



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Terry Bell, Rahway,
Fire Department

CSC Docket Nos. 2025-99 and 2025-
769

OAL Docket Nos. CSV 12052-24 and
CSR 14965-24
(Consolidated)

ISSUED: AUGUST 13, 2025

The appeals of Terry Bell, Fire Fighter, Rahway, Fire Department, 30 calendar day suspension¹ and removal, effective March 6, 2024, on charges, were heard by Administrative Law Judge Susana E. Guerrero (ALJ), who rendered his initial decision on July 11, 2025. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on August 13, 2025, accepted and adopted the ALJ's Findings of Fact and Conclusions and her recommendations to reverse the 30 calendar day suspension. However, it did not agree with her recommendation to modify the removal to a six-month suspension. Rather, it upheld the removal.

Regarding the 30 calendar day suspension, the ALJ found no credible evidence in the record to support the underlying charges. While the appointing authority argues otherwise, upon review, the Commission agrees. In this regard, the ALJ found:

Bell testified that he heard Gustofson's announcement that dinner was ready and that he heard: "If you're not eating can you come to the watch." He denies, however, that either his name or BC Fleischman's name was ever mentioned, or that Gustofson ever

¹ The record indicates that the appellant served this suspension from February 6, 2024, through March 5, 2024.

indicated that the announcement constituted an order or instruction coming from a superior officer. He testified that he did not think that the announcement was an order, but merely a request for coverage by the firefighter. Firefighter Gustofson did not testify at the hearing, and BC Fleischman concedes that he did not listen to the entire announcement and does not remember whether Bell's name was even mentioned by Firefighter Gustofson. Bell was the only witness who testified that he heard the announcement. Consequently, I **FIND** that while an announcement was made over the loudspeaker seeking coverage at the watch desk, it is unclear what precisely was said. I also **FIND** that the evidence is inconclusive that the announcement mentioned BC Fleischman, or that it mentioned or was expressly directed at Bell and not made generally to all those not participating in the group dinner. The record is also inconclusive that Bell was the only firefighter not participating in the group dinner or that he was aware that he was the only one and that the announcement was intended for him alone.

When BC Fleischman went to the watch desk to offer Bell some dinner and saw that Bell was not there, he went to the TV room and asked Bell why he was not manning the watch desk. Bell informed him that he did not know that he had to be there, and when BC Fleischman told him that he was ordered to go to the watch desk, Bell responded: "I take orders from Gus now?" and testified that he heard Gustofson laughing and did not believe the announcement to be an order. One firefighter cannot give another firefighter orders, and he considered Firefighter Gustofson's announcement to be a request, not an order. I **FIND** that while Bell did not present to the watch desk when coverage was requested, the evidence is inconclusive that the announcement constituted an order, or that it was presented as an order or instruction coming from a superior officer that was expressly directed at Bell. I also **FIND** that the record is inconclusive that Bell "falsely accused" BC Fleischman of harassment or "spread false accusations and rumors," as alleged in the FNDA.

While the appointing authority disagrees with the ALJ's findings, it has presented no persuasive evidence that her findings and conclusions in this regard were arbitrary, capricious, unreasonable or not based on her assessment of the credible evidence in the record.

As to the removal, the appointing authority argues that the ALJ's reduction in penalty is not warranted. The Commission agrees. In this regard, the ALJ stated:

Here, the City argues that Bell's actions, and the loss of trust by the Chief and BC Fleischman, justify his removal. I recognize that Bell

failed to perform his duties at the Stearns Street fire and that his actions jeopardized the safety of the victim, and of the EMT and officers who climbed onto the roof. After being ordered by his Captain to remove the victim from the roof, Bell climbed the ladder, spoke very briefly with the victim, and walked away from him for about five minutes. The victim was alert and physically able to walk down the ladder with Bell—in fact, he did so five minutes later after a few seconds of coaching by the EMT and other officers. If Bell needed help getting him down, he should have radioed for assistance, and he certainly should have stayed with him. Rather, he walked away, left the victim on the roof, and involved himself in tasks that were never assigned to him. Fortunately, the five-minute delay in securing the victim did not result in any harm to him or to the EMT and officers who climbed onto the roof. The victim also did not appear to be in any imminent danger from the fire while he was on the roof, as it was contained to the front of the building and was quickly extinguished. Yet, the fact remains that it was Bell's responsibility to remove the victim from the roof, as ordered.

