



## STATE OF NEW JERSEY

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Nadrell McMillan,  
New Brunswick, Department of  
Public Works

CSC DKT. NO. 2024-1326  
OAL DKT. NO. CSV 00103-24

**ISSUED: APRIL 30, 2025**

The appeal of Nadrell McMillan, Sanitation Worker, New Brunswick, Department of Public Works, removal, effective September 14, 2023, was heard by Administrative Law Judge Jacob S. Gertsman, who rendered his initial decision on March 27, 2025. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, including a thorough review of the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of April 30, 2025, accepted and adopted the Findings of Fact and Conclusions as contained in the attached ALJ's initial decision and his recommendation to reverse the removal.

As indicated above, the Commission has thoroughly reviewed the exceptions filed by the appointing authority in this matter and finds them unpersuasive. In this regard, the ALJ's determinations are predominantly based on his assessment of the credibility of the witnesses in conjunction with his viewing of a video of the incident. In his initial decision, the ALJ stated:

I deem the testimony of both Paige and McMillan to be credible, as their testimony was clear, direct, and consistent with the evidentiary record. Further, Paige's testimony regarding the aspects of the altercations that he personally witnessed was consistent with both McMillan's testimony and the videos. (J-5; J-6.) However, while Paige's testimony regarding what he witnessed was credible, he did not witness the physical altercation between Walker, Richardson, and McMillan. In fact, counsel for the respondent acknowledged that there were no

witnesses to how the fight began after Walker arrived. (Tr. 50:18–23.)

Respondent concedes that “[w]hat is in dispute is whether Mr. McMillan had the ability to or attempted to retreat during the physical altercation.” (Resp’t’s Br. at 12.) Paige, who admitted that he could not see on the video who threw the first punch, testified that he believed that McMillan had the opportunity to remove himself from the situation and retreat prior to the fight. Notwithstanding his credible testimony on the events that he witnessed, I give no weight to this opinion, as it was solely based on his viewing of the surveillance footage, and not what he personally witnessed.

Upon viewing the footage (J-5; J-6), the fight began less than fifteen seconds after Walker pulled up to the DPW and got out of the car. McMillan credibly testified that he did not know that Richardson and Walker were dating, and that he asked Walker when he got out of the car, and was walking towards him, if he was there to fight, which Walker said he was. He added that he did not try to run when Walker said he was there to fight him because he did not want to turn his back and risk getting punched in the back of the head. Further, McMillan did not believe that he would have physically gotten away from the situation since the plantar fasciitis in his foot would have hindered him from running. Therefore, I FIND that it is not reasonable to believe that McMillan could determine Walker’s connection to the incident with Richardson, determine if he was there to fight him, make the decision whether it was safe to turn his back on Walker and Richardson, and then retreat, all in less than fifteen seconds.

Based on the above, the ALJ concluded that the appellant did not instigate either altercation and, based on the circumstances, did not have a reasonable opportunity to retreat.

The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). “[T]rial courts’ credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record.” *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto*, *supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ’s decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this matter, the exceptions filed are not persuasive in demonstrating that

the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations, or the findings and conclusions made therefrom.

The Commission also rejects the appointing authority's argument that the ALJ did not sufficiently address the charges underlying the first altercation. As indicated above, the ALJ made specific findings in that regard, again based on his assessment of the credible evidence in the record. The Commission finds nothing in the record or the appointing authority's exceptions persuasively rebuts those findings.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from the first date of separation without pay until the date of actual reinstatement. Further, as the appellant has prevailed, he is entitled to reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses the removal and grants the appeal of Nadrell McMillan.

The Commission orders that the appellant be granted back pay, benefits, and seniority from the appellant's first date of separation without pay to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for the appellant pursuant to *N.J.A.C.* 4A:2-2.12. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2.12, the parties shall make a

good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 30<sup>TH</sup> DAY OF APRIL, 2025



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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 00103-24

AGENCY DKT. NO. 2024-1326

**IN THE MATTER OF NADRELL MCMILLAN,  
CITY OF NEW BRUNSWICK, DEPARTMENT  
OF PUBLIC WORKS.**

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**Samuel E. Wenocur, Esq.**, for appellant Nadrell McMillan (Oxfeld Cohen, P.C.,  
attorneys)

**Kathryn V. Hatfield, Esq.**, for respondent City of New Brunswick, Department of Public  
Works (Hatfield Schwartz Law Group, LLC, attorneys)

Record Closed: March 6, 2025

Decided: March 27, 2025

BEFORE **JACOB S. GERTSMAN**, ALJ t/a:

**STATEMENT OF THE CASE**

Appellant Nadrell McMillan (McMillan), a sanitation worker for the City of New Brunswick Department of Public Works (DPW), appeals the DPW's termination of his employment for violating: 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)(2), insubordination; 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, specifically, fighting or creating a disturbance on City property. (J-1.)

