

In the Matter of Estephania  
Gutierrez, Clifton, Department of  
Human Services

CSC Docket No. 2025-65  
OAL Docket No. CSV 10017-24

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

**ISSUED: SEPTEMBER 10, 2025**

The appeal of Estephania Gutierrez, Keyboarding Clerk 2, Clifton, Department of Human Services, removal, effective May 23, 2024, on charges, was heard by Administrative Law Judge Kelly J. Kirk (ALJ), who rendered her initial decision on July 25, 2025. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 10, 2025, adopted the ALJ's Findings of Facts and Conclusions of Law and her recommendation to uphold the removal.

## ORDER

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

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 10<sup>TH</sup> DAY OF SEPTEMBER, 2025

Allison Chris Myers

Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 10017-24

AGENCY REF. NO. 2025-65

**IN THE MATTER OF ESTEPHANIA  
GUTIERREZ, CITY OF CLIFTON,  
DEPARTMENT OF HUMAN SERVICES,**

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**Curtiss Jameson**, Esq., for appellant Estephania Gutierrez (Kroll Heineman  
Ptasiewicz Parsons Jameson, attorneys)

**Adam S. Herman**, Esq., for respondent City of Clifton (Adams Lattiboudere Croot  
& Herman, LLC, attorneys)

Record Closed: May 20, 2025

Decided: July 25, 2025

BEFORE **KELLY J. KIRK**, ALJ:

**STATEMENT OF THE CASE**

The City of Clifton, Department of Human Services terminated keyboarding clerk  
2 Estephania Gutierrez for incompetency, inefficiency or failure to perform duties,  
insubordination, and conduct unbecoming a public employee.

## **PROCEDURAL HISTORY**

Estephania Gutierrez was served with a Preliminary Notice of Disciplinary Action (PNDA) dated January 23, 2024, for incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. (J-1.) A departmental hearing was held on February 20, 2024, and April 11, 2024, and the City of Clifton (City) issued a Final Notice of Disciplinary Action (FNDA), dated May 23, 2024, sustaining the charges of incompetency, inefficiency or failure to perform duties, insubordination, and conduct unbecoming a public employee, and terminating Gutierrez's employment. (J-2.)

Gutierrez appealed, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law, where it was received on July 19, 2024. The hearing was scheduled for January 22, 2025, and January 27, 2025. Due to a technical issue, the hearing was rescheduled for February 10, 2025, at which time the parties appeared and discussed settlement of the matter. A settlement was to be entered into the record, but appellant requested additional time to consider the settlement, and the parties were scheduled to appear on February 11, 2025, at 3:30 p.m. to enter the settlement on the record or obtain hearing dates. Appellant opted to proceed with a hearing, and the hearing was rescheduled. The hearing was held on February 26, 2025, February 28, 2025, and March 12, 2025, and the record closed on May 20, 2025, after receipt of the parties' post-hearing briefs.

## **EVIDENCE AND FINDINGS OF FACT**

### **Background**

Estephania Gutierrez testified on her own behalf. John Edward Biegel, III, Michelle Jasper, Susan Polito, Deidre Hughes, Kimberly Castellano, Margaret Nysk, and Douglas Johnson testified on behalf of respondent. Based upon a review of the evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Clifton City Hall is a complex, and the main building houses four different agencies: the Senior Center (for seniors and persons with special needs), Outreach (where drivers transport seniors and persons with disabilities), Power of One (a nonprofit organization storing food there for seniors and people in need), and Passaic County's nutrition program. John Biegel has been employed by the City since 1990, and since 2004 he has been the Health Inspector/Director of Health and Human Services, in which capacity he is supervisor of the Senior Center and Outreach. Douglas Johnson has been employed by the City since 2016 as a personnel officer. He is the head of the City's Human Resources Department.

Gutierrez was first employed by the City in the early 2000s in the Recreation Department as a keyboarding clerk. She was laid off in 2008 or 2009 but returned in 2011. The Recreation Department supervisor was Debbie Oliver. An issue or issues arose between Gutierrez and Oliver, and in 2021, Gutierrez filed complaints against Oliver and Johnson. The complaints were withdrawn, and Gutierrez transferred from the Recreation Department to the Senior Center.

