified that he recommended a thirty working day suspension based upon a number of factors, including, that an emergency situation did not exist at the time and that motor vehicle violations as well as violations of the Rules occurred. Turner believed that the penalty was warranted based on his review of the file. The appellant has only one prior minor disciplinary action consisting of written reprimand for the misuse of sick time. While the penalty of a thirty working day suspension is significant and is a jump for an officer with little disciplinary history, the appropriate focus must be given to the nature and seriousness of the appellant’s actions. The serious nature of appellant’s actions warrants imposition of major discipline. The appellant was operating a department vehicle negligently or carelessly in violation of several motor vehicle laws and Rules and General Orders and in such a way that it ultimately caused injuries to the public as well as significant property damage to both the department vehicle and the private citizen’s vehicle.

The Commission agrees with the ALJ’s penalty analysis. While the appellant was remorseful afterward, the upheld misconduct is extremely serious and worthy of a significant sanction, especially given the appellant’s status as a law enforcement officer. His improper actions caused both property damage and injuries. Accordingly, the 30 working day suspension imposed should serve as a clear message to the appellant as to the inappropriateness of his actions and signify that any future misconduct will result in more severe disciplinary action, up to removal from employment.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 30 working days was justified. The Commission therefore upholds that action and dismisses the appeal of Jorge Flores.

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 5TH DAY OF FEBRUARY, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CORRECTED

INITIAL DECISION

OAL DKT. NO. CSV 09665-2023

AGENCY DKT. NO. 2024-645

**IN THE MATTER OF JORGE FLORES,
CAMDEN COUNTY SHERIFF'S
DEPARTMENT.**

Stuart J. Alterman, Esq., for appellant, Jorge Flores (Alterman & Associates, LLC,
attorneys)¹

Brandon Hawkins, Esq., Assistant County Counsel, for respondent, Camden
County Sheriff's Department (Office of Camden County Counsel, attorneys)

Record Closed: August 12, 2024

Decided: December 23, 2024

BEFORE REBECCA C. LAFFERTY, ALJ

STATEMENT OF THE CASE

Appellant, Jorge Flores (Flores or appellant), a Sheriff's Officer for the Camden County Sheriff's Department, appeals the imposition of a thirty working-day suspension effective September 18, 2023, by the respondent, Camden County Sheriff's Department

¹ John Ferner, Esq. represented the appellant at the time of hearing but subsequently left the firm of Alterman & Associates, LLC prior to the submission of the post-hearing briefs in this matter. A post-hearing brief, dated May 31, 2024, was submitted on the appellant's behalf by Stuart J. Alterman, Esq. The Office of Administrative Law has not received a substitution of attorney indicating that Mr. Ferner remains as counsel to the appellant.

(CCSD or respondent). The following charges resulting from a motor vehicle accident that occurred on July 7, 2022, are contained in the Final Notice of Disciplinary Action (FNDA), dated September 7, 2023: Count I – N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming a Public Employee; Count II – N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty; Count III – N.J.A.C. 4A:2-2.3(a)(8) – Misuse of public property, including motor vehicles; Count IV – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause; Count V – Sheriff's Office Rules & Regulations 3:2.7 – Neglect of Duty; Count VI – Sheriff's Office Rules & Regulations 3:2.6 – General Responsibilities; Count VII – Sheriff's Office Rules & Regulations 3:3.1 – Obedience to Laws, Regulations, and Policy, specifically, Sheriff's Office General Order 29.00 – Vehicle Rules and Procedures, and General Order 31.00 – Operation of Police Vehicles/Pursuit Policy; Count VIII – Sheriff's Office Rules & Regulations 4:5.4 – Operation of Motor Vehicles; and Count IX – Sheriff's Office Rules & Regulations 4:5.6 – Care of Department Vehicles. (R-2.)

The appellant denies the charges and asserts that the respondent failed to meet its burden of proof that the appellant's involvement in the motor vehicle accident at issue supports the charges in the FNDA. The appellant further disputes that the appellant's involvement in the motor vehicle accident warrants a thirty working day suspension. Should the thirty working day suspension be sustained? Yes. The respondent established by a preponderance of the competent, relevant, and credible evidence that the charges resulting from the motor vehicle accident involving the appellant were appropriate and should be sustained.

PROCEDURAL HISTORY

On May 3, 2023, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA) containing charges stemming from a motor vehicle accident that occurred on July 7, 2022. (R-1.) The appellant requested a departmental hearing, which was held on August 29, 2023. Following the departmental hearing, the respondent issued the FNDA on September 7, 2023. (R-2.) On September 11, 2023, the appellant filed an appeal of the FNDA. On September 21, 2023, the matter was transmitted to the Office of

Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 40A:14-202(d). A settlement conference was held with Judge Joseph Ascione on November 14, 2023. The matter was unable to be resolved, and the matter was reassigned.

A Prehearing Conference was held on February 1, 2024, and a Prehearing Order was entered on February 2, 2024. See February 2, 2024 Prehearing Order. There was a one-day hearing held on March 25, 2024. The parties were given time to obtain the transcript of the hearing and submit summation briefs, and upon receipt of summation briefs, the record was closed on June 7, 2024. The record was reopened on July 16, 2024, to obtain additional documentation. The record closed again on August 12, 2024. A request for an extension for filing the Initial Decision in this matter was requested and granted, extending the date for filing the Initial Decision to November 15, 2024. A request for a second extension for filing the Initial Decision in this matter was requested and granted, extending the date for filing the Initial Decision to December 30, 2024.

DISCUSSION OF FACTS

Detective Michael Kelhower (Kelhower) testified on behalf of the respondent. Kelhower is a detective in the Internal Affairs (IA) division of the CCSD. He has been employed by the CCSD since January 3, 2017, and has been in IA for approximately two years, where his duties include compliance and investigation of matters involving CCSD officers.

On July 7, 2022, he was notified that Flores was involved in a motor vehicle accident in a CCSD vehicle while on duty. He confirmed that Flores activated his body camera at the time of the accident. (R-17.) Kelhower testified that the body camera footage first showed Flores driving through a red light. (R-17.) The body camera video then showed a large landscaping truck in the left lane in Flores' same direction of travel making a wide right turn. (R-17.) The body camera video also showed Flores swerving left into oncoming traffic and striking a passenger van. (R-17.) Kelhower explained the way that body cameras work is that when an officer double taps the button, there is a

thirty second buffer where the video of the previous thirty seconds is shown, but there is no sound, then the sound begins recording.

The road on which the accident occurred is a four-lane road, with two lanes in each direction separated by double yellow lines. The crash data retrieved from the CCSD vehicle by the Camden County Prosecutor's Office (CCPO) determined that that Flores was traveling forty-four miles per hour in a thirty-five mile per hour zone. (R-10.) Kelhower confirmed that Flores was not responding to an emergency at the time that he proceeded through the red light. He further stated that even during an emergency, officers are required to stop at red lights, activate their lights and sirens, and then they may proceed through a red light but only if they are responding to an emergency.

