STATE OF NEW JERSEY

In the Matter of Rafael Roman, Bergen County, Department of Health	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2024-2229 OAL Docket No. CSV 06101-24	:	CORRECTED DECISION

ISSUED: MARCH 20, 2025

The appeal of Rafael Roman, Animal Control Officer, Bergen County, Department of Health, removal, effective January 23, 2024, on charges, was heard by Administrative Law Judge Thomas R. Betancourt (ALJ), who rendered his initial decision on February 18, 2025. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

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 March 19, 2025, adopted the ALJ's Findings of Facts and Conclusions. However, it did not adopt his recommendation to modify the removal to a six-month suspension. Rather, the Commission upheld the removal.

In this matter, the ALJ found that the appellant was guilty of the misconduct alleged and upheld the underlying charges of conduct unbecoming a public employee and other sufficient cause. In this regard, he properly dismissed the charges of incompetency, inefficiency or failure to perform duties, inability to perform duties, and neglect of duty as these charges were not appropriately proffered based on the misconduct. Upon its *de novo* review, the Commission agrees with the ALJ's findings and finds nothing in the record to demonstrate that the ALJ's findings regarding the charges were arbitrary, capricious or unreasonable.

In its exceptions, the appointing authority argues that removal is the proper penalty in this matter. The Commission agrees. In this regard, similar to its assessment of the 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, in recommending that the removal be modified to a six-month suspension, the ALJ performed an analysis of the penalty to be imposed. In that regard, the ALJ stated:

> Appellant has a fairly extensive prior disciplinary history, as set forth in R-3.[1] None of his prior disciplinary matters rose to the level of major discipline. *See N.J.A.C.* 2A:2.2.
>
> In the instant matter removal seems a rather draconian penalty. The two instances of inappropriate touching surely amount to the level of major discipline. However, this type of behavior has not been the subject matter of any other discipline. A substantial suspension, short of termination seems more suitable to the acts herein.

Initially, the Commission notes that the appellant began his tenure with the appointing authority in September 2021. Thereafter, in less than two and one-half years prior to the current incident, he accrued five disciplinary actions. While none of these actions resulted in major discipline, it is clear that the appellant has a penchant for misconduct in his short tenure. Moreover, the misconduct in this case was wholly inappropriate and cannot be countenanced. Had the appellant been a more senior employee with a clean disciplinary history, the Commission could have supported the recommended reduction. However, such is not the case in thus matter. Thus, the Commission finds that the removal comports with the tenets of progressive discipline and based on the misconduct, is not shocking to the conscious.

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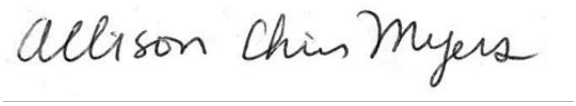
[1] Exhibit R-3 indicates the appellant's prior disciplinary history as follows: In 2023, he received two written reprimands and two, one working day suspensions, and in January 2024, he received a two working day suspension.

ORDER

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

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 19TH DAY OF MARCH, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 06101-24
AGENCY REF. NO.: 2024-2229

RAFAEL ROMAN,
Petitioner,
vs.
COUNTY OF BERGEN,
DEPARTMENT OF HEALTH,
Respondent.

Matthew P. Rocco, Esq., for appellant, (Rothman, Rocco, Laruffa, LLP, attorneys)

Brian M. Hak, Esq., for respondent (Eric M. Bernstein & Associates, attorneys)

Record Closed: December 6, 2024 Decided: February 18, 2025

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Rafael Roman, appeals a Final Notice of Disciplinary Action (FNDA), dated April 19, 2024, imposing a penalty of removal, effective retroactively to January 23, 2024.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on May 3, 2024.

A prehearing conference was conducted on May 17, 2024, and a prehearing order entered by the undersigned on May 21, 2024.

A hearing was held on October 15, 2024. The record was kept open for counsel to submit written summations. Written summations were received on December 6, 2024, from both appellant and respondent. The record closed on December 6, 2024.

ISSUES

Whether there is sufficient credible evidence to sustain the charges set forth in the Final Notice of Disciplinary Action; and, if sustained, whether a penalty of removal is warranted.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

In the instant matter, there is no dispute that appellant touched Ms. Hays on the cheek. He freely admitted it. Plus, it was witnessed by both Ms. Hays, the recipient of the unwanted touch, and Ms. Lyons. The most relevant factual matter in dispute is the touching of Ms. Lyons's thigh by Mr. Roman. Mr. Roman denies this occurred. Ms. Lyons clearly testified that it did, as did Ms. Hays.