Margaret<sup>1</sup> Nysk has been employed by the City since December 2017 as a Senior Citizen Program Aide at the Senior Center. She is not a supervisor but the "lead person" at the Senior Center and oversees daily operations of the Senior Center. Nysk is also a Medicare specialist. Michelle Jasper has been employed by the City since February 2016 as a keyboarding clerk at the Senior Center. Jasper provides information and assistance to the seniors. Nysk and Jasper share the Senior Center office. There is a desk outside the Senior Center office door, in the main, open Senior Center area, that was utilized by Gutierrez. Gutierrez sometimes wrote notes on the open desk calendar. Her hours were 8:00 a.m. until 4:00 p.m. Gutierrez received a lunch break and two approximately fifteen-minute breaks—one in the morning and one in the afternoon. Gutierrez's job duties at the Senior Center were to assist seniors and check seniors in for the lunch program, and provide office help when needed. During COVID, she also checked temperatures.

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<sup>1</sup> Referred to by Gutierrez as Malgorzata.

Power of One is a nonprofit organization that houses food at the Senior Center. Kimberly Castellano is the director of Power of One, which contracts with the City to respond and deliver food for food-insecure seniors, disabled persons, and veterans. Power of One spends at least twenty hours a week at the Senior Center, Monday through Friday, primarily Tuesdays and Wednesdays, as those days are food-focused, and the other days are spent cleaning the space and accepting deliveries. Power of One was at the Senior Center before Gutierrez transferred there. The first issue that arose between Gutierrez and Castellano resulted from Gutierrez questioning Castellano and Nysk about expiration dates on the food.

The Passaic County Nutrition Services application includes contact information, such as date of birth, transportation requirements, whether the individual has a cane or wheelchair, language and nutrition information, and emergency contact information. (C-5.) The application also includes voluntary questions, such as gender, marital status, with whom the individual resides, if the individual is in poverty, ethnicity, race, and whether frail, disabled, or vulnerable, noting that “Your privacy and confidentiality will be protected and services are not denied or affected in any way if you choose to not answer.” The signature line reflects “I hereby authorize the release of this information to the Passaic County Department of Social Services and the transportation provider where appropriate.” (C-5.) Additionally, a Release of Information Form Photo Release states, “By my signature below, I am authorizing the release, exchange and/ or discussion of pertinent social, psychological, medical and/or other information for the purpose of making appropriate referrals for services,” which information may include a Photo Release. Seniors complete the application for the nutritious lunch program, but not all seniors sign the photo release.

On February 20, 2022, Castellano had volunteers from the Clifton High School Key Club at the Senior Center preparing food packages. An issue arose between Gutierrez and Castellano and other Power of One volunteers. As a result, Gutierrez was verbally instructed by Biegel not to photograph anyone, especially not minors, at the Senior Center, without obtaining permission.

In late April/early May 2022, Gutierrez was transferred from the Senior Center to Outreach. Outreach is located down the hall in the same building as the Senior Center. Deidre Hughes has been employed by the City since 1993, when she was first hired as a part-time bus operator for the Recreation Department. She has been the supervisor of the Outreach Department for twenty-two years and is responsible for seven drivers, as well as public relations and phone work. Outreach provides medical transportation for chemotherapy, dialysis, and other medical appointments and transportation for the City's nutrition program, which transports people to the Senior Center for food. Outreach also transports seniors for grocery shopping twice per week. Hughes and Gutierrez were not friends outside of work, but they were friends at work—which included sometimes going to lunch together and exchanging texts and photos about their families. Hughes requested that Gutierrez work in Outreach.

After the transfer from the Senior Center to Outreach, Gutierrez had no job duties at the Senior Center. Her Outreach job duties were to take phone messages and make appointments, if able to do so. Gutierrez's job duties did not involve monitoring drivers. Hughes did all the scheduling, but if there was a time slot that someone needed, Gutierrez would fill it in the book.

A confidential memo from Johnson to Gutierrez, dated June 6, 2022, "Re: Harassment Complaint," states as follows:

As you are aware, the City of Clifton (the "City") received a discrimination and harassment complaint against you by Senior Center employee, Margaret Nysk. A thorough investigation was conducted with the assistance of outside counsel. The investigation included, among other things, interviews with the complainant, you, and other witnesses, as well as a review of documentary evidence. The City takes these allegations very seriously and appreciates your cooperation in the investigation.