### **PROCEDURAL HISTORY**

On September 14, 2023, the DPW issued a Preliminary Notice of Disciplinary Action (PNDA) notifying McMillan of the charges against him relating to an incident that took place at the DPW on August 31, 2023. McMillan requested a departmental hearing, which was held on October 30, 2023. On November 13, 2023, the DPW issued a Final Notice of Disciplinary Action (FNDA) (J-1), which sustained the charges against him for violations of N.J.A.C. 4A:2-2.3(a)(1), (2), (6), (7), and (12). McMillan was terminated from his employment effective September 13, 2023.

The appellant timely requested a hearing, and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on December 26, 2023, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was assigned to the undersigned, and I conducted the initial prehearing telephone conference on February 28, 2024. Following additional telephone conferences, the hearing was held on September 18, 2024. Post-hearing briefs were filed by the parties, and the record was closed on December 16, 2024. The record was reopened on February 26, 2025, and a telephone conference was held on March 6, 2025, to discuss the incomplete FDNA that was transmitted to the OAL and entered into the record at the hearing. The complete FDNA was filed on March 6, 2025, and the record was once again closed.<sup>1</sup>

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<sup>1</sup> A prior order of extension was rescinded when the record was reopened.

**DISCUSSION AND FINDINGS OF FACT**

**Joint Stipulation of Facts<sup>2</sup>**

The following stipulated facts are hereby **FOUND** as **FACT**:

1. McMillan was hired by the DPW on January 28, 2022, as a sanitation worker.
2. On August 31, 2023, McMillan was involved in a physical fight with another DPW employee and another individual, who was not a City of New Brunswick employee, in the DPW yard during working hours.
3. On September 14, 2023, McMillan was suspended without pay and served with a PNDA charging him with violations of Civil Service rules and regulations including:
  - 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)(2)—Insubordination
  - 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
  - N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause, specifically, fighting or creating a disturbance on City property
4. On November 13, 2023, McMillan was issued an FNDA terminating his employment with the City. (J-1.)

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<sup>2</sup> The Joint Stipulation of Facts was modified by the undersigned for stylistic, grammatical, and consistency purposes.

5. On December 11, 2023, McMillan appealed his termination to the New Jersey Civil Service Commission.
6. The facts relating to the incident giving rise to the termination are as follows:
  - a. On August 31, 2023, McMillan was working on modified duty at the DPW.
  - b. Prior to leaving for his route, McMillan was standing outside the DPW garage when fellow employee Brittany Richardson (Richardson) approached him and pushed him.
  - c. McMillan was caught off balance and, in trying to regain his balance, burned a hole in Richardson's clothing.
  - d. Richardson became angry and began to confront McMillan.
  - e. Quintin Paige (Paige), the supervisor, intervened and stopped the physical confrontation between Richardson and McMillan.
  - f. While Paige was in his office, Richardson's boyfriend, Walter Walker (Walker), trespassed onto DPW premises. Walker and McMillan then engaged in a fight, which Richardson joined.

### **Testimony**

#### **For Respondent**

**Quintin Paige** (Paige) has worked for the DPW since 2000 and has been the supervisor of sanitation since 2016. He stated that there is a prohibition against fighting in the workplace and the discipline for that offense is termination. Paige supervised McMillan and knew him all his life through McMillan's parents.



Paige was present at the DPW on August 31, 2023. McMillan was on modified duty that day due to an issue with his foot. When he came out to the yard, he saw McMillan and Richardson talking but did not know that they were fighting. He described Richardson as argumentative, and a troublemaker. When he was speaking to other employees, they alerted him to the argument between McMillan and Richardson. Paige went over to step in, separated them, and asked McMillan to step away.

Paige directed everyone to leave, but Richardson did not. She was on her phone, and he talked her out of calling her brothers, telling her it would be a problem if they came. He asked Richardson what happened, and she told him that she pushed McMillan, and he pushed her back. McMillan had a Black & Mild cigar in his hand and he burned her shirt when he was trying to catch his balance. She was not hurt but believed that it was intentional. There was a good distance between McMillan and Richardson, and Paige told them to remain separated and he went to his office to get the incident reports. However, he did not know that she called Walker, who was previously employed by the DPW.