I found both Ms. Hays and Ms. Lyons credible. They did not shy away from answering questions. The explanation for the delay in reporting the incident to their supervisor was reasonable and plausible. It does not detract from their credibility. Their respective credibility is further enhanced by their desire not to have Mr. Roman disciplined, but rather to have their supervisor issue a generic reminder to staff about inappropriate touching. They have no axe to grind with Mr. Roman.

Mr. Roman relies on a denial that the one incident of touching Ms. Lyons's thigh occurred. In light of the corroboration of this by Ms. Hays, who was in position to clearly observe the touching, renders Mr. Roman's testimony in this regard suspect. Further detracting from Mr. Roman's credibility is his denial that he was asked by Ms. Lyons why he touched Ms. Hays' face. Both Ms. Hays and Ms. Lyons clearly and believably testified that this occurred.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS**:

1. Appellant, Rafael Roman, was employed by the County of Bergen, Department of Health as an animal control officer (ACO). He arrives at work approximately between 6:30 and 7:00 a.m. (Tr. 68:19-25)

2. Taylor Hays is employed by the County of Bergen, Department of Health as an ACO since May 2023. (Tr. 12:18-19)

3. Skylynn Lyons is employed by the County of Bergen, Department of Health as a supervisor for animal control and an ACO. She has been employed by the County Bergen since August of 2021. (Tr. 22:1-25)

4. Gerard Dargan is employed by the County of Bergen, Office of the Inspector General as Chief Investigator. He has held this position for three years. Prior to his current position he was employed in various law enforcement positions for 27 years. (Tr. 42:21-24; 43:1-8)

5. Mr. Gargan conducted the investigation into the incident which is the subject of the within matter and prepared a report as to the same. (R-2)

6. An incident occurred on December 22, 2023, involving Mr. Roman, Ms. Hays and Ms. Lyons. (R-1 and R-2)

7. Mr. Roman reported to work on Dec 22, 2023 at approximately 7:15 a.m. (Tr. 71:5-11)

8. Ms. Hays works the third shift from 11:30 p.m. to 8:00 a.m. and did so from December 21 to December 22. Per Ms. Hays, at approximately 7:15 a.m. on December 22, 2023, she and Ms. Lyons were inside (a work trailer) speaking with Ms. Lyons. (Tr. 13:13-19)

9. Ms. Lyons also works the third shift. She approximates the time she was inside with Ms. Hays to be “probably” 6:30 a.m. (Tr. 23:11-15)

10. Mr. Roman entered the trailer at some time and proceeded to touch Ms. Hays on the face, ostensibly to demonstrate how cold it was outside. (Tr. 14:1-9, 23:16-23 and 73 2-4)

11. Ms. Lyons asked Mr. Roman why he touched Ms. Hays. (Tr. 14:6-9, 23:16-23)

12. Mr. Roman replied that he wanted to show her how cold it was outside. (Tr. 14:6-9 and 23:17-23)

13. This touching was unsolicited and unwanted. It made Ms. Hays visibly uncomfortable. (Tr. 14:1-9 and 24:12)

14. After the face touching incident, Mr. Roman went outside and returned a few minutes later. He sat next to Ms. Lyons and placed his hand on her thigh while appearing to whisper something to her. Ms. Lyons appeared uncomfortable by this and was uncomfortable by this. (Tr.14:18 ;23:24-5 to24:1-5; and 26:1-7)

15. This too was unsolicited and unwanted. It made Ms. Lyons uncomfortable. (Tr. 26:21-25)

16. After the two touching incidents Ms. Hays and Ms. Lyons went outside and discussed what happened. They decided to speak with their supervisor when he returned from vacation. They would not seek discipline against Mr. Roman but would request a general email about inappropriate touching. (Tr. 16:24-25 to 17:1-22 and 26: 21-25 to 27:1-15)

17. The supervisor, Mr. Byrnes, advised them that due to the Anti-Harassment Policy the matter needed to be reported. (Tr. 18:11-20 and Tr.27:7-15)

18. This led to the investigation conducted by Mr. Dargan. (R-2)

19. During the course of his investigation Mr. Dargan discovered several other incidents, as follows: Ms. Lyons reported that Mr. Roman walked up behind her and squeezed her sides; Ms. Lyons reported that Mr. Roman sat on her lap. While these incidents were reported during the course of the investigation I do not find them as fact for the purpose of this hearing. They are unspecified as to time and date and were never previously reported.