While Bell failed to perform his duties at the Stearns Street fire and later submitted a Post-Incident Analysis that contained certain mischaracterizations and inaccuracies about what occurred at the fire, I am not persuaded that Bell's conduct was sufficiently egregious to warrant termination, the "penalty of last resort." Consequently, given that Bell served as a firefighter for sixteen years without any major discipline; that his superiors agree that he was a talented and knowledgeable firefighter; and that the events of the Stearns Street fire occurred within a very short time span, five minutes, and did not result in any harm to the victim or others, I **CONCLUDE** that the penalty of termination is excessive, and that a more appropriate penalty is a six-month suspension.

Regarding the penalty, 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).

The Commission finds the appellant's misconduct in this matter egregious and worthy of removal from employment. While it is significantly noteworthy that the appellant was a 16-year employee with no history of major discipline, his misconduct was seriously negligent for a public safety employee, and in fact, a dereliction of his primary duties to ensure the safety of the public and his co-firefighters. His failure to successfully do so in a timely manner, which are the most basic duties of his position, cannot be countenanced. The Commission cannot imagine how the appointing authority could trust the appellant to successfully perform these primary duties should he be returned to employment. Accordingly, the Commission finds that the appellant's removal from employment, notwithstanding his prior history, is appropriate and neither disproportionate to the infraction nor shocking to the conscience.

Since the 30 calendar day suspension has been reversed and the removal has been upheld, the appellant is entitled to back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from February 6, 2024 through March 5, 2024, to account for the reversed 30 calendar day suspension. Further, since 30 calendar day suspension has been reversed, pursuant to *N.J.A.C.* 2-2.12, the appellant's attorney is entitled to reasonable counsel fees only for work on that portion of this consolidated matter.

This decision resolves the merits of the dispute between the parties concerning the merits of the dispute between the parties concerning the suspension and removal. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision on the suspension will not become final until any outstanding issues concerning counsel fees for the suspension are finally resolved.

ORDER

30 Calendar Day Suspension

The Civil Service Commission finds that the appointing authority's action in suspending the appellant for 30 calendar days was not justified. Therefore, the Commission reverses that action and upholds the appeal of Terry Bell. The appellant is therefore entitled to 30 calendar days of back pay, seniority and benefits pursuant to *N.J.A.C.* 4A:2-2.10(d)3. The Commission further awards reasonable counsel fees as provided for in *N.J.A.C.* 4A:2-2.12 for that matter. Proof of income earned and 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. The Commission directs that the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to 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 regarding the suspension 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.

Removal

The Civil Service Commission further finds that the action of the appointing authority in removing the appellant was justified and dismisses the appellant's appeal of that action.

This is the final administrative determination regarding the appellant's removal. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 13TH DAY OF AUGUST, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

OAL DKT. NOS. CSV 12052-24

and CSR 14965-24

AGENCY DKT. NO. 2025-99

**IN THE MATTER OF TERRY BELL,
CITY OF RAHWAY FIRE DEPARTMENT.**

Zinovia H. Stone, Esq., for appellant Terry Bell (Caruso, Smith & Picini,
attorneys)

Aaron L. Rainone, Esq., for respondent City of Rahway (Rainone, Coughlin &
Minchello, attorneys)

Record Closed: May 30, 2025

Decided: July 11, 2025

BEFORE **SUSANA E. GUERRERO, ALJ:**

STATEMENT OF THE CASE

Terry Bell (Bell or appellant), a firefighter with the City of Rahway Fire Department (the City or respondent), appeals his termination relating to his response to a fire on October 13, 2023, as well as a thirty-day suspension that was previously issued for his conduct on January 13, 2024.

PROCEDURAL HISTORY

Bell filed an appeal from a Final Notice of Disciplinary Action (FNDA) dated May 14, 2024, issued by the City, imposing a thirty-day suspension for events relating to his failure to report to the watch desk on January 13, 2024. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on August 21, 2024 for determination as a contested case under OAL Dkt. No. CSV 12052-24 and assigned to me.

Appellant then filed a separate appeal from a subsequent FNDA, dated September 26, 2024, in which the City terminated the appellant for his performance at a fire on October 13, 2023. This appeal was filed with the OAL on October 11, 2024, for determination as a contested case under OAL Dkt. No. CSR 14965-24 and assigned to Administrative Law Judge Daniel Brown, who is now a Judge of the Superior Court.