Paige described the surveillance video footage of the second part of the incident (J-6), which occurred when he was in the office. Richardson was on the phone and walked toward McMillan. Walker, who was not authorized to be on the premises since the DPW did not open to the public until 8:00 a.m., then drove up to the garage where McMillan was standing. The video showed that McMillan saw Walker when he drove up, and Paige testified that they were former coworkers and knew each other. Paige did not know if McMillan was aware that Richardson and Walker were dating. Based on the video, he believed that McMillan had an opportunity to remove himself from the situation.

The altercation between McMillan and Walker began between ten and fifteen seconds after Walker arrived, and Paige was unable to tell by watching the video who threw the first punch. Paige came out of his office with the incident reports approximately one minute later and saw the altercation. He joined others in separating McMillan, Richardson, and Walker by grabbing Walker and telling him that he should not be at the DPW. McMillan was in retreat at that time. Paige also tried to restrain Richardson, who kept trying to swing at McMillan. Richardson subsequently took McMillan's backpack and

threw his belongings into the street. Paige was shown a second video of the incident. (J-5.) He described the fight as two against one, with Richardson and Walker fighting McMillan. Richardson was punching and kicking McMillan while Walker and McMillan were fighting on the ground.

Paige reiterated that he did not witness the fight, and his testimony was based on his viewing of the video. He also reiterated that based on the video, he believed that McMillan had the ability to retreat prior to the fight.

On cross-examination, Paige stated that during the initial interaction between McMillan and Richardson he did not witness McMillan getting physical with her, only that they were arguing. When asked to elaborate on his testimony that Richardson was a troublemaker, he added that some mornings she would "come in just basically going crazy, like cursing everybody out" (Tr. 52:24–25), and some days she was a beautiful person. He stopped talking to her until she spoke first, depending on her mood, and just learned to deal with her. He described it as "normal" for Richardson to threaten people.

Paige held Richardson back during the initial interaction and no one was holding McMillan back. He stated that it was not problematic for McMillan to be where he was before Walker arrived, and he told McMillan to stay there.

He reiterated that McMillan had the opportunity to get out of the situation when Walker drove up. When shown the surveillance footage (J-6), Paige agreed that Walker pulled up at approximately 19:53 of the footage and the fight began at 20:06. He did not know if McMillan was able to walk away from the situation when Walker was walking towards him. He also agreed that Walker approached very close to McMillan within ten seconds of his car arriving.

When he came out of the office he witnessed McMillan trying to walk away, but Richardson was trying to follow him. Paige was trying to stop Richardson, and no one was trying to stop McMillan. A few minutes later, Richardson and Walker got ahold of McMillan's possessions, including his phone, and began throwing them into the street. He did not know if anyone tried to stop them.

Paige added that there was limited training on violence in the workplace, but defending yourself is permitted.

On re-direct examination, he stated that being able to defend yourself was in relation to being out in public.

**For Appellant**

**Nadrell McMillan** was hired by the DPW in January 2002. He had an issue with Richardson during an overtime assignment approximately two or three months prior to the August 31, 2023, incident, where she got upset with him when they worked together. There was no physical altercation between them and no disciplinary action was taken against him. He asked not to be placed on overtime assignments with her, and did not speak to her until August 31, 2023. McMillan added that he witnessed Richardson getting into arguments with other workers, but not physical fights, and he tried to stay away from her.

On August 31, 2023, he was on modified duty since he was not cleared for full duties due to plantar fasciitis in his foot, which made it painful for him to walk and interfered with his ability to run. Prior to his first interaction with Richardson he was smoking a cigar and had his head down looking at his phone. Richardson then pushed him and said "move." He did not see her prior to the push. McMillan was surprised and did not want to fall over, and his initial reaction was to grab onto something. He tried to grab onto whatever was coming towards him, which was Richardson, but he did not know it was she until he looked up. He added that the plantar fasciitis affected his ability to maintain his balance.

When he asked Richardson why she pushed him, she responded that it was an accident. He then told her that it was not an accident since she said "move" when she pushed him. McMillan then walked away believing the incident was over; however, as he turned around, Richardson was walking toward him. She told McMillan that the incident was a joke, which McMillan disagreed with, and she proceeded to get in his face using

profanities. She then used two of her fingers to tap the side of his face two times, and he pushed her away each time. Paige separated them, and he walked off to the side of the garage because he wanted to create some distance between them.