20. Mr. Roman was suspended without pay pending at a Loudermill hearing. The Loudermill hearing officer sustained the charges in the FNDA and found termination the appropriate penalty. (R-1)

21. After either his suspension, or his termination, a second investigation began regarding Mr. Roman resulting in a report dated March 22, 2024. (R-6)

22. I make no factual findings as to this report as the incidents reported therein (regarding inappropriate comments). They are unspecified as to time and date and were never previously reported.

23. The County of Bergen maintains an Anti-Harassment and Anti-Discrimination Policy. (R-3)

24. The applicable section lies in the General Anti-Harassment Policy, which states in pertinent part: "Instances that may violate the County's Policy against harassment and which may result in disciplinary action include the following: Unwelcome remarks and ***actions*** based on protected classifications. (emphasis added) The protected class would be Ms. Hays' and Ms. Lyons' gender.

25. Mr. Roman violated County policy by engaging in the inappropriate and unwelcomed touching of Ms. Hays and Ms. Lyons.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the

competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

In the instant matter, after a Loudermill[1] hearing, the charges set forth in the PNDA were sustained, as set forth in the FNDA:

N.J.A.C. 4A:2-2.3(a)1 – Incompetency, inefficiency or failure to perform duties;
N.J.A.C. 4A:2-2.3(a)3 – Inability to perform duties;
N.J.A.C. 4A:2-2.3(a)6 - Conduct unbecoming a public employee;
N.J.A.C. 4A:2-2.3(a)7 - Neglect of duty; and,
N.J.A.C. 4A:2-2.3(a)(12) - Other sufficient cause.

There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform an act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). Neglect of duty is predicated on an employee's omission to perform, or failure to perform or discharge, a duty required by the employee's position and includes official misconduct or misdoing as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J.

[1] Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

Super. 629 (App. Div.), certif. granted, 97 N.J. 588 (1984), aff'd on other grounds, 99 N.J. 1 (1985).

The charges of Incompetency, inefficiency or failure to perform duties (N.J.A.C. 4A:2-2.3(a)1; Inability to perform duties N.J.A.C. 4A:2-2.3(a)3; and, Neglect of duty N.J.A.C. 4A:2-2.3(a)7 cannot be sustained. No evidence regarding any of these charges was presented during the course of the hearing. These charges were simply not addressed.

"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)).

As to this charge, the County has carried its burden of proof. It is certainly unbecoming conduct for a public employee to inappropriately touch a co-worker, particularly one of the opposite sex. While one may argue that touching someone's cheek with a cold hand to demonstrate how cold it is outside is merely playful, it is inappropriate nonetheless as it was without permission and unwelcome. Further a male touching a female co-worker on the thigh can never be appropriate.

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against petitioner. The charge of other sufficient cause has been dismissed when "respondent has not

given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), http://njlaw.rutgers.edu/collections/oal/final/. Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.

Cleary appellant's actions violate the implicit standard of good behavior. The County has carried its burden as to this charge as well.

This forum has the duty to decide in favor of the party on whose side weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, supra, 37 N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

Here it is clear that the evidence preponderates in favor of respondent that appellant is guilty of the charge of Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)6, and Other Sufficient Cause, N.J.A.C. 4A:2-2.3(a)(12), in the FNDA, as set forth above.

What now must be determined is whether a termination from employment is the appropriate penalty.

An appeal to the Merit System Board[2] requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances should be reviewed for guidance. West New York v. Bock, 38 N.J. 500 (1962). Although the concept of progressive discipline is often cited by appellants as a mandate for lesser penalties for first time offences,

> 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.
>
> [In re Hernmann, 192 N.J. 19, 33-4 (2007) (citing Henry, supra, 81 N.J. 571).]

Although the focus is generally on the seriousness of the current charge as well as the prior disciplinary history of the appellant, consideration must also be given to the purpose of the civil service laws. Civil service laws "are designed to promote efficient public service, not to benefit errant employees . . . The welfare of the people as a whole, and not exclusively the welfare of the civil servant, is the basic policy underlining the statutory scheme." State Operated School District v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). "The overriding concern in assessing the propriety of the penalty is the public good. Of the various considerations which bear upon that issue, several factors may be considered, including the nature of the 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, 465.