Pursuant to the parties' request, I issued an Order consolidating both matters on November 19, 2024. A hearing was scheduled for January 6 and 7, 2025, but adjourned at the request of the appellant and held on February 2 and 11, 2025. The parties were given an opportunity to request transcripts and file post-hearing briefs. The briefs were received on April 11, 2025, and the record closed on May 2, 2025, upon receipt of a missing exhibit (A-2). I reopened the record when I discovered that the FNDA for CSV 12052-24 that the parties had submitted as Joint Exhibit 10 (J-10) differed from the FNDA filed with the OAL and with the Civil Service Commission. The parties were informed of this discrepancy on or around May 6, 2025, and attempts were made to schedule a telephone conference with the parties to address this discrepancy. A telephone conference was held on May 19, 2025, and the parties agreed to replace J-10 with the FNDA that was filed with the OAL. The parties were given until May 30, 2025, to supplement their post-hearing briefs to address the correct FNDA which contained charges that differed from the joint exhibit previously supplied by the parties. The record closed on May 30, 2025, upon receipt of the supplemental briefs.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Terry Bell had been a firefighter with the City for about sixteen years when he was terminated in 2024. While he had some minor discipline in the past, Bell had no history of any major discipline.

The City alleges that Bell failed to properly perform his duties during a fire on October 13, 2023, and that he subsequently prepared a report concerning the fire that contained multiple untruthful and false statements. More specifically, the FNDA for CSR 14965-24 charges Bell with: failing to communicate effectively using the fire department radio; abandoning the patient on the roof and failing to transfer patient care to a licensed caregiver; failing to wear appropriate personal protective equipment; improperly assisting with hose deployment and assigning himself as the temporary Rapid Intervention Crew (RIC) member, which deviates from the Fire Department's accountability system; failing to perform rescue operations when ordered by Captain Lopez; and purposely reporting untruthfully and falsely on the statement/report of the incident. This Preliminary Notice of Disciplinary Action (PNDA) was not issued until March 5, 2024, while the FNDA sustaining the charges is dated September 26, 2024.

The City also alleges that on January 13, 2024, Bell failed to report to the watch desk for coverage when instructed; argued against the instruction and subsequently denied hearing it; and then falsely accused the battalion chief of harassment and spread false accusations and rumors about a superior officer. The PNDA for CSV 12052-24 was issued on February 8, 2024, and the FNDA is dated May 14, 2024. The City sought a thirty-working-day suspension for the events of January 13, 2024, and termination for the events relating to the October 13, 2023 fire.

Bell continued to work for the City as a firefighter after the October 13, 2023 fire, until he was suspended following the January 13, 2024 incident.

October 13, 2023 Fire

On October 13, 2023, Bell responded to a report of a fire at a residence on Stearns Street in Rahway. He drove Engine 3 with Captain Ramon Lopez (Captain Lopez) and Firefighter Manning. While en route to the fire, they were informed that a man was trapped on the back roof of the building. They were the first firefighters to arrive at the scene, although Battalion Chief Richard Fleischman (BC Fleischman),¹ who served as the incident commander, arrived at around the same time. Members of the Rahway Police Department were already on the scene. Captain Lopez instructed Bell to get a ladder and tools from the truck.

When Engine 3 arrived, Captain Lopez conducted an initial assessment of the scene and observed that the fire appeared to be contained near the front of the building. Captain Lopez and Bell also observed the man on the roof of the one-story addition near the back of the house. He had climbed out of a second-floor window and had burns on his arms and head but was alert and able to communicate.

Although Bell denies that Captain Lopez ordered him to get the victim off the roof, the evidence preponderates that he was ordered by the Captain to remove the victim. Captain Lopez testified credibly that he ordered Bell to remove the man from the roof; Bell secured and climbed the ladder; and Bell's own reporting of the incident acknowledges that Captain Lopez told him "you got the victim" prior to the Captain walking to the front of the house with Manning. Manning and Captain Lopez were to take the front door and enter the building. I **FIND** that Bell's duty, consistent with Captain Lopez's order, was to perform rescue operations and remove the victim from the roof, and that Bell was aware of this at the time.

When Bell climbed the ladder, he observed that the victim had burns to his arms and head, and they briefly spoke. While there was some smoke coming out of a rear window near the victim, neither Bell nor the victim appeared to be in any imminent danger at that time. Bell testified that the victim told him that he could not go down the

¹ Regarding the chain of command at the firehouse, firefighters report to captains, and captains report to battalion chiefs. In Rahway, they all serve under Chief Michael J. Roberts (Chief Roberts).

ladder with him, and Bell descended the ladder alone after having been on the ladder for only a few seconds. While Bell stood at the top of the ladder near the victim, he yelled out: "He's burnt up. I need help." This is observed on police body camera footage obtained from police officers who were at the scene. However, while there were police officers on the ground near Bell, there does not appear to be any member of the Rahway Fire Department nearby.