He interviewed Flores during his investigation of the accident. (R-6.) During the interview, Flores admitted that at the time he drove through the red light, his sirens and lights were not activated, and he was not responding to an emergency. (R-6 at 5, line 25 to page 6, line 13.) Flores agreed that the accident could have been avoided had he not proceeded through the red light just prior to the accident and he further agreed that he had made a poor decision. (R-6 at page 7 lines 12-16.; R-6 at page 8, lines 20-22.)

Kelhower prepared an IA investigation report in which he concluded that Flores violated multiple regulations, orders, and motor vehicle laws and caused the accident. (R-7.)

On cross-examination, Kelhower testified that prior to being employed by the CCSD, he was a corrections officer for the Camden County Department of Corrections. He never served as a detective prior to becoming a detective in IA with the CCSD. He attends a biannual training course for IA detectives that is administered by the CCPO. He has no specialized training in motor vehicle crash investigation, has never authored a motor vehicle crash report, and has no experience in investigating motor vehicle crashes. He agreed that his job is to investigate incidents involve CCSD officers in a neutral manner to determine what happened in a particular case. He agreed that witness

statements should be obtained as soon as possible while the incident is still "fresh" in the person's mind, but he said that sometimes witness statements are not necessary if the body camera footage is complete. He also agreed that photographs are important if there is incomplete body camera footage.

In this case, during his investigation, he reviewed all the body camera footage and some of the reports, and he did not believe it was necessary to interview any witnesses – either the occupants of the landscaping truck or those in the passenger van – due to the completeness of the body camera footage. He confirmed that he did not respond to the crash scene to investigate, he did not physically inspect the passenger van, and he did not obtain crash photographs until they were requested by Flores' counsel. He saw the CCSD vehicle when the crash data box was retrieved by the CCPO. Neither he, nor the CCPO requested the crash data box from the passenger van.

Kelhower further testified that on the date of the accident, Flores was assigned to the Special Investigations Bureau of the CCSD. An officer working an extra duty detail at the Department of Motor Vehicles called for backup and Flores, along with several other officers, responded to assist with detaining an unruly customer. After the customer was detained, Flores was assigned to follow the vehicle that was transporting the arrestee. Flores was operating an unmarked 2010 Ford Explorer on Mt. Ephraim Avenue which is a four-lane road, with two northbound lanes and two southbound lanes. Solid yellow lines separate the northbound and southbound lanes. The posted speed limit on Mt. Ephraim Avenue is thirty-five miles per hour and the road surface is level. (R-12 and P-1.) Flores was traveling northbound in the right lane, the landscaping truck was in the left northbound lane, and the passenger van was traveling southbound in the left lane. The intersection of Mt. Ephraim Avenue and Ferry Avenue is .1 mile from the site of the accident. (R-12 and P-1.) Prior to the crash, the truck and trailer made a right-hand turn across Flores' lane of travel, but Kelhower did not agree that Flores was "cut-off" because Flores was far enough back. He stated that Flores swerved into the oncoming lane of traffic to avoid hitting the truck and trailer. After impact, the airbags in both vehicles deployed and there were injuries to Flores and the occupants of the passenger van that

was struck – Flores reported knee/leg pain, the driver of the passenger van had a visible abrasion to the face, and the passenger in the van reported chest and shoulder pain.

From the body camera footage, Kelhower observed that immediately after the collision, the driver of the passenger van was not in the driver's seat, but rather in between the driver's seat and backset, but he would not speculate whether the driver was wearing her seatbelt at the time of the accident. Kelhower agreed that N.J.S.A. 39:4-82 provides that drivers have a duty to drive in the right lane, but the body camera footage reflects that the passenger van was traveling in the left southbound lane, rather than the right southbound lane at the time of impact. He also agreed that the body worn camera footage does not show a vehicle traveling in the right southbound lane immediately to the right of the van. Kelhower does not know how fast the passenger van was traveling at the time of impact or whether it tried to brake. Kelhower was also not aware if the speedometer in the department vehicle was calibrated or certified.

He agreed that the New Jersey Crash Investigation Report (Crash Report) indicates an apparent contributing circumstance of the accident was coded in blocks 118a and 118b as "Other Drive/Pedalcyclist Action", and that below the narrative in the Crash Report, the investigating officer noted "truck took wide turn – Field 118a". (R-12 and P-1.) He also agreed that no summonses were issued as a result of this crash and the narrative of the Crash Report states in part, "V1 was driving north bound on Mt. Ephraim when a truck with a trailer connected made a wide right turn causing V1 to have to veer left into the southbound lane striking V2 head on." (R-12.)

Kelhower further agreed that after the crash, Flores, immediately called for assistance, including EMS and other officers, and checked on the passengers in the van. Kelhower himself is not aware of any serious injuries resulting from the accident.

Kelhower confirmed that the Commander of the IA unit and the Undersheriff determine whether an IA investigation takes place. He said an initial review is undertaken and if there are concerns or deficiencies, the unit goes a step further and conducts an

investigation into the matter. Kelhower stated that sometimes matters that are investigated result in not being sustained. He said that the IA unit "reviews" all officer involved crashes, but the reviews do not always lead to "investigations".

Kelhower stated that he was familiar with the CCSD Disciplinary Code (Code) and that the stated purpose of the Code, as well as the New Jersey Attorney General's Internal Affairs Policy (NJAG IA Policy). He agreed that the NJAG IA Policy lists "faulty driving" as a minor rule infraction. Kelhower testified that Flores was involved in a prior motor vehicle crash in which there were no violations of rules and regulations. As the IA detective investigating, Kelhower does not get involved in the determination of discipline after the investigation is completed, nor does he review prior discipline as part of his investigation. As the investigating officer, Kelhower drafts the charges and specifications contained in the PNDA and the Undersheriff reviews the investigation and recommends discipline, but it is ultimately the Sheriff that makes the final decision regarding discipline.

Kelhower agreed that under the Office of the Sheriff Manual of Rules and Regulations (Rules) there are different classes of offenses, but he could not independently recall the corresponding recommended penalties for those classes. He agreed that neglect of duty and obedience to laws, rules, and regulations are Class II offenses under the Rules, care of department vehicles is a Class III offense, and operation of motor vehicles is a Class IV offense. He also agreed that there are no suggested penalties in the Rules for the violations of the New Jersey Administrative Code because those are separate from the Rules and penalties are subject to the discretion of the Undersheriff and Sheriff. He believes that the Undersheriff only reviews the violations of the Rules in formulating suggested discipline.