He did not interact with Richardson for the next few minutes but heard her saying to Paige that she did not push him and that he burned her. This was in reference to a hole in her shirt caused by his cigar, which he stated was not intentional. McMillan added that he did not try to insult, threaten, or engage in any further fighting with her, and he believed the incident was over.

McMillan knew Walker prior to that day since he was an employee of the DPW when McMillan started there. He did not have any prior incidents with Walker, did not know he was dating Richardson, and did not know Walker was coming to the DPW prior to his arrival.

He was standing in front of the garage when Walker arrived, and he did not recognize his car. McMillan recognized Walker when he got out of his car, but he quickly figured out that Walker was there for Richardson as they walked towards him. He did not know if Walker was there to talk or fight so he asked if he was there to fight him. McMillan stated that he was not looking to fight Walker, but Walker answered as he was coming towards him that he was in fact there to fight. McMillan did not believe that he would have physically gotten away from the situation, since the plantar fasciitis in his foot would have hindered him from running.

McMillan was shown the surveillance video (J-6), and he noted that Walker turned towards him at approximately 20:00 of the footage and the fight began at approximately 20:06. Richardson joined in the fight by kicking and punching McMillan. McMillan took Walker down and was then either punched or kicked from behind. The fight ended quickly after others ran over to break it up. Paige then told him to go to the break room, but he did not want to turn his back on them. He did not try to engage with them after he left the scene, and he added that his shirt was ripped during the fight.

Less than three minutes later he came out of the building and saw Richardson and Walker throwing his belongings around. He expressed his anger to Paige that he was letting this happen. He was not trying to threaten Richardson or Walker when they were throwing his belongings; however, McMillan moved towards Richardson when she threatened to do something to his car. He did not have any physical contact with her or say anything to her, and there was no further physical altercation.

On cross-examination he stated that he did not have a response when Walker said he was there to fight him. He did not try to escape the situation and clarified that he took down Walker with a wrestling move. McMillan did not say anything to Walker during the fight, and he reiterated that he did not know the extent of Walker and Richardson's relationship.

On re-direct examination he stated that he did not try to run when Walker said he was there to fight him because he did not want to turn his back and risk getting punched in the back of the head. He wanted to keep Walker in his line of sight and was worried that Walker would hurt him more if he turned around to get away. He added that it was necessary to throw one punch at Walker so he could get up. While this was happening, he was hit and kicked in the back of the head by Richardson.

### **Credibility Analysis and Additional Findings of Facts**

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. 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).

I deem the testimony of both Paige and McMillan to be credible, as their testimony was clear, direct, and consistent with the evidentiary record. Further, Paige's testimony regarding the aspects of the altercations that he personally witnessed was consistent with both McMillan's testimony and the videos. (J-5; J-6.) However, while Paige's testimony

regarding what he witnessed was credible, he did not witness the physical altercation between Walker, Richardson, and McMillan. In fact, counsel for the respondent acknowledged that there were *no witnesses* to how the fight began after Walker arrived. (Tr. 50:18–23.)

Respondent concedes that “[w]hat is in dispute is whether Mr. McMillan had the ability to or attempted to retreat during the physical altercation.” (Resp’t’s Br. at 12.) Paige, who admitted that he could not see on the video who threw the first punch, testified that he believed that McMillan had the opportunity to remove himself from the situation and retreat prior to the fight. Notwithstanding his credible testimony on the events that he witnessed, I give no weight to this opinion, as it was solely based on his viewing of the surveillance footage, and not what he personally witnessed.

Upon viewing the footage (J-5; J-6), the fight began less than fifteen seconds after Walker pulled up to the DPW and got out of the car. McMillan credibly testified that he did not know that Richardson and Walker were dating, and that he asked Walker when he got out of the car, and was walking towards him, if he was there to fight, which Walker said he was. He added that he did not try to run when Walker said he was there to fight him because he did not want to turn his back and risk getting punched in the back of the head. Further, McMillan did not believe that he would have physically gotten away from the situation since the plantar fasciitis in his foot would have hindered him from running. Therefore, I **FIND** that it is not reasonable to believe that McMillan could determine Walker’s connection to the incident with Richardson, determine if he was there to fight him, make the decision whether it was safe to turn his back on Walker and Richardson, and then retreat, all in less than fifteen seconds.