While Bell testified that he could not get the victim down by himself and that he asked BC Fleischman for help, I **FIND** that the evidence does not preponderate that Bell ever asked BC Fleischman, or any other member of the fire department, for help in getting the victim off the roof. BC Fleischman, who I found credible, denied that Bell asked for assistance, and the police body camera footage taken at the scene does not corroborate Bell's testimony that he asked BC Fleischman for help and that BC Fleischman acknowledged the request. Moreover, Bell made no mention of this in any subsequent meeting, nor in any written report.

Chief Roberts testified credibly that if Bell needed assistance with the victim, the proper procedure to request assistance is to use the radio. He testified that fire scenes like this one are generally loud and that yelling from the roof was not appropriate, in part because there was no member of the fire department close enough to hear Bell. There is no evidence that any member of the fire department was close enough to Bell to be able to hear him say, without his radio, that he needed help.

While Bell testified that he could not get the victim down safely by himself, Captain Lopez testified credibly that there was no indication that the victim could not come down using a ladder or that Bell would be unable to remove him from the roof himself. While the victim was scared, he was conscious, alert, and mobile. Captain Lopez reasonably relied on Bell to remove the victim from the roof given Bell's level of experience as a firefighter and because it appeared to be a "very simple operation," as the victim did not need to be carried and Bell just had to talk the victim on to the ladder and guide him down.

When Bell descended the ladder without the victim and walked to the front of the house, he left the victim alone on the roof for about five minutes. Chief Roberts testified credibly that it was not appropriate for Bell to leave the victim with the police officers who were on the ground as it was Bell's obligation to secure the victim and remove him from that dangerous situation. I **FIND** that Bell neglected his duties when he abandoned the victim on the roof for about five minutes. Bell was required to remain with the victim until the victim could be transferred to someone with an equal or higher medical authority. I also **FIND** that Bell failed to communicate effectively at the scene by not using the fire department radio if he needed assistance.

When Bell left the victim on the roof, he went to the fire truck to get his gear and uninked a hose while other firefighters, including Captain Lopez, Manning, and firefighters from Engine 4, entered the front door and put out the fire. The fire was described as a room and contents fire that was extinguished in only fifteen seconds once hosed down. EMS arrived at the scene while Bell was near the front of the building. Bell approached them in the driveway and informed them, in the presence of several police officers, that the victim "needs help getting down" and that he was badly burned. Upon saying this, Bell turned around and returned to the front of the building, away from the victim, who was still on the roof. Having received this information from Bell, and having seen him walk away from the victim, EMT McGhee proceeded towards the victim, and he and two police officers climbed the ladder onto the roof to attempt to remove the victim. I **FIND** that, while Bell may not have expressly ordered or asked them to climb onto the roof, he abandoned his responsibility to remove the victim and left the task to EMS and the police by informing them that the victim "needs help getting down" and then walking away from them and the victim. Bell did not accompany them to the victim. Rather, he returned to the front of the house to assist with other tasks that had not been assigned to him. He did not tell EMS or the police that he would return to remove the victim, nor did he indicate that he was securing assistance to remove the victim from the roof. When BC Fleischman noticed that the victim was still on the roof and that Bell was not with him, he ordered Bell to return to the victim and get him off the roof. When Bell returned to the ladder near the victim, EMT McGhee and police officers were on the roof speaking with the victim and leading him onto the ladder. I **FIND** that Bell only returned to assist with the victim's removal when BC Fleischman ordered him

to do so and that, in effect, Bell delegated his responsibility to remove the victim from the roof by allowing the EMT and officers to climb the roof to remove the victim.

It is undisputed that the police officers and EMT should not have been on the roof and that it is primarily the fire department's responsibility to remove victims from a fire scene. Climbing the roof to remove the victim placed the two police officers and the EMT in a potentially dangerous situation.

While the victim was scared and may have hesitated to go down the ladder, EMT McGhee testified credibly that the victim descended willingly after "a little bit of coaching and instructing" him on how to get down. It took the EMT and the officers no more than one minute to get him down. While the officers and the EMT were on the roof assisting the victim onto the ladder, Bell returned to the ladder, per BC Fleischman's order, and accompanied the victim as he descended the ladder. The victim descended without incident and his care was turned over to EMS. He was treated for burns and given oxygen.