From his time working with Flores, Kelhower said Flores is a good officer, he was trained adequately and has the level of skill that would be expected of someone of his experience and training. Kelhower did not believe the morale of the department was affected by this accident, and other than taking a car out of service, it did not affect the efficiency or competency of the CCSD to deliver services to the community. He could not

say whether or not Flores complied with the General Order 29.00 requiring officers to maintain the vehicle, including fluids, gas, and tire inspection, but the charge was included in the PNDA that he drafted. Kelhower also included a violation of General Order 31.00 in the PNDA, the operation of police vehicles/pursuit policy, the purpose of the policy being for the proper and safe operation of police vehicles so that officers arrive safely to perform their duties in a professional manner. On the day of the accident, Flores was assigned to the special investigations bureau and was following a transport car – he was not responding to an emergency, and he was not in pursuit.

Kelhower confirmed that the officer from the Camden County Police Department (CCPD) who wrote the Crash Report did not issue any summonses and thus determined based on his brief investigation that Flores was not in violation of any law. However, Kelhower stated that he stands by the IA investigation and the determination that Flores was at fault for the accident and that the accident could have been prevented. He agreed that Flores was cooperative, followed all procedures and orders given to him after the crash, was not “horsing around” just prior to the accident, and that no criminal charges were issued from this accident; however, he reiterated that Flores was at fault for the accident and that the accident could have been prevented. While Kelhower did not believe that Flores was driving with a specific intent to harm others, he believed that Flores was driving with an overall lack of care of the safety of himself and others. He agreed that the accident did not occur within the intersection at the red light.

Kelhower further testified that a trail car is required to follow another police vehicle at a safe distance in case a situation arises in which the lead car requires assistance. Flores’ assignment following as the trail car did not necessitate him driving through a red light or speeding as there was no immediate or emergent situation at the time. If Flores did need to drive through a red light, he was required to activate his lights and siren. Kelhower had not received any prior reports that the speedometer in the vehicle Flores was driving was inaccurate.

Kelhower further testified that the CCPD never requested to review the body camera footage. Additionally, while the CCPO declined to pursue criminal charges for the accident, they referred the matter back to the CCSD for any administrative investigation that the department deemed was appropriate based upon their finding that Flores' failure to stop at the traffic signal at Mount Ephraim Avenue and that he was driving over the speed limit reflected that Flores was "driving in an unsafe manner". (R-10 and R-11.)

Undersheriff **Robert Turner** (Turner) also testified on behalf of the respondent. Turner has been the Undersheriff at the CCSD for about eight and a half years. His duties include supervising the IA Unit and the Civil Process Unit. Turner previously served as a Camden City police officer for twenty-six years prior to becoming the Undersheriff. As supervisor of the IA Unit, he reviews investigations once they are complete, makes recommendations, and forwards them to the Sheriff for review.

Turner reviewed all documents related to this investigation, but did not review the body camera video footage. Turner is the one who made the recommendation for a thirty-day suspension based upon a number of factors, including, that an emergency situation did not exist at the time and that motor vehicle violations as well as violations of the Rules occurred. Turner believes that the penalty was warranted based on his review of the file.

The Rules have different classes of offenses with different recommended penalties for each. Turner believed there were class I and class II offenses involved in this matter. The recommended range of penalties for a class II violation can range from a written reprimand to a dismissal. The severity of the incident, length of service with the department, and any prior disciplinary history are factors that would weigh on the recommendation.

Turner confirmed that Flores was assigned an unmarked 2010 Ford Explorer on the date in question. Turner stated that vehicles remain as part of the fleet as long as

they are properly functioning – once a vehicle begins to cost the County money for repairs, the vehicle is taken out of service.

Turner agreed that mitigating factors are taken into consideration when determining a penalty for an officer. He agreed that after the accident Flores took command of the situation, checked on the passengers of the other vehicle, and that he was proud of how Flores conducted himself after the crash. Turner is not aware of any civil complaints or tort claims notices as a result of this accident.

Turner further agreed that the purposes behind the Rules are (1) to protect employees from false charges of misconduct or wrongdoing and to provide accused officers with due process safeguards; and (2) to monitor officers' compliance with the Rules, regulations, and procedures. Factors to be considered when implementing discipline include the nature of the offense and the need to deter other officers or the accused. Turner confirmed that the CCSD is subject to the AG Guidelines on IA. Those guidelines distinguish between minor rule infractions (untidiness, tardiness, faulty driving and failure to follow procedures), and major infractions. While a first offense for a motor vehicle accident could constitute minor discipline, it depends on the nature of the accident and severity of the injuries.

This was the first motor vehicle accident for Flores, the only other prior discipline was a written reprimand for a violation of the sick time policy. While this incident was under investigation, Flores' driving privileges for the CCSD were revoked and he was assigned to duty at the Hall of Justice, which limited his job opportunities.

Jorge Flores (Flores) testified on his own behalf. Flores was hired by the CCSD in December 2017, where he has been employed for approximately six and a half years, His current position with the CCSD is Sheriff's Officer and he is currently assigned to the probation division located in Cherry Hill. During his time with the CCSD, he has received numerous meritorious awards and unit citations for the special investigative unit. Flores

previously served five and a half years with the Army National Guard including one year overseas with Operation Inherent Resolve before joining the CCSD.

On July 7, 2022, Flores was assigned to the special investigative unit for fugitive recovery. He was called to assist a fellow officer at the Division of Motor Vehicles to assist with an unruly individual. After the individual was arrested, Flores was directed to trail the police vehicle containing the arrestee for officer safety reasons. Flores was alone in his CCSD vehicle driving northbound on Mount Ephraim Avenue following the lead police vehicle. As he approached the intersection with Ferry Avenue, the traffic light at the intersection was red. He slowed down and did not see any cars awaiting the green light on Ferry Avenue and then proceeded to pass through the intersection on the red light without his lights or siren activated. After crossing the intersection, Flores saw a truck towing a "box storage unit" that made a hard right turn across his lane. He swerved left into oncoming traffic to avoid hitting the trailer of the truck and struck another vehicle that was traveling southbound. Flores admitted that he was not responding to an emergency at the time he crossed the intersection against the red light – he had lost sight of the lead police vehicle in front of him and was trying to catch up to it.

Immediately after the accident, Flores called central communications and advised them of the accident. He then went over to the other vehicle to check on the occupants and called for medical assistance. There were only two occupants in the other vehicle – the driver who had visible facial abrasions and complained about her forehead, and the passenger who was complaining about her chest. Flores was also injured in the accident. He sustained bilateral bone bruising to his knees, hands, joints, and fingers that caused him to be out of work for over a week.

The CCPD, Metro Division responded to the accident and completed the Crash Report. Flores gave a statement to the CCPD while at the hospital. He was not directed to write any reports regarding the motor vehicle accident. Afterwards, Flores was notified that he was transferred to the Hall of Justice and was told that he was not allowed to operate any CCSD vehicles. Flores missed out on overtime opportunities because he

was not permitted to operate any CCSD vehicles. He also was required to complete an online driver's education course. He is not aware of any summonses issued to any person as a result of this accident, including himself.