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our 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)

[2] Now the Civil Service Commission, N.J.S.A. 11A:11-1

(citing Bock, supra, 38 N.J. at 522). The 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 the 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, supra, 38 N.J. 523–24.

The concept of progressive discipline has been used to reduce the penalty of removal in other cases involving a law-enforcement officer who used racist language in public but who otherwise had a largely unblemished employment record. In In re Roberts, CSR 4388-13, Initial Decision (December 10, 2013) adopted, Comm'n (February 12, 2014), <http://njlaw.rutgers.edu/collections/oal/>, for example, an on-duty police officer who, while arresting an uncooperative black suspect, shouted to his K-9 police dog, "Zero, bite that nigger," had his penalty modified from removal to a six-month suspension. The ALJ had found that his misconduct was "plainly aberrational," as his past record only included an oral reprimand for a motor-vehicle accident over the course of seven years of service and several of his minority co-workers credibly testified that he had otherwise treated citizens in an impartial and respectful manner. While the ALJ found that, due to mitigating circumstances, "termination is too severe a penalty," he nonetheless concluded that, despite a past record that included only an oral reprimand, the "fitting" penalty "is the longest suspension which the law allows: six months."

While concept of progressive discipline in determining the level and propriety of penalties imposed requires a review of an individual's prior disciplinary history a "clean" record may be out-weighed if the infraction had issued a serious in nature. Henry v. Rahway State Prison, 81 N.J. 571 (1980); Carter v. Bordentown, 191 N.J. 474 (2007). Further some disciplinary infractions are so serious that removal is appropriate. Destruction of public property is such an infraction. Kindervatter v. Dep't of Envt'l Protection, CSV 3380-98, Initial Decision (June 7, 1999), http://lawlibrary.rutgers.edu/collections/oal/search.html.

In determining the penalty to be imposed, the court noted that none of the factors justifying mitigation of removal were present. Namely mistake, negligence, or remorse. The Court was compelled to hold that whatever the employee's motive, and regardless of the worth of the computer, she had to be subject to major discipline. While the goal of discipline is to either remove an employee unsuitable for public service or to impose some lesser sanction when the employee may be rehabilitated, the Court held that the extraordinary serious offense in this case could not be mitigated by a prior good-service record as that mitigation is reserved only for lesser offenses.

Appellant has a fairly extensive prior disciplinary history, as set forth in R-3. None of his prior disciplinary matters rose to the level of major discipline. See N.J.A.C. 2A:2.2.

In the instant matter removal seems a rather draconian penalty. The two instances of inappropriate touching surely amount to the level of major discipline. However, this type of behavior has not been the subject matter of any other discipline. A substantial suspension, short of termination seems more suitable to the acts herein.

Based upon the above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence that appellant is guilty of the charges in the FNDA, of Conduct Unbecoming a Public Employee and Other Sufficient Cause; that the charges of Incompetency, inefficiency or failure to perform duties; Inability to perform duties; and, Neglect of duty are not sustained.

ORDER

It is **ORDERED** that the following charges set forth in the FNDA are **SUSTAINED**:

N.J.A.C. 4A:2-2.3(a)6 - Conduct unbecoming a public employee;
N.J.A.C. 4A:2-2.3(a)(12) - Other sufficient cause.

It is hereby further **ORDERED** that the following charges set forth in the FNDA are **NOT SUSTAINED** and are **DISMISSED**:

N.J.A.C. 4A:2-2.3(a)1 – Incompetency, inefficiency or failure to perform duties;
N.J.A.C. 4A:2-2.3(a)3 – Inability to perform duties;
N.J.A.C. 4A:2-2.3(a)7 - Neglect of duty.

It is further **ORDERED** that penalty of termination in the FNDA is amended to a suspension without pay for a period of six months; and

It is further **ORDERED** that appellant be awarded appropriate back pay for the period of his separation from employment (subject to mitigation for income earned during this period), including benefits, and seniority in accordance with N.J.A.C. 4A:2-2.10.

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.

February 18, 2025
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Appellant:

Rafael Roman, appellant

For Respondent:

Taylor Hays
Skylynn Lyons
Gerard Dargan

List of Exhibits

For Appellant:

None

For Respondent:

R-1 FNDA
R-2 Dargan Investigative Report dated 1/10/2024
R-3 County of Bergen Anti-Harassment and Anti-Discrimination Policy, Amended March 2022
R-4 Rafael Roman prior disciplinary history
R-5 Investigative Report dated 12/15/2023
R-6 Investigative Report dated 03/22/2024