Chief Roberts testified that it was a high priority to remove the victim from the roof and that Bell should not have gone to the front of the building to assist other firefighters with the hose, as that was outside the scope of his assigned duties. Captain Lopez testified credibly that, as a firefighter, Bell did not have the authority to change assignments, and that he should have checked with his senior officer before assisting another team. I **FIND** that Bell should not have assisted with hose deployment because he was never assigned to do so and, more importantly, he should have used that time to remove the victim from the roof or at least remain with the victim until assistance was secured.

Moreover, I **FIND** that the evidence does not preponderate that Bell failed to wear appropriate equipment on October 13, 2023 as alleged in the FNDA.

Subsequent Meetings and Reports concerning the Fire

About a week after the October 13, 2023 fire, BC Fleischman and Captain Lopez met with Bell to discuss the fire and to ask him why he failed to remove the victim from the roof as he had been ordered. Captain Lopez and BC Fleischman testified consistently and credibly that, at this meeting, Bell explained that he was having a difficult time coaching the victim off the building and that he transferred patient care to the EMT. This concerned them because the victim was still on the roof when Bell transferred care, and it was dangerous for the EMT and police officers to climb onto the roof. They discussed the importance of following orders; prioritizing life safety (i.e., securing the victim); using the radio to call Incident Command when assistance is needed; and the danger of placing untrained personnel on the roof of a fire building. Bell never told them that he had asked them for help that evening nor that he was waiting for them to provide assistance. At this meeting, the BC and Captain decided not to discipline Bell for what had occurred, and they considered it a learning experience. BC Fleischman agreed that he still felt comfortable with Bell working as a firefighter after the Stearns Street fire because Bell seemed to recognize and understand his errors, and Bell appeared to agree with what they told him.

Then in late October 2023, Bell emailed BC Thornton, who addresses safety concerns at the Department, a Post-Incident Analysis of the Stearns Street Fire. This was not an "official report" of the incident itself but a report containing Bell's concerns and critique of the events that evening. He later filed a report with the State's Division of Fire Safety. In reviewing the Post-Incident Analysis sent to BC Thornton, hearing the testimony, and observing the police body camera footage, I **FIND** that Bell made certain misleading and inaccurate statements in his report. For example, he incorrectly noted in the report that he put his bottle on as he exited Engine 3. I **FIND**, however, that this inaccuracy was neither intentional nor significant.

Bell also noted in the report that when he arrived at the fire, Captain Lopez told him to get the ladder. He wrote that while on the ladder, he was "anticipating" that Captain Lopez "would come back with another ladder and medical bag" but that when the Captain did not return, Bell determined that he could not rescue and remove the

victim by himself. I **FIND** that Bell's statements that he was "anticipating" that Captain Lopez would return with another ladder and medical bag is misleading and inaccurate. Captain Lopez never indicated that he would return with these items, and there is no evidence in the record that this would occur or that Bell had any reason to expect or anticipate that it would.

Bell also reported that there was a "possibility" of him having to be a temporary RIC member in case something went wrong at the front door, but that BC Fleischman then instructed him to return to the ladder and remove the victim. He also wrote: "I got the victim down the ladder alone, then turned him over to ems units" I **FIND** that Bell's statement that there was a possibility of having to be a temporary RIC member is misleading. He was not authorized to assign himself as temporary RIC member; Chief Roberts testified credibly that there was no need for an RIC crew to be activated; and the evidence does not preponderate that an RIC team would be needed in connection with this room and contents fire that was quickly and easily extinguished. I also **FIND** that Bell made a misleading statement that he "got the victim down the ladder alone." While he did escort the victim down the ladder, he did not act alone—two police officers and the EMT were on the roof assisting the victim and guiding him onto the ladder.

Bell had his yearly review in December 2023, and while BC Fleischman may not have given him an above-average or excellent review as in the past, he still gave Bell a satisfactory one. BC Fleischman noted in the review that Bell "underperformed" at the Stearns Street fire, did not follow orders or show good common sense, and did not take responsibility for his actions. There was no mention in the review, however, that Bell was unfit to be a firefighter or that he was no longer trustworthy. At the hearing, BC Fleischman described Bell as "very smart" and knowledgeable, and Chief Roberts described him as a "very talented firefighter." However, they both testified that they could no longer trust Bell and that they had no faith that he would follow orders.