Flores admitted that reflecting on the events of that day, he could have handled the situation differently. Specifically, he did not need to run the red light – he could have called ahead and asked the lead vehicle to slow down if a trail car was really needed, or he could have waited at the red light and just let them continue on. While Flores acknowledged that he ran a red light and was speeding, he believes that both running the red light and speeding were separate and distinct incidents from the accident, and it was a spur of the moment decision to pass through the red light – he does not normally pass through red lights when he is on routine patrol.

Flores acknowledged that he should be disciplined for breaking traffic laws but that he does not believe that warrants a thirty-day suspension. He testified that some of the violations of the Rules that he was charged with in the FNDA are duplicative of the civil service charges. Flores stated that he did not believe that he committed all of the violations that were charged, or that he engaged in any unprofessional, illegal, or unethical behavior related to the motor vehicle accident in question. In fact, he believes that he performed his duties in a competent manner, and that he followed the Rules regarding the accident in question. Flores has not received any major discipline in the past, only a written reprimand for inappropriate use of sick time.

On cross examination, Flores acknowledged that he was taught how to operate a police vehicle in the police academy. He testified that he used to drive daily in his position with the special investigative unit. He was assigned to the special investigative unit in the summer of 2020, prior to that he was assigned to the probation division. Flores stated that during his tenure with the CCSD, he was not required to pass through red lights often, only during emergency instances. He confirmed that officers are not permitted to pass through a red light unless they are responding to an emergency, and their lights and siren are activated. He also confirmed that he was not directed to pass through the red light

and his detail did not require him to pass through the red light. He agreed that all drivers are required to maintain a safe stopping/following distance. Flores was not prevented from working all side jobs, only those that required him to operate an CCSD vehicle such as Division of Motor Vehicles detail and One Stop, which are the two side jobs he mainly worked.

Flores further agreed that in his IA interview with Kelhower the following exchange took place:

Detective Kelhower: Can you agree that there's a high probability if you did not go through the red light just prior to that accident that week, that the accident could have been avoided.

Flores: Yes.

(R-6 at 7, lines 12-16.)

Credibility

It is the obligation of the factfinder to weigh the credibility of the witnesses in determining the ultimate issues. Credibility is the value that a factfinder gives to a witness's testimony. "Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Inferences may be drawn concerning the witness' expression, tone of voice. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)).

In assessing credibility, the interests, motives or bias of a witness are relevant, and a factfinder is expected to base decisions of credibility on his or her common sense, intuition, and experience. A factfinder "is not bound to believe the testimony of any witness, in whole or in part." State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted.) Rather, they "may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible." Ibid. 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).

Three witnesses testified in this matter – Kelhower, Turner and Flores. I had the opportunity to hear the testimony of all of the witnesses, observe their demeanor, and review the documentary evidence submitted into evidence. In so doing, I gave slightly greater weight to the testimony of Kelhower and Turner. Both witnesses testified professionally and cogently, and I found both witnesses to be candid and credible throughout their testimony. I found Kelhower's testimony in particular to be credible and his investigation and reporting of the same to be objective and thorough. I also found that Flores testified honestly and sincerely and found him to be forthcoming and remorseful.

FINDINGS OF FACT

Having had the opportunity to listen to the testimony of the witnesses, to observe their demeanor, and to assess their credibility, as well as having fully considered the other evidence in the record, I **FIND** the following **UNDISPUTED FACTS**:

Flores has been employed with the CCSD as a sheriff's officer since December 2017. On July 7, 2022, Flores was assigned to the special investigative unit for fugitive recovery. (R-7.) He was called to assist a fellow officer at the Division of Motor Vehicles to assist with an unruly individual. After the individual was arrested, Flores was directed to trail the police vehicle containing the arrestee. (R-7 at 1.)

While Flores was following the lead police vehicle, he was involved in a motor vehicle accident. (R-7 and R-12.) The accident occurred on Mount Ephraim Avenue, 449 feet north of the intersection with Ferry Avenue in the City of Camden. (R-12.) Mount Ephraim Avenue is a four-lane road, with two lanes in each direction separated by double yellow lines and has a posted speed limit of thirty-five miles per hour.

The body camera footage obtained from the body camera worn by Flores on the date of the accident shows that just prior to impact, Flores drove through a red light at the intersection with Ferry Avenue. (R-7, R-12 and R-17.) After crossing the intersection, Flores came upon a truck with a trailer making a wide right turn in the lanes in front of him. (R-7, R-12 and R-17.) Flores swerved left into the southbound lanes of Mount Ephraim Avenue into oncoming traffic and struck a passenger van head-on that was driving in the southbound direction. (R-7, R-12 and R-17.) Flores immediately called the accident into central communications and attended to the occupants of the other vehicle involved in the accident. (R-7 and R-17.)

The accident resulted in various physical injuries to both the occupants of the passenger van and Flores and all parties were taken to the hospital for evaluation. (R-7, R-10, R-12, and R-17.) Flores was out of work for approximately one week after the accident due to his injuries. Additionally, both the CCSD vehicle and the passenger van sustained severe front-end damage disabling both vehicles. (R-10, R-12, and R-17.) The CCSD vehicle was out of service for a period of time due to the damage incurred from the accident. The crash data retrieved from the CCSD vehicle by the CCPO determined that that Flores was traveling forty-four miles per hour in a thirty-five mile per hour zone prior to the impact. (R-10.) The CCPD officer who investigated the accident listed in block 118a of the Crash Report that a contributing circumstance of the accident was "Other Drive/Pedalcyclist Action". (P-1 and R-12.) He also listed in block 188b of the Crash Report that a contributing circumstance of the accident was "None." (P-1 and R-12.) No summonses were issued as a result of the accident. (R-12.)

Kelhower is a detective in the IA division of the CCSD. He has been employed by the CCSD since January 3, 2017, and has been in IA for approximately two years, where his duties include compliance and investigation of matters involving CCSD officers. Kelhower attends a biannual training course for IA detectives that is administered by the CCPO, although he has no specialized training in motor vehicle crash investigation.

On April 3, 2023, Kelhower conducted an IA interview with Flores as part of his investigation of the accident. (R-6.) During the interview, Flores admitted that at the time he drove through the red light at the intersection of Mount Ephraim Avenue and Ferry Avenue, his sirens and lights were not activated, and he was not responding to an emergency. (R-6 at 5, line 25 to page 6, line 13.) When asked why he went through the red light, Flores responded, "To attempt to follow the head vehicle." (R-6 at 6, lines 14-17.) Additionally, the following exchange took place:

Detective Kelhower: Can you agree that there's a high probability if you did not go through the red light just prior to that accident that week, that the accident could have been avoided.