The investigation has concluded that there was no credible evidence to sustain any actions against you which would violate the City's Prohibited Discrimination and Harassment Policy. However, an improper demeanor complaint has been sustained against you for actions you took at the Senior center (the "Center"). A counseling by Mr. Biegel will be given to you

in this regard as disciplinary action and will address the following issues:

1. You must remain civil and courteous at all times in the Center to all workers and senior citizens, must work toward fostering a cooperative work environment in the Center, and must politely communicate with all workers at the Center rather than advising them that they cannot speak to you directly;
2. You are not to raise your voice or yell or fight with anyone in the Center at any time. If you have a complaint or problem at the Center, you can direct same to your supervisor or to the Personnel Officer;
3. You are not to film anyone at the Center unless they provide explicit permission. You must refrain from any activities at the Center that could be disruptive to the work place or interfere with any employee's duties;
4. You must act cooperatively at all times with Ms. Nysk, who is the lead employee at the Senior Center, and inform her of your whereabouts, your work assignments and your time off;
5. You must not refer to Ms. Nysk or anyone else as "old" and should not direct any insulting language toward anyone at the Center. You will be provided with a copy of the City's Anti-Discrimination Policy and will need to familiarize yourself with same;
6. Any future failure to comply with the instant directives could result in discipline; and
7. Your direct supervisor is Mr. Biegel, and you must follow all of his directives, get approval for any time off from him, and review your job duties and work assignments with him.

Although Ms. Nysk is not your supervisor, you still need to treat her courteously at all times and communicate with her as noted above. Ms. Nysk will be informed that she is not your supervisor and that you will report to Mr. Biegel. She will also be advised that she does not have the power to discipline you. It is the City's hope that these clarifications will promote a more cordial atmosphere at the Senior Center between the both of you.

You will also note that the City prohibits retaliation against any individual for filing a good-faith complaint or for participation in the investigation of a complaint under the City's Prohibited



Discrimination and Harassment Policy. Accordingly, the City requests that you not discuss the investigation with anyone and that you respect the anti-retaliation provision. Any breach of this confidentiality and/or retaliation provision may be considered additional grounds for discipline.

Please be guided accordingly.

[C-2.]

On October 3, 2022, at 11:48 a.m., Gutierrez emailed Jasper and Health and Human Services employee Lauren Scarfo, copying Biegel, as follows:

Michel[I]e,

Friendly Reminder

We service our Clifton Residents for the Passaic County Area  
Appts

Mrs. [G.] called into the office requesting transportation to  
Mountainside Hospital in Montclair Essex County

I returned her call but she still will like **for you and Lauren to  
give her a call back (973) [XXX-XXXX].**

[C-6.]

On October 3, 2022, at 1:31 p.m., Jasper replied as follows:

Estephania,

In regards to your response on denying my client Mrs. [G.] a resident, taxpayer of Clifton, your response was inappropriate and unprofessional. First of all, my client called me back informing me that you told her this office (Senior Citizen office) should have known better not to have transferred the call to Outreach. You also asked for the name of the person she spoke to. Both, comment and question made her feel very uncomfortable. There was no need for this. Please be advised, you also gave her the wrong information by telling her Outreach does not transport outside of Passaic County. The appropriate way to handle this situation is to do an intake on the resident, discuss her situation with her, and perhaps consult with your Supervisor. After all, this senior Center is

supposed to be working as a team. Mrs. [G.] needs to go to Mountainside Hospital on October 17<sup>th</sup> for an operation. There is plenty of time to schedule an appointment for transportation to Mountainside Hospital, after doing her intake. She has a husband with dementia and her daughter has to stay with him therefore, Mrs. [G.] relied upon calling me for help. I work diligently to build a relationship and to be sure my clients' needs are taken care of. They are very well aware of this. Therefore, going forward It would be greatly appreciated we work as a team.

For your information, the Outreach department will transport within 5 miles outside of Passaic County (see attached flyer), I have been working in the Senior Center for 6 years and Outreach has transported Clifton residents to and from Mountainside Hospital for Dialysis many times.

[C-6.]