Based upon due consideration of the testimonial and documentary evidence in the record, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following additional **FACTS**:

McMillan was not the instigator of the first altercation with Richardson. He accidentally burned her shirt with his cigar after he attempted to steady himself after she pushed him without provocation. After being separated by Paige, McMillan walked to the

side of the garage to create distance with Richardson. He did not interact with Richardson for the next few minutes, and he did not try to insult, threaten, or engage in any further fighting with her, and he believed the incident was over.

Similarly, McMillan was not the instigator of the second altercation with Walker and Richardson. Walker came to the DPW after Richardson called him. McMillan did not know that Walker and Richardson were dating when Walker trespassed and did not recognize his car when he drove up to the garage of the DPW on August 31, 2023. When Walker got out of the car immediately upon arrival and began walking towards him, McMillan asked if he was there to fight him, which Walker said he was. The fight began less than fifteen seconds after Walker arrived, and McMillan did not have the ability or opportunity to retreat. McMillan did not turn his back to Walker and Richardson because he had a reasonable fear that he would be hit from behind. Both Walker and Richardson fought McMillan, who took Walker down with a wrestling move prior to the fight being broken up.

### **LEGAL ANALYSIS AND CONCLUSIONS**

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including "conduct unbecoming a public employee," "neglect of duty," and "other sufficient cause." N.J.A.C. 4A:2-2.3(a)(6), (7), and (12).

In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). An appeal requires the OAL to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris Cnty. Bd. of Social Servs., 197 N.J. Super. 307 (App. Div. 1984).

Here, the FNDA reflects that McMillan was charged with incompetency, inefficiency, or failure to perform duties; insubordination; conduct unbecoming a public employee; neglect of duty; and other sufficient cause, specifically, fighting or creating a disturbance on City property, due to his altercation with Richardson and Walker, a non-employee trespassing at the DPW, on August 31, 2023.

I will first address whether McMillan's actions on August 31, 2023, constituted a violation of the City of New Brunswick's violence-in-the-workplace policy, which provides in pertinent part:

The City will not tolerate any employee committing any act or threat of workplace violence against any employee, customer, visitor, or guest of the City, on City property, or while performing work for the City.

Workplace violence is any intentional conduct, including acts or threats of harassment, and/or coercion, that is sufficiently severe, offensive, or intimidating to cause an individual reasonably to fear for his/her personal safety or the safety of his/her family, friends, associates, and/or property, such that employment conditions are altered or a hostile, abusive, or intimidating work environment is created for one or more employees. Workplace violence may involve any threats or acts of violence occurring on City premises regardless of the relationship between the City and the parties involved in the incident. Workplace violence also includes threats or acts of



violence that affect the business interests of the City or its customer(s) or that may lead to an incident of violence on the City's premises, or while performing work on the City's behalf, including break times and before and after regular working hours. . . .

Violations of this policy will result in serious disciplinary action up to and including termination from employment.

[J-2 at 9–10.]

Appellant argues that “there was nothing before Mr. Walker’s arrival which Mr. McMillan should have or could have reasonably done to avoid the fight.” (Appellant’s Br. at 11). I agree. On August 31, 2023, McMillan was the victim of an unprovoked confrontation initiated by Richardson. He accidentally burned her shirt after he attempted to steady himself after she pushed him. After the two were separated by Paige, McMillan walked to the side of the garage to create distance with Richardson. He did not interact with Richardson for the next few minutes, and he did not try to insult, threaten, or engage in any further fighting with her, and he believed the incident was over.

McMillan was then the victim of a second confrontation, initiated by Walker, who was called by Richardson, came to fight McMillan, and was trespassing at the DPW. That fight began less than fifteen seconds after Walker arrived and McMillan did not have the ability or opportunity to retreat. McMillan did not turn his back to Walker and Richardson because he had a reasonable fear that he would be hit from behind. Both Walker and Richardson then fought McMillan, who took Walker down with a wrestling move prior to the fight being broken up. Based on the foregoing, I **CONCLUDE** that McMillan’s actions on August 31, 2023, were plainly self-defense.

McMillan was acting in self-defense, and therefore his actions on August 31, 2023, fail to meet the criteria of the violence-in-the-workplace policy. I **CONCLUDE** that his actions were not sufficiently severe, offensive, or intimidating to cause an individual reasonably to fear for his/her personal safety or his property; did not contribute to a hostile, abusive, or intimidating work environment; and did not involve any threats or acts of violence. Accordingly, I **CONCLUDE** that McMillan did not violate the City of New Brunswick’s violence-in-the-workplace policy.