Flores: Yes.

(R-6 at 7, lines 12-16.)

Flores also agreed that he had made a poor decision on the day of the accident. (R-6 at 8, lines 20-22.) At the hearing, Flores testified that he knew and understood that it was the CCSD policy that officers are required to stop at red lights, activate their lights and sirens, and then they may proceed through a red light but only if they are responding to an emergency. Flores also admitted that he was also speeding just prior to the accident.

Kelhower prepared an IA investigation report in which he concluded that Flores was in violation of multiple motor vehicle laws, Rules, and General Orders, and his actions were the cause of the accident. (R-7.) As part of his investigation, he reviewed the body camera videos of Flores and all sheriff's officers who responded to the accident scene.

(R-12.) Kelhower's report was forwarded to the CCPO for review and investigation. The CCPO issued a report authored by Detective Nipsey Rivera, Special Prosecutions Unit, which states as follows: "Failing to stop at the red light on Mount Ephraim Avenue, and driving over the speed limit reflected that Officer Flores was indeed driving in an unsafe manner." (R-10 at 4.) The CCPO declined to pursue an investigation of any criminal charges related to the motor vehicle accident. (R-11.)

On May 3, 2023, the CCSD issued a PNDA containing charges stemming from the motor vehicle accident that occurred on July 7, 2022. (R-1.) Flores requested a departmental hearing, which was held on August 29, 2023. Following the departmental hearing, the CCSD issued the FNDA on September 7, 2023, sustaining the charges and imposing a thirty working day suspension. (R-2.)

The only prior discipline Flores has received from the CCSD is a Written Reprimand, dated July 31, 2020, for a violation of the CCSD sick leave policy. (R-3.)

DISCUSSION AND CONCLUSIONS OF LAW

A civil service employee's rights and duties are governed by the Civil Service Act (CSA) and regulations promulgated pursuant to the CSA. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1 et. seq. The purpose behind the civil service regulations is to provide rules establishing a "personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery public services." N.J.A.C. 4A:1-1.1; see N.J.S.A. 11A:1-2. A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be in the form of a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2, 11A:2-20; N.J.A.C. 4A:2-2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. N.J.S.A. 11A:1-2(c). Thus, a public entity may impose major discipline upon a civil service employee. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2. Minor discipline is a reprimand or a suspension or fine of five working days or less. N.J.A.C. 4A:2-3.1(a). A local appointing authority may establish procedures for processing minor discipline and

grievances. N.J.A.C. 4A:2-3.1(d). Major discipline is a suspension or fine of five or more working days, a demotion, or the removal/termination of the civil service employee from their position of employment. N.J.A.C. 4A:2-2.

An employee may appeal a major disciplinary action to the Civil Service Commission. N.J.A.C. 4A:2-1.1; N.J.S.A. 11A:2-6, 11A:2-13. In appeals concerning major disciplinary actions, the appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of fact." Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) citation omitted. The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958).

In the instant matter, the following violations were sustained:

1. Count I – N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming a Public Employee
2. Count II – N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty
3. Count III – N.J.A.C. 4A:2-2.3(a)(8) – Misuse of public property, including motor vehicles
4. Count IV – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause
5. Count V – Sheriff's Office Rules & Regulations 3:2.7 – Neglect of Duty
6. Count VI – Sheriff's Office Rules & Regulations 3:2.6 – General Responsibilities
7. Count VII – Sheriff's Office Rules & Regulations 3:3.1 – Obedience to Laws, Regulations, and Policy, specifically, Sheriff's Office General Order 29.00 – Vehicle Rules and

Procedures, and General Order 31.00 – Operation of Police Vehicles/Pursuit Policy

8. Count VIII – Sheriff's Office Rules & Regulations 4:5.4 – Operation of Motor Vehicles
9. Count IX – Sheriff's Office Rules & Regulations 4:5.6 – Care of Department Vehicles

On July 7, 2022, you were on duty operating an unmarked Sheriff's Office Ford Explorer in an unsafe manner when you veered into oncoming traffic causing a head on collision with a passenger van. The accident resulted in major damage to both vehicles and injuries to yourself and civilians.

You failed to obey New Jersey Motor Vehicle Laws. Specifically, the Crash Data Retrieval that was conducted on the Ford Explorer revealed that just prior to the accident you were traveling forty-four miles per hour in a posted speed zone of thirty-five miles per hour. During the interview you admitted to driving through the red light at Mt. Ephraim Avenue and Ferry Avenue and your vehicles [sic] lights and sirens were not activated at that time. Additionally, you admitted that you were not driving to an emergent situation at the time, and you agreed that had you not driven through the red light there is a high probability the accident would have never occurred.

Conduct Unbecoming A Public Employee

"Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that "adversely affects the morale or efficiency of the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in municipal 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)).

The obligation to act in a responsible manner is especially compelling in a case involving a law enforcement official:

[A] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public, particularly in a small community . . . [Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).]

Nor can a police officer complain that he or she is being held to an unfairly high standard of conduct. Rather, "it is one of the obligations he undertakes upon voluntary entry into the public service." In re Emmons, supra 63 N.J. Super. at 141-42.

The facts of this matter are largely undisputed. The appellant has admitted to the facts and circumstances that gave rise to the motor vehicle accident, testifying in both his IA interview and at the OAL hearing that he proceeded through a red light without activating his lights and sirens, was not responding to any emergency, and was exceeding the speed limit by nine miles per hour just before the accident. Furthermore, he testified that he made a poor decision that day, and there is a high probability that if he did not run the red light, the accident would not have happened. After viewing the body camera footage, there were no vehicles blocking the appellant's view ahead, and the truck with the trailer was in the roadway as appellant approached, it did not suddenly enter the roadway in the appellant's path. Appellant had the time to approach the vehicle in a safe manner to assess its maneuvers, however, by appellant's own admission he was trying to catch up to the lead vehicle that got away from him.

As stated above, police officers are held to a higher standard than the public, they represent law and order to the citizens and are expected to present an image of personal integrity. While there is no dispute that the appellant acted professionally in the moments after the accident – immediately reporting the accident and checking on the occupants of the other vehicle despite his own injuries – the fact of the matter is, he was by his own admission in violation of several motor vehicle laws that ultimately led to a motor vehicle accident that was preventable and that caused physical injuries to the public and himself, as well as significant property damage to both vehicles. Members of the public are expected to observe motor vehicle laws every time they take to the road, including making proper observations of vehicles and conditions in the roadway ahead of them, and to exercise proper caution and keep a safe following distance. Police officers certainly are no different. The appellant's actions in operating a motor vehicle on July 7, 2022, were negligent and careless. Police officers are also expected to exercise good judgement, which the appellant admittedly stated that he lacked when he testified that he “made a poor decision” that day.