On October 13, 2022, Jasper filed a grievance with the IBEW Local 1158 as follows:

My statement of grievance is of significant emotional distress which has been brought upon me since the transfer of employee Ms. Estephania Gutierrez to the Clifton Senior Center. On many occasions Ms. Gutierrez has taken photographs, video [and] voice recordings, documentation and stalking me. I have never given her permission to take any photos or recordings.

Several times on a daily basis, Ms. Gutierrez passes my office and stares me down while I am working at my desk. There is absolutely no reason for her to be walking throughout the Senior Center to keep passing my office. I feel very uncomfortable and have asked Ms. Margaret Nysk to please keep the office doors closed because I began suffering from anxiety, mental anguish, nightmares [and] sleeplessness.

On Thursday, October 6, 2022, I had permission to leave early. Ms. Gutierrez again took a picture of a sign I hap [sic] put on my office door. Ms. Gutierrez is a driver from Outreach, should not be supervising me, none the less, taking photos in the Senior Center.

Participants who attend the Senior Center must sign a permission form for Passaic County in order to be

photographed. This form is attached to their yearly intake sign up form. Not every participant gives permission [and] signs the form to be photographed. Also, I have attached emails where Ms. Gutierrez in one reply states she has a problem with me. I have never given her any reason to have a problem with me. If so, I am sure she would have addressed the problem with the administrators.

In addition, Ms. Gutierrez has walked towards outside the Senior Center in September 2022, with her arms hanging closed fists, slightly hunched over and giving me her stare down. There were a few participants who also noticed her coming towards me as if she wanted to fight me or harm me. On October 12, 2022, I asked one of the participants if he remembered the incident and he did. Conclusively, he confirmed Ms. Gutierrez's conduct.

Ms. Gutierrez's photographing, video and verbal recordings, documentations, staring down, stalking [and] instability has caused me egregious emotional distress therefore creating a hostile work environment.

This has had a significant impact on my physical health as I cannot eat a full meal and have lost 20 pounds.

[C-7.]

An October 17, 2022, "formal complaint" letter from Jasper to Biegel and City attorney Mathew Priore states as follows:

Please be advised that upon my arrival from lunch on Monday, October 17, 2022 at approximately 2:30 PM, Ms. Estephania Gutierrez was standing outside of the Senior Center office doors questioning a client while she was waiting to be seen for assistance from Mrs. Margaret Nysk or myself. The office doors were closed with a note to knock on the door.

As I approached the client and Ms. Gutierrez, I asked the client what type of assistance she needed and whether or not she had an appointment? She did not have an appointment therefore, she had to wait because, at this time of year our clients with appointments have priority over walk-ins. I asked Mrs. Nysk why the office doors were closed and she informed me Ms. Gutierrez had passed by staring into the office giving intimidating looks. Mrs. Nysk also, told me Ms. Gutierrez was banging on the office doors in front of our client. Mrs. Nysk

had already known the client was waiting. There is no reason for Ms. Gutierrez to question our clients or to come to our office doors and bang on them. This has not been the first time Ms. Gutierrez has approached and questioned our clients. I would appreciate your prompt attention to these occurrences.

[C-14.]

On December 6, 2022, Gutierrez was served with a PNDA charging her with incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause for the following specifications:

1. On or about September 19, 2022, ESTEPHANIA GUTIERREZ did act in an insubordinate manner by videotaping and/or taking photographs of a resident and another employee at the Clifton Senior Center with her cell phone. Ms. Gutierrez had been previously instructed and directed by her department head that she was not to photograph or record anyone in the workplace.

...

2. On or about September 19, 2022, while in the process of video taping and/or taking photographs of a resident and another employee at the Clifton Senior Center with her cell phone, ESTEPHANIA GUTIERREZ exited her City vehicle and engaged in and/or provoked a verbal confrontation with a resident. There were two senior residents in the City vehicle with Ms. Gutierrez at the time of the incident whom Ms. Gutierrez was supposed to be transporting to their home. Instead of transporting the two seniors to their home, Ms. Gutierrez exited her City vehicle and proceeded to engage in a verbal confrontation with another resident who was visiting the Clifton Senior Center.

[A-1.]

Per an FNDA, dated May 19, 2023, a departmental hearing was held on December 20, 2022, and a charge of neglect of duty was sustained, and Gutierrez was suspended for three days. (C-16.)