January 13, 2024 Incident

The City's firehouse has a watch desk that is stationed twenty-four hours a day by a firefighter. On the evening of January 13, 2024, Bell was at the firehouse while

Firefighter Gustofson manned the watch desk. BC Fleischman was providing dinner for everyone at the firehouse that evening, but Bell informed him that he had brought his own dinner. Bell went to the TV room to eat alone. Since Firefighter Gustofson was going to eat dinner with the other officers, BC Fleischman had him make an announcement over the station loudspeaker for coverage at the watch desk.

The City asserts that an order was given over the loudspeaker instructing Bell or anyone not attending dinner to report to the watch desk, and that he chose to ignore it. While BC Fleischman testified that he told Firefighter Gustofson to announce that dinner was ready and to have Bell come down to man the watch desk, when asked what specific order he gave Firefighter Gustofson, BC Fleischman responded speculatively: "I think it would have been just that simple, it was very informal, hey, let everybody know dinner is ready and have Terry come down."

Bell testified that he heard Gustofson's announcement that dinner was ready and that he heard: "If you're not eating can you come to the watch." He denies, however, that either his name or BC Fleischman's name was ever mentioned, or that Gustofson ever indicated that the announcement constituted an order or instruction coming from a superior officer. He testified that he did not think that the announcement was an order, but merely a request for coverage by the firefighter. Firefighter Gustofson did not testify at the hearing, and BC Fleischman concedes that he did not listen to the entire announcement and does not remember whether Bell's name was even mentioned by Firefighter Gustofson. Bell was the only witness who testified that he heard the announcement. Consequently, I **FIND** that while an announcement was made over the loudspeaker seeking coverage at the watch desk, it is unclear what precisely was said. I also **FIND** that the evidence is inconclusive that the announcement mentioned BC Fleischman, or that it mentioned or was expressly directed at Bell and not made generally to all those not participating in the group dinner. The record is also inconclusive that Bell was the only firefighter not participating in the group dinner or that he was aware that he was the only one and that the announcement was intended for him alone.

When BC Fleischman went to the watch desk to offer Bell some dinner and saw that Bell was not there, he went to the TV room and asked Bell why he was not manning the watch desk. Bell informed him that he did not know that he had to be there, and when BC Fleischman told him that he was ordered to go to the watch desk, Bell responded: "I take orders from Gus now?" and testified that he heard Gustofson laughing and did not believe the announcement to be an order. One firefighter cannot give another firefighter orders, and he considered Firefighter Gustofson's announcement to be a request, not an order. I **FIND** that while Bell did not present to the watch desk when coverage was requested, the evidence is inconclusive that the announcement constituted an order, or that it was presented as an order or instruction coming from a superior officer that was expressly directed at Bell. I also **FIND** that the record is inconclusive that Bell "falsely accused" BC Fleischman of harassment or "spread false accusations and rumors," as alleged in the FNDA.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). A law enforcement officer is held to a higher standard than a civilian public employee. See Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consol. 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 the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

The City argues that Bell's actions during the fire, coupled with the Chief's lack of faith and trust that Bell will perform tasks as ordered, warrant termination. The City maintains that, rather than accept responsibility for his failures at the fire, Bell chose to file a report in which he lied about the event, and that his refusal to follow an order on January 13, 2024 confirmed a pattern of undisciplined behavior that impacts the safety of his fellow firefighters and the public. While Bell's performance at the fire was problematic, and he made certain misrepresentations in his Post-Incident Analysis, I am not persuaded that there is a pattern of behavior that impacts public or firefighter safety.

In connection with the incident of October 13, 2023, for which the respondent seeks termination, the FNDA dated September 26, 2024, charges Bell with violating the following regulatory provisions: 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)(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). It also charges Bell for violating at least sixteen separate sections of the Rules and Regulations for the Fire Department.

In connection with the incident of January 13, 2024, for which the respondent seeks a thirty-day suspension, the FNDA charges Bell with violating the aforementioned regulations and eight sections of the Fire Department's Rules and Regulations.

Since the City's witnesses did not testify as to how Bell's actions may have violated the Department Rules and Regulations, and the City's post-hearing brief does not address any of the rules and regulations that were allegedly violated, I **CONCLUDE** that the City has not sustained its burden to demonstrate that Bell violated any of the Fire Department's Rules and Regulations.