The appellant argues that because there was no change in morale within the CCSD after the accident, nor did the accident affect the level of services that the respondent provides to the community, this charge cannot be sustained. However, it can hardly be said these are the only factors to consider in evaluation this charge. Not only did the appellant fail to follow motor vehicle laws that ordinary citizens are required to follow and make proper observations; in failing to observe these laws, he caused injuries to members of the public and damaged their property by his actions. Additionally, the appellant appears to argue that the appellant's professional conduct after the accident somehow precludes the substantiation of this charge. While the appellant's conduct after the accident is admirable, it hardly absolves his actions.

Based on the foregoing, as well as the reasoning below, I **CONCLUDE** that the appellant's actions on July 7, 2022, did rise to a level of conduct unbecoming a public

employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and that the respondent has met its burden of proof on this issue.

Neglect of Duty

"Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, 2009 N.J. AGEN LEXIS 112 (February 5, 2009) (citation omitted), adopted, Civil Service Commission (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). 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. Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). While neglect of duty does not require an intentional or willful act, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

Police officers are expected to discharge their official duties with care. The neglect of duty charge as set forth above is not solely limited to situations where police officers fail to perform all or part of their duties, it also encompasses when they are negligent in the discharge of those duties. On July 7, 2022, the appellant was directed to perform the duties of a trail car at the time of the accident. He was following a lead car that contained an arrestee. As admitted by the appellant, the situation had diffused, and no emergency existed at the time of the accident. However, while performing his duties as the trail vehicle, by the appellant's own admission he violated several motor vehicle laws and was ultimately involved in a motor vehicle accident trying to catch up to the lead car. It can

hardly be said he performed his official duties with care on July 7, 2022. The appellant argues that the charge cannot be sustained because there was no nonperformance of an official duty as to the car accident. The appellant fails to acknowledge that the neglect of duty charge also includes acting negligently in the discharge of official duties. The appellant's actions in operating a motor vehicle on July 7, 2022, were certainly negligent if not careless.

Therefore, based on the foregoing, as well as the reasoning below, I **CONCLUDE** that appellant's actions on July 7, 2022, constitute neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7) and that the respondent has met its burden of proof on this issue.

Misuse of Public Property

The charge of "misuse of public property" including motor vehicles is most often thought of when an officer or other public employee uses a vehicle or property in a way other than it was intended to be used or uses the public property for personal gain. However, these are not the only ways that public property can be misused. In a scenario not totally dissimilar to the instant matter, in disagreeing with the Administrative Law Judge's assessment of this charge, the Civil Service Commission held that the charge of misuse of public property was sustained when the appellant's operation of an ambulance was the cause of the accident. In the Matter of Ryan J. Gray, 2014 LEXIS 428 (OAL Docket No. CSV 6369-13). The Commission stated, "An improper use of a vehicle may encompass an employee's act of negligence in operating the vehicle." Id. at 12. The Commission concluded that in that case, "The appellant was negligent in his duties and misused public property in the process." Id. at 11.

While the facts of the Gray matter and the instant matter are slightly different in that the appellant's actions in in Gray were the immediate and direct cause of the accident, in this matter, the appellant's negligent operation of the police vehicle led to the occurrence of an accident that was preventable.

As such, based on the foregoing, I **CONCLUDE** that appellant's actions on July 7, 2022, constitute a misuse of public property, including motor vehicles in violation of N.J.A.C. 4A:2-2.3(a)(8) and that the respondent has met its burden of proof on this issue.

Other Sufficient Cause

Appellant was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause". This catch-all provision of the code means that a finding of misconduct deserving of discipline need not "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior 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, 39-40 (App. Div. 1992) (citing references omitted). As set forth in the findings of fact and as discussed more thoroughly above, the appellant's actions in operating a motor vehicle on July 7, 2022, violated the standard of good behavior expected of police officers.

For the reasons set forth more fully above, and below, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause by a preponderance of credible evidence for his actions on July 7, 2022.

Violations of Sheriff's Office Rules and Regulations

The appellant has also been charged with various violations of the Rules.

Section 3:2.7 – Neglect of Duty

Section 3:2.7 of the Rules, states, "Members and employees may be charged with neglect of duty for any act or omission in violation of law, police orders, procedures or rules and regulations." As discussed at length above, the appellant's negligent operation of a motor vehicle while in the course of his official duties when he drove nine miles per

hour above the posted speed limit, proceeded through an intersection with a red light without activating his lights and siren and when not responding to an emergency, constitutes an act in violation of law, specifically the motor vehicle laws, as well as several CCSD Rules and General Orders. The appellant argues that this charged should not be sustained because the appellant was interrupted in performing his assigned duty on July 7, 2022, through his involvement in a motor vehicle accident that was “no fault of his own.” For the appellant to assert in his post-hearing submission that he had zero responsibility for the accident, is contrary to the evidence presented and the appellant’s own admissions both in the IA interview and at the OAL hearing.

As such, and for the reasons set forth more fully above, I **CONCLUDE** that appellant is in violation of Section 3:2.7 by his actions on July 7, 2022, and that the respondent has met its burden of proof on this issue.

Section 3:2.6 – General Responsibilities

Section 3:2.6 of the Rules provides as follows:

Members shall at all times take appropriate action to:

- A. Protect life and property
- B. Preserve the peace
- C. Prevent crime
- D. Detect and arrest violators of the law
- E. Enforce all state and local laws and ordinances coming within jurisdiction of the Office of the Sheriff
- F. Safely and expeditiously regulate traffic
- G. Aid citizens in matters within police jurisdiction

The appellant asserts that he was not performing any of the above duties on July 7, 2022, and therefore this charge should not be sustained. To the contrary, at the time of the accident the appellant was assigned the task of trailing a police vehicle containing an arrestee. The appellant was required to “protect life and property” in the discharge of those duties. It can hardly be said that the appellant was protecting life and property

when he veered into oncoming traffic causing a head-on collision which resulted in injuries to civilians and the appellant, as well as significant property damage.

Therefore, I **CONCLUDE** that the appellant's actions on July 7, 2022, were in violation of Section 3:2.6 and that the respondent has met its burden of proof on this issue.

Section 3:3.1 – Obedience to Laws, Regulations, and Policy, specifically, Sheriff's Office General Order 29.00 – Vehicle Rules and Procedures, and General Order 31.00 – Operation of Police Vehicles/Pursuit Policy

Section 3:3.1, states, "Employees shall obey all laws, ordinances, rules and regulations, policies and procedures, and general orders of the Office of the Sheriff as applicable." For the reasons set forth below, because I conclude that the appellant is in violation of General Orders 29.00 and 31.00, I **CONCLUDE** that the appellant's actions on July 7, 2022, were also in violation of Section 3:3.1 and that the respondent has met its burden of proof on this issue.