On November 28, 2022, Jasper emailed Biegel, Johnson, and City manager Dominick Villano two complaints, stating:

I am sorry I have to send you these two complaints. It seems to be Ms. Gutierrez doesn't realize the seriousness of the harassment charges.

[C-1.]

Attached to her email was a November 28, 2022, letter entitled "Complaints Against Estephania Gutierrez" from Jasper to Biegel, Johnson, and Villano, stating as follows:

On two occasions Ms. Estephania Gutierrez was seen photographing the Senior Center office door in which my office is located. The first incident occurred on November 18, 2022, where as [sic] she took photos of the note on the door. The note stated, the Senior Office is closed today. Please call [ . . . ] and leave a message and someone will get back to you as soon as possible. I had attended the trip to Camp Hope. Mrs. Margaret Nysk had to leave work to take care of her daughter at home due to an illness. [P.M.]<sup>2</sup> had notified me of this incident.

The second incident occurred on November 23, 2022, Ms. Estephania Gutierrez was observed by a few witnesses who were at the Senior Center taking photos of the office door. The witnesses who told me are Susan Polito, [P.M.], and Kim Castellano. I was told she took four photos of the note I left on my office door which stated, I was out to lunch and will be back at 2:30.

[C-1.]

Susan Polito and P.M. are seniors who frequent the Senior Center. Polito has been a registered nurse for fifty years and a City volunteer for thirty years. She is a participant in the Senior Center program and has volunteered at the Senior Center since late 2022/early 2023 in the kitchen and for other Senior Center events. She spends thirty

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<sup>2</sup> Initials are used for confidentiality, as P.M. did not testify and testimony reflects that he was a participant at the Senior Center.

to thirty-five hours a week at the Senior Center. Polito and P.M. have been friends for more than twenty years.

On December 14, 2022, Gutierrez was served with a PNDA charging her with incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause for the following specifications:

1. On or about December 14, 2022, ESTEPHANIA GUTIERREZ did act in an insubordinate manner by video taping and/or taking photographs of several residents and employees of Passaic County while inside the Clifton Senior Center. The incident occurred while the County employees were making a presentation to residents at the Clifton Senior Center. Ms. Gutierrez's actions interfered with the County's work at the Senior Center and resulted in the County Site Manager as well as three seniors who attended the presentation complaining about Ms. Gutierrez's actions. Ms. Gutierrez had been previously instructed and directed by her department head that she was not to photograph or record anyone in the workplace.

[A-2.]

Per an FNDA, dated May 19, 2023, a departmental hearing was held on December 20, 2022, and a charge of insubordination was sustained, and Gutierrez was suspended for two days. (C-17.)

Leszek Rudnicki, Mauricio Portillo, and Cristofer Gindhart are Outreach drivers. On May 5, 2023, Gutierrez emailed Johnson, and copied Hughes, Biegel, and an individual at IBEW 1158, as follows:

I am reporting to you in writing per your request the incident I called into your office about 7:45 am

This morning I was walking up the path to the entry door Mauricio came out of building and as he passed me he made some kind of yuck sigh, I mimicked him.

He immediately angry charged right to me and said WHAT coming close to me. I responded "you heard me" I excused myself and said cant bother with you I'm punching in. Mauricio following right behind me saying "you know what I'm going to tell Deidre" (this all happen very quickly)

He comes back into the building following right behind me calling me crazy "Loca tu eras una m-- you got problems and you are crazy man you crazy" I responded don't speak to me

I pass the drivers lunch room heading to office and by the time I passed by lunch room I saw Deidre was in Lunchroom I continued walking straight to the office.

I'm in the office while Mauricio was speaking to supervisor in drivers lunch room, (maybe 3-5 min pass) He comes to the office (leaves Deidre in lunchroom) to ask me to come tell Diedre [sic] what I responded to him outside.

I responded something about don't talk to me and continue to repeat it. I felt Mauricio was out of control I repeatedly asked him not to talk to me.

Diedre [sic] comes to office asked us both to stop we are both wrong, I pointed at him as he was gesturing with his finger to his head that I was crazy. He did not stop or walk away. Supervisor asks for us to put it in writing. He continues to talk. At some point He starts insulting me in Spanish and repeatedly continue to call me crazy.