**1. N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, inefficiency, or failure to perform duties**

In general, incompetency, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain, or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980). The fundamental concept is that an employee should be able to perform the duties of the position for which he or she was hired. Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960) (employee must be qualified to perform the duties of the job as outlined by the appointing authority). Respondent contends that "[t]here is no dispute that Mr. McMillan failed to perform his job duties on the day in question." (Resp't's Br. at 14.) I disagree, as the record is devoid of any testimony or documentary evidence to substantiate the charge that he failed to perform his job duties. Therefore, I **CONCLUDE** that the respondent has failed to demonstrate, by a preponderance of the credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(1). I **FURTHER CONCLUDE** that this charge must be dismissed.

**2. N.J.A.C. 4A:2-2.3(a)(2)—Insubordination**

"Insubordination" is not defined in N.J.A.C. 4A:2-2.3. Black's Law Dictionary 802 (11th ed. 2019) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Therefore, the term "insubordination" incorporates not only acts of disobedience, but also acts of non-compliance and non-cooperation, and it can occur even where no specific order or direction has been given to the allegedly insubordinate person. McMillan did not violate the violence-in-the-workplace policy. Further, the record demonstrates that McMillan followed Paige's directives on August 31, 2023. Accordingly, I **CONCLUDE** that the respondent has failed to demonstrate, by a preponderance of the credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(2). I **FURTHER CONCLUDE** that this charge must be dismissed.

### 3. N.J.A.C. 4A:2-2.3(a)(6)—Conduct unbecoming a public employee

There is no precise definition for “conduct unbecoming a public employee,” and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. “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. 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)). McMillan did not violate the violence-in-the-workplace policy, and his actions in self-defense on August 31, 2023, did not violate any standards of good behavior. Accordingly, I **CONCLUDE** that the respondent has failed to demonstrate, by a preponderance of the credible evidence, that the appellant’s conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(6). I **FURTHER CONCLUDE** that this charge must be dismissed.

### 4. N.J.A.C. 4A:2-2.3(a)(7)—Neglect of duty

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 and 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 Sys. Bd. (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div.), certif. granted, 97 N.J. 588 (1984), aff'd on other grounds, 99 N.J. 1 (1985). McMillan did not violate any DPW policy, and the record fails to reflect any other misconduct to substantiate this charge. Accordingly, I **CONCLUDE** that the respondent has failed to demonstrate, by a preponderance of the credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(7). I **FURTHER CONCLUDE** that this charge must be dismissed.

**5. N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause: Fighting or creating a disturbance on City property**

There is no definition in the New Jersey Administrative Code for "other sufficient cause." There have been cases when the charge of other sufficient cause has been dismissed when "[the] [r]espondent has not given any substance to the allegation of 'other sufficient cause.'" Simmons v. City of Newark, CSV 09122-99, Initial Decision (February 22, 2006), adopted, Merit Sys. Bd. (April 27, 2006), <https://njlaw.rutgers.edu/collections/oal/>. Here, during the altercation with Walker and Richardson, McMillan was acting in self-defense, and his actions did not violate the DPW violence-in-the-workplace policy. Accordingly, I **CONCLUDE** that the respondent has failed to demonstrate, by a preponderance of the credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, fighting or creating a disturbance on City property. I **FURTHER CONCLUDE** that this charge must be dismissed.

Accordingly, based on the foregoing, as the respondent has failed to meet its burden to substantiate any of the charges set forth in the FNDA, I **CONCLUDE** that discipline is not warranted.

**ORDER**

The respondent has failed to prove by a preponderance of the credible evidence the following charges against the appellant: 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)(2), insubordination; 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, specifically, fighting or creating a disturbance on City property. Accordingly, I **ORDER** that these charges be and are hereby **DISMISSED**.

I **FURTHER ORDER** that appellant's termination by the City of New Brunswick Department of Public Works is **REVERSED** and that he be reinstated to his employment with back pay, seniority, and all other applicable benefits, retroactive to the date of his termination, September 13, 2023.

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.

March 27, 2025

DATE

  
JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JSG/cab

## **APPENDIX**

### **Witnesses**

#### **For Appellant:**

Quintin Paige

#### **For Respondent:**

Nadrell McMillan

### **Exhibits**

#### **Joint**

- J-1 Final Notice of Disciplinary Action
- J-2 City of New Brunswick Employee Handbook
- J-3 City of New Brunswick Police Department Incident Report dated August 31, 2023
- J-4 City of New Brunswick Police Department Investigation Report dated September 12, 2023
- J-5 Cell-phone video
- J-6 CCTV video