General Order 29.00 – Vehicle Rules and Procedures

General Order 29.00, provides, in part:

II. Introduction

The purpose of this order is to outline the proper use and care of department vehicles.

III. Mechanics:

- G. Drivers shall, at all times, set an example and obey all speed limits and other New Jersey Motor Vehicle Laws. Even in an emergency situation, they shall never drive in a manner that endangers lives or property.

This provision is self-explanatory. By the appellant's own admission, he was operating the department vehicle above the speed limit and proceeded through an

intersection on a red signal in violation of the New Jersey Motor Vehicle Laws in a non-emergent situation. Appellant inexplicably focuses only the provision contained within this General Order that requires officers to check the fluids in their vehicle before their shift rather than focusing on the above provision. For all of the reasons previously stated in this Initial Decision, I **CONCLUDE** that the appellant's actions on July 7, 2022, were in violation of General Order 29.00 and that the respondent has met its burden of proof on this issue.

General Order 31.00 – Operation of Police Vehicles/Pursuit Policy

General Order 31.00, provides, in part:

II. Introduction

The purpose of this order is to establish guidelines for the proper and safe operation of police vehicles. An officer must be sensitive to public opinion while operating a police vehicle and shall operate his vehicle in a manner that shows consideration for his own safety, the safety of the person whom he seeks to apprehend, and above all, the safety of others who may be using the roadway. The primary concern of this office is to have the officer arrive safely at the scene in order to perform their duties in a professional manner.

III. MECHANICS

A. General Operation

1. While operating a Sheriff's Office vehicle all traffic regulations, traffic signs, and posted speed limits shall be strictly adhered to by all officers. Operators shall at all times set a good example for the public. Operators shall take all necessary precautions to avoid motor vehicle accidents, or injury involving officers or the public.

Likewise, this provision is also self-explanatory. By the appellant's own admission, he was operating the department vehicle above the speed limit and proceeded through an intersection on a red signal in violation of the New Jersey Motor Vehicle Laws in a

non-emergent situation. The appellant's actions do not set a good example for the public. Additionally, the appellant failed to take all necessary precautions to avoid a motor vehicle accident or injury involving officers or the public. For all of the reasons previously stated in this Initial Decision, I **CONCLUDE** that the appellant's actions on July 7, 2022, were in violation of General Order 31.00 and that the respondent has met its burden of proof on this issue.

Section 4:5.4 – Operation of Motor Vehicles

Section 4:5.4, states,

Members and employees, when driving vehicles of any description, private or of the department, shall not violate the traffic laws except in cases of absolute emergency and then only in conformity with the law regarding same. They shall set an example for other persons in the operation of their vehicles.

As discussed at length throughout this decision, by appellant's own admission he was in violation of traffic laws in a non-emergent situation. Therefore, I **CONCLUDE** that the appellant's actions on July 7, 2022, were in violation of Section 4:5.4 and that the respondent has met its burden of proof on this issue.

Section 4:5.6 – Care of Department Vehicles

Section 4:5.6, states,

Members and employees are responsible for the proper care of Office of the Sheriff vehicles assigned to them. A damaged vehicle may subject the responsible individual to reimbursement charges and appropriate disciplinary action. Members and employees shall not use any Office of the Sheriff vehicle for personal use or pleasure without the expressed permission of the Sheriff. All Office of the Sheriff vehicles remain the property of Camden County and are subject to entry, retraction of use privilege, and/or inspection without notice.

In appellant's post-hearing submission, he asserts that the only damage to the department vehicle was caused by another driver's unforeseen negligent actions. As discussed previously, for the appellant to assert in his post-hearing submission that he had no responsibility for the accident and thus the resultant damage to the department vehicle is contrary to the evidence presented and the appellant's own admissions both in the IA interview and at the OAL hearing. Therefore, for all of the foregoing reasons previously discussed, I **CONCLUDE** that the appellant's actions on July 7, 2022, were in violation of Section 4:5.6 and that the respondent has met its burden of proof on this issue.

Other Issues Raised by Appellant

The appellant raised additional issues in his post-hearing submission. For the reasons discussed below, I find these issues to be wholly without merit and do not alter my findings and conclusions in this matter.

I. The IA investigation

The appellant asserts that Kelhower's IA investigation was faulty and grounded in confirmation bias. There was no testimonial or documentary evidence presented to establish that Kelhower's investigation was faulty and "marred" by bias, preconceived notions, or lack of diligence. First, the appellant attacks Kelhower's qualifications and experience to investigate motor vehicle accidents, however, the appellant did not provide any witnesses that could attest to that assertion. Kelhower testified that he has been trained on how to properly investigate and attends biannual courses with the CCPO.

Second, the appellant asserts that Kelhower's investigation was faulty because he relied heavily on the body worn camera footage, and did not speak with all individuals involved in the accident amongst other investigative items. However, Kelhower testified that sometimes witness statements are not necessary if the body camera footage is complete. In this case, during his investigation, he reviewed all the body camera footage

and some of the reports, and he testified that it was necessary to interview any additional witnesses – either the occupants of the landscaping truck or those in the passenger van – due to the completeness of the body camera footage. Additionally, appellant admitted to crossing the intersection on the red light without his lights and sirens activated and was not responding to an emergency. Further, he admitted to making a poor decision. Conversely, the appellant would rely heavily on the conclusions of the investigating officer contained within the Crash Report, although that officer did not have the opportunity to review the footage from the appellant's body worn camera before making such conclusions, nor did he testify at the hearing.

The appellant further implies that Kelhower entered the investigation with a preconceived notion or investigative bias against the appellant and/or as to how the accident occurred that caused him to engage in the selective gathering of evidence to support those preconceived notions. To be clear, the appellant presented absolutely no evidence or testimony to support his claims of investigative or confirmation bias on the part of Kelhower, that Kelhower engaged in selective evidence gathering, or that Kelhower had any predetermined conclusion in mind. To the contrary, the testimony and evidence supported that Kelhower conducted a fair, impartial, and complete investigation.

II. The charges and penalties in the FNDA were unwarranted, unsupported, excessive and therefore should be dismissed.

The appellant asserts that because he was charged with violations of the same nature under both the New Jersey Administrative Code and the CCSD Rules and General Orders, the charges are excessive. Appellant does not cite to any OAL or Civil Service Commission decisions to support that this practice is arbitrary, capricious, or unreasonable, and thus requires no further attention.