I felt the situation was so out of control it could only escalate due to seeing how angry Mauricio was towards me ignoring the supervisor. I felt thing can only get worse so I decided to call your office and while I'm attempting to report what was accruing [sic] I said to you "I have a driver here" Mauricio very proudly and confidently, loudly says 'no no my name is MAURIC[I]O say my name, yeah lets go yeah come on lets go to his office right now['] and yelling other stuff I didn't catch, while I'm trying to report it to you I had to stop and because he continue yelling in the background I'm unable to concentrate I have to stop and ask you "do you hear him? he is calling me crazy Listen to him yelling, You asked if Diedre [sic] was in?['"] I said yes she is here and you said ok I will come over.

Once I'm off the phone with you I announced you were coming over He somewhat calm down went outside and waiting for you, after speaking with him you came by me in the office and I tried to explain what transpired You asked to put it in writing.

As I mentioned to you while you stopped in, Mauricio is a part of Malgorzata's<sup>3</sup> bandwagon. He is very comfortable and confident of no consequences with a supervisor present, personnel on the phone and all other staff to call me crazy continue to gestor [sic] it as well that I'm mental then to victimize himself that he has to go home because he's upset.

I have reported this driver Mauricio and Leszek to you in 2022, I have reported both drivers to John B. Department head in a Feb 2023 meeting and now to supervision. It is an issue because they see nothing happens with Malgorzata or Michelle treatment towards me so they feel there is no consequences for defaming my character by calling me mental and telling seniors I am mental and to stay away from me they are not allowed to talk with me and it continues to escalate where drivers tell seniors to report me they have a phone number where they can report me.

After you left both drivers where [sic] in by Malgorzata office.

This is a formal complaint on both drivers Mauricio and Leszek.

[A-6.]

A letter "to whom it may concern" from Portillo, dated May 5, 2023, states as follows:

This is my formal complaint against Estephania Gutierrez. This morning right before 8am I was going on my out [sic] from the Senior Building and Estephania was coming towards the building she said something and I turned around and asked her what she said and she called me a Dirty Dog in Spanish and other obscenities for no reason at all and my coworker Leszek witnessed this happening this morning. Also, I want to add that her behavior is making it unsafe to work at and she can snap at any given time. I feel very unsafe with this employee.

[C-8.]

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<sup>3</sup> Nysk.



An undated complaint from Rudnicki, stamped received by the City on May 5, 2023, states as follows:

On Tuesday April 25th after 4pm I was outside sitting with Mauricio waiting for my ride when Estephania was leaving the parking lot in her car to go home she stuck up her left middle finger at us when she drove past us and wanted to add that there have been several other incidents with this employee but was never notified to have this in writing so this is my formal complaint.

[C-13.]

Biegel spoke to Johnson about the complaints.

In October 2023, a comment made by Gutierrez to Johnson led to a medical evaluation of Gutierrez.

An October 23, 2023, letter "to whom it may concern" from Hughes states as follows:

Approximately 18 months ago I asked if Estephania could cover my office while I was away on training. Upon my return she approached me and said she would like to drive and get her CDL. This would be a great help to the department. Shortly after I had her drive she reported an issue with Mrs. Nysk and one of her clients. Feeling it wasn't handled to her likings she told me she would no longer be driving.

The tension started to arise between her and two of the drivers; Leszek and Mauricio, because they were spending so much time in the senior service office. I explained to her that it was not her concern and let it go.

Last year the city hired 2 new drivers who have worked out marvelous. All the seniors enjoy them. Cris immediately took an interest in the office wanting to know the ins and outs of our operation to which I was very happy to teach.

In late March of this year I was diagnosed with VCT Vertebral Column Tumors aka Chondrosarcoma and have been going every 3 weeks for chemo treatments. I have tried not to allow

my diagnosis to interfere with my work but the tension is steadily escalating and not helping me.