Bell is charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform his duties. In this type of breach, an employee

performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). Based on my consideration of the evidence presented, and the findings of fact above, I **CONCLUDE** that Bell failed to perform his duties, in violation of N.J.A.C. 4A:2-2.3(a)(1), when he failed to follow an order and remove the victim from the roof in a timely fashion; when he chose to "freelance" and look to perform other tasks outside the scope of his duties, rather than to complete the task assigned to him; when he left the victim alone on the roof for five minutes; when he failed to follow protocol and use his radio to request any needed assistance; and when he transferred his responsibility to the EMT and police officers, and allowed them to climb onto the roof to remove the victim. I also **CONCLUDE** that because Bell neglected to perform these duties at the fire, his actions constitute a violation of N.J.A.C. 4A:2-2.3(a)(7).

"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 (Feb. 5, 2009) (citation omitted), adopted, Civil Serv. Comm'n (Mar. 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. 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). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. Here, Bell neglected to perform his duties as a firefighter when he failed to follow his Captain's order to remove the victim from the roof in a timely fashion when initially ordered, and when he abandoned the victim on the roof and delegated his responsibility to the EMT and police officers. Bell's actions not only jeopardized the victim's safety by leaving him on the roof for five minutes, but the safety of the EMT and officers who climbed onto the roof to assist the victim.

Bell is also charged with insubordination, pursuant to N.J.A.C. 4A:2-2.3(a)(2). The Civil Service Act does not provide a definition for this charge. The term, however, is generally interpreted to mean the refusal to obey an order of a supervisor. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), adopted, Civil Serv.

Comm'n (Sept. 3, 2014), <https://njlaw.rutgers.edu/collections/oal/>. According to Webster's II New College Dictionary (1995), "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. I **CONCLUDE** that Bell was insubordinate and violated N.J.A.C. 4A:2-2.3(a)(2) when he failed to follow Captain Lopez's order to remove the victim from the roof. Rather than comply with the order and use the radio to request assistance if he needed assistance, Bell simply abandoned the victim on the roof for about five minutes until he was ordered again to return to the victim.

Bell is charged with "Inability to perform duty," N.J.A.C. 4A:2-2.3(a)(3), a charge which has been upheld where the employee is incompetent to execute his or her job responsibility. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305 (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county). I **CONCLUDE** that the City has failed to demonstrate how Bell violated N.J.A.C. 4A:2-2.3(a)(3). While Bell failed to perform his assigned duties at the fire, there is insufficient evidence to conclude that he is incompetent or incapable of performing the job of a firefighter.

Bell is also charged with violating N.J.A.C. 4A:2-2.3(a)(7) for unbecoming conduct. "Conduct unbecoming" is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for [government] employees and confidence in the operation of [governmental] services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). 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 Emmons, 63 N.J. Super. at 140 (citing Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955))). I **CONCLUDE** that Bell's conduct was unbecoming and violated N.J.A.C. 4A:2-2.3(a)(7), when he made inaccurate and misleading statements in his report to BC Thornton.

Finally, Bell is charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause." "Other sufficient cause" is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, 2014 N.J. AGEN LEXIS 236 (May 19, 2014), adopted, Civil Serv. Comm'n (Sept. 3, 2014), <http://njlaw.rutgers.edu/collections/oal/>. The City's charges relating to alleged violations of the Department Rules and Regulations have not been sustained, and I **CONCLUDE** that the City has not demonstrated by a preponderance of the credible and reliable evidence that Bell's conduct violated this statutory provision.

Consequently, with regard to CSR 14965-24, I **CONCLUDE** that the charges of Incompetency, inefficiency or failure to perform duties [N.J.A.C. 4A:2-2.3(a)(1)]; Conduct unbecoming a public employee [N.J.A.C. 4A:2-2.3(a)(6)]; Neglect of duty [N.J.A.C. 4A:2-2.3(a)(7)]; and Insubordination [N.J.A.C. 4A:2-2.3(a)(2)] are hereby **SUSTAINED**. I also **CONCLUDE** that the charges of "Inability to perform duty" [N.J.A.C. 4A:2-2.3(a)(3)], Other sufficient cause [N.J.A.C. 4A:2-2.3(a)(12)], and charges relating to violations of the Fire Department's Rules and Regulations are hereby **REVERSED**.

In his supplemental brief, Bell argues that the charges against him warrant sanctions, including dismissal of the charges, because the City committed a fraud on this tribunal by submitting a falsified FNDA. While it is still unclear how the incorrect FNDA was submitted as a joint exhibit, I am not persuaded that the City intended to defraud this tribunal, or that sanctions are appropriate.