Additionally, the appellant asserts that these penalties are unsupported and without merit. In support of his argument, he relies again on the Crash Report and the conclusions of the investigating officer who did not have the benefit of viewing the appellant's body worn camera footage before coming to his conclusions. The appellant

also relies upon the fact that no motor vehicles summonses were issued to Flores as a result of this accident, which is not conclusive and of no moment. Furthermore, the appellant also mentions that the CCPO did not recommend that any traffic summonses be issued, again that is not conclusive of fault or lack thereof. While it is true that the CCPO did not specifically recommend that any traffic summonses be issued, the CCPO was reviewing the matter to determine if any criminal charges were appropriate. The actual conclusion of the CCPO investigating detective was, "... Failing to stop at the red light on Mount Ephraim Avenue, and driving over the speed limit reflected that Officer Flores was indeed driving in an unsafe manner." (R-10 at 4.) For all of the reasons set forth above in this decision, I conclude the opposite to be true and that the charges set forth in the FNDA have been supported by competent and credible evidence and been proven by a preponderance of the credible evidence.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522-23 (1962), which was decided more than fifty years ago, the New Jersey Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Bock Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations, and the like on one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. at 523-24.

Although the Civil Service Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's disciplinary history may be outweighed if the infraction at issue is of a serious nature. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Bowden v. Bayside State Prison, 268

N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The concept of progressive discipline is recognized in this jurisdiction, but:

That is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position, or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's own position involves public safety, and the misconduct causes risk of harm to persons or property.

[In re Herrmann, 192 N.J. 19, 33-34 (2007), (citing Henry, 81 N.J. at 580).]

Here, the respondent has proven by a preponderance of the credible evidence the following charges against the appellant: Count I – N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming a Public Employee; Count II – N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty; Count III – N.J.A.C. 4A:2-2.3(a)(8) – Misuse of public property, including motor vehicles; Count IV – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause; Count V – Sheriff's Office Rules & Regulations 3:2.7 – Neglect of Duty; Count VI – Sheriff's Office Rules & Regulations 3:2.6 – General Responsibilities; Count VII – Sheriff's Office Rules & Regulations 3:3.1 – Obedience to Laws, Regulations, and Policy, specifically, Sheriff's Office General Order 29.00 – Vehicle Rules and Procedures, and General Order 31.00 – Operation of Police Vehicles/Pursuit Policy; Count VIII – Sheriff's Office Rules & Regulations 4:5.4 – Operation of Motor Vehicles; and Count IX – Sheriff's Office Rules & Regulations 4:5.6 – Care of Department Vehicles.

The penalty sought by the respondent is a thirty working day suspension without pay. Turner testified that he recommended a thirty working day suspension based upon a number of factors, including, that an emergency situation did not exist at the time and

that motor vehicle violations as well as violations of the Rules occurred. Turner believed that the penalty was warranted based on his review of the file. The appellant has only one prior minor disciplinary action consisting of written reprimand for the misuse of sick time. While the penalty of a thirty working day suspension is significant and is a jump for an officer with little disciplinary history, the appropriate focus must be given to the nature and seriousness of the appellant's actions. The serious nature of appellant's actions warrants imposition of major discipline. The appellant was operating a department vehicle negligently or carelessly in violation of several motor vehicle laws and Rules and General Orders and in such a way that it ultimately caused injuries to the public as well as significant property damage to both the department vehicle and the private citizen's vehicle.

As was stated in Moorestown Township v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966):

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. . .

In this case, appellant failed to adhere to these standards.

Based upon the facts set forth in this matter, I **CONCLUDE** that a thirty working day suspension is the appropriate discipline for the violations of: N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause; together with violations of: Count I – N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming a Public Employee; Count II – N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty; Count III – N.J.A.C. 4A:2-2.3(a)(8) – Misuse of public property, including motor vehicles; Count IV – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause; Count V – Sheriff's Office Rules & Regulations 3:2.7 – Neglect of Duty; Count VI – Sheriff's Office Rules & Regulations 3:2.6 – General

Responsibilities; Count VII – Sheriff's Office Rules & Regulations 3:3.1 – Obedience to Laws, Regulations, and Policy, specifically, Sheriff's Office General Order 29.00 – Vehicle Rules and Procedures, and General Order 31.00 – Operation of Police Vehicles/Pursuit Policy; Count VIII – Sheriff's Office Rules & Regulations 4:5.4 – Operation of Motor Vehicles; and Count IX – Sheriff's Office Rules & Regulations 4:5.6 – Care of Department Vehicles.

ORDER

It is **ORDERED** that the charges and specifications made against the appellant set forth in the Final Notice of Disciplinary Action, dated September 7, 2023, are **SUSTAINED**.

It is also **ORDERED** that the respondent's imposition of a thirty working day suspension without pay is **SUSTAINED**.

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.

Rebecca C. Lafferty

December 23, 2025

DATE

REBECCA C. LAFFERTY, ALJ

Date Received at Agency:

Date Mailed to Parties:

RCL/tat

APPENDIX

WITNESSES

For appellant

Jorge Flores, Officer, Camden County Sheriff's Office

For respondent

Michael Kelhower, Detective, Camden County Sheriff's Office

Robert Turner, Undersheriff, Camden County Sheriff's Office

EXHIBITS

For appellant

P-1 State of New Jersey Police Crash Investigation Report NJTR-1, Overlay and Instructions

For respondent

R-1 Preliminary Notice of Disciplinary Action (31-A), dated May 3, 2023

R-2 Final Notice of Disciplinary Action (31-B), dated September 7, 2023

R-3 Written Reprimand, dated July 31, 2020

R-4 Internal Affairs Complaint Notification, dated July 19, 2022

R-5 Administrative Advisement forms, dated April 3, 2023

R-6 Transcript of interview of Sheriff's Officer, Jorge Flores #710, dated April 3, 2023

R-7 Camden County Sheriff's Office Internal Affairs Investigation Report, dated April 24, 2023

R-8 Correspondence, dated July 21, 2022, from Det. Kelhower to the Camden County Prosecutor's Office

- R-9 Camden County Prosecutor's Office, Search Warrant Order, FD-CAM-6159-SW-22, dated September 28, 2022
- R-10 Camden County Prosecutor's Office, Summary Investigative Report, dated October 3, 2022
- R-11 Camden County Prosecutor's Office Declination Letter, dated March 19, 2023
- R-12 Crash Investigation Report for incident on July 7, 2022
- R-13 Email correspondence between Det. Kelhower and the Camden County Police Department
- R-14 RT-TOIC Request for Information, dated July 13, 2022
- R-15 Camden County Sheriff's Office, Operations Report, dated July 15, 2022
- R-16 Internal Affairs Report Form
- R-17 Body worn camera footage of Officer Flores contained on a flash drive

Joint Exhibits

- J-1 Office of the Sheriff of Camden County – Manual of Rules and Regulations
- J-2 Office of the Sheriff of Camden County General Orders: General Order 29.00 – Vehicle Rules and Procedures
- J-3 Office of the Sheriff of Camden County General Orders: General Order 31.00 – Operation of Police Vehicles/Pursuit Policy
- J-4 Office of the Sheriff of Camden County – Vehicular Pursuit Policy – Appendix 31.00