However, I do **CONCLUDE** that all charges relating to CSV 12052-24 are hereby **REVERSED** as the City failed to sustain these charges by a preponderance of the evidence presented.

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on

appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlow, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, or demotion. Bock, 38 N.J. at 522–24.

Progressive discipline may be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention. Rotundi v. Dep't of Health & Human Servs., OAL Dkt. No. CSV 385-88, Initial Decision (Sept. 29, 1988).

Here, the City argues that Bell's actions, and the loss of trust by the Chief and BC Fleischman, justify his removal. I recognize that Bell failed to perform his duties at the Stearns Street fire and that his actions jeopardized the safety of the victim, and of the EMT and officers who climbed onto the roof. After being ordered by his Captain to remove the victim from the roof, Bell climbed the ladder, spoke very briefly with the victim, and walked away from him for about five minutes. The victim was alert and physically able to walk down the ladder with Bell—in fact, he did so five minutes later after a few seconds of coaching by the EMT and other officers. If Bell needed help getting him down, he should have radioed for assistance, and he certainly should have stayed with him. Rather, he walked away, left the victim on the roof, and involved himself in tasks that were never assigned to him. Fortunately, the five-minute delay in securing the victim did not result in any harm to him or to the EMT and officers who climbed onto the roof. The victim also did not appear to be in any imminent danger from the fire while he was on the roof, as it was contained to the front of the building and was

quickly extinguished. Yet, the fact remains that it was Bell's responsibility to remove the victim from the roof, as ordered.

While Bell failed to perform his duties at the Stearns Street fire and later submitted a Post-Incident Analysis that contained certain mischaracterizations and inaccuracies about what occurred at the fire, I am not persuaded that Bell's conduct was sufficiently egregious to warrant termination, the "penalty of last resort." Consequently, given that Bell served as a firefighter for sixteen years without any major discipline; that his superiors agree that he was a talented and knowledgeable firefighter; and that the events of the Stearns Street fire occurred within a very short time span, five minutes, and did not result in any harm to the victim or others, I **CONCLUDE** that the penalty of termination is excessive, and that a more appropriate penalty is a six-month suspension.

ORDER

Accordingly, it is **ORDERED** that the action of the respondent to terminate the appellant is **REVERSED** and that he be reinstated to the position of firefighter. It is **FURTHER ORDERED** that the appellant be suspended for six months and receive the return of appropriate benefits.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

July 11, 2025

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency:

July 11, 2025

Date Mailed to Parties:

July 11, 2025

jb

APPENDIX

Witnesses

For Appellant:

Terry Bell

For Respondent:

Michael J. Roberts

Justin McGhee

Ramon Lopez

Richard Fleischman

Exhibits

Joint Exhibits:

- J-1 City of Rahway Rules and Regulations – Fire Department
- J-2 Not in Evidence
- J-3 PNDA dated March 5, 2024
- J-4 Memo of charges dated March 5, 2024
- J-5 Video File 1 – BWC, dated October 13, 2023
- J-6 Video File 2 – BWC, dated October 13, 2023
- J-7 Audio File 1 – Rahway House Fire Radio
- J-8 FNDA dated September 26, 2024
- J-9 PNDA dated February 8, 2024
- J-10 FNDA dated May 14, 2024

For Appellant:

- A-1 Awards and commendations
- A-2 NFIRS-10 Personnel Report by BC Fleischman dated October 13, 2023
- A-3 Memo to Chief Roberts from BC Fleischman dated November 10, 2023
- A-4 Statement prepared by Lopez
- A-5 Not in Evidence

A-6 Not in Evidence

A-7 Not in Evidence

A-8 PO Kennedy's BWC footage dated October 13, 2023 (usb)

A-9 Evaluation dated December 2023

For Respondent:

R-1 NFIRS report dated October 13, 2023

R-2 Rahway EMS report

R-3 Email from Bell to BC Thornton

R-4 Subsequent Report filed by Lopez

R-5 Report filed by Lopez

R-6 Memo to Chief from BC Fleischman dated November 10, 2023

R-7 Not in Evidence

R-8 Emails dated February 15, 2024

R-9 Not in Evidence

R-10 Disciplinary records from 2008 (resulting in fine for unauthorized absences)

R-11 FNDA dated July 9, 2009 with related documents (resulting in written reprimand)

R-12 PNDA dated November 5, 2009 and related documents (resulting in minor discipline)

R-13 Document regarding December 2022 incident

R-14 Notice of Minor Disciplinary Action dated March 2023 and related documents