One morning before hours Estephania and Mauricio had an exchange of words that totally got out of control and Doug Johnson was called. Because I did not hear what was said and I did not take her side we started not speaking to each other except if it was work related. I have asked her to abide by the conversationalist [sic] of the office and to the dress code to which I was told "I am not a driver they do not apply to me." She is constantly making grunting or gagging noises or sly comments under her breath when Mauricio is around. She constantly challenging my views and rules. She has had words with Cristofer to which he has put a complaint in and will not come near the office if she is there

I am not able to have a conversation with any of the sales reps. or the seniors without her interfering in the conversation. If the drivers need to speak with me they call me on the cell phone or ask me to step out of the office, then I'm told [illegible] talking about her. Last Thursday a senior asked if I would be in work Friday [illegible] I said I had a meeting to go to he asked if Cris would be in the office. I didn't get a chance to reply when she said 'I'M IN CHARGE HERE HE IS NOTHING BUT A DRIVER AND DOESN'T BELONG IN HERE' I said nothing I have been told by a number of seniors that they shouldn't trust me I lie and I'm a snake. They have also told me they shouldn't trust Cris the [sic] is just my puppet.

Today one of the seniors came in to say hello and I asked how his weekend was. He was telling me what had transpired then Estephania chimed in and said you're wrong when the gentlemen tried to finish she continued with I have a right to defend my beliefs you can't say that. He apologized but said I wasn't speaking with you

This has to stop. The office is becoming a hostile work place. I am going home every day completely stressed out, getting tightness in my chest. I have been going through a lot and this is certainly not helping me. My family wants me to leave but I really do not want to. I truly love them and I have a great report [sic] with them

I am requesting Estephania be transferred out of the department before my health takes a wrong turn. We are slow

right now and since she refuses to drive I really do not have enough work for her

[C-3.]

On December 6, 2023, Gutierrez was served with a PNDA charging her with incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause for the following specifications:

1. On or about October 24, 2023, ESTEPHANIA GUTIERREZ, while working in the Clifton Senior Center, yelled and acted in an abrasive and inappropriate manner toward a co-worker and then gave the co-worker the middle finger.

...

2. On or about October 25, 2023, ESTEPHANIA GUTIERREZ, while working in the Clifton Senior Center, engaged in a confrontation with a co-worker by glaring at the co-worker for a prolonged period of time with her arms crossed and then aggressively slammed her bag, which made the co-worker feel very uncomfortable.

[A-3.]

Per an FNDA, dated January 23, 2024, a departmental hearing was held on January 23, 2024, and a charge of conduct unbecoming a public employee was sustained, and Gutierrez was suspended for ten days. (C-18.)

Section 10.5(b) of the Personnel Policies and Procedures Manual states:

Except in emergency situations or as part of their officially assigned or regular or permitted duties, employees are prohibited from taking any photographs, pictures, digital images or audio recordings of any crime scenes, traffic crashes, arrestees, detainees, people or job related incident or occurrence with any personal analog or digital device, camera, imaging device, audio recorder or cellular telephone. This section also applies in off duty scenarios regarding any

law enforcement related activities. Any photographs, images or recordings taken with any personal device pursuant to or in violation of this section are considered evidence and are subject to applicable laws, code guideline or directive concerning storage release and disposal. Employees who have recorded any photographs, images or recordings with any personal device shall notify their supervisors as soon as practical. For the purposes of this section, an “emergency situation” involves a sudden and unforeseen combination of circumstances or the resulting state that calls for immediate action, assistance or relief, and may include accidents, crimes and flights from accidents or crimes.

[C-15.]

In order for an employee to access a pay stub or W-2, the employee must first acknowledge he or she received and read the Personnel Policies and Procedures Manual.

## **Testimony**

John Edward Biegel III

Gutierrez complained about expiration dates violations to Nysk and Castellano, resulting in a back-and-forth altercation. There is a difference between expiration dates and sell-by dates, and the dates were sell-by dates. He orally instructed Gutierrez in February 2022 not to photograph/record anyone in the workplace, and the June 6, 2022, memo was the second time Gutierrez was instructed not to photograph/record anyone. Her photographing and recording was disruptive, made people feel harassed, and was not within her job duties. There was no legitimate reason associated with her job to take photos of people or items. Once reassigned to Outreach, there was no reason for Gutierrez to interact with or keep track of Nysk or Jasper. He was advised that Gutierrez was intimidating and creating a hostile work environment. People should be able to work without feeling threatened or that whatever they do is being scrutinized. Gutierrez caused the Senior Center and Outreach to not be a good working environment. The issues between Gutierrez and Hughes became very combative. Gutierrez’s demeanor was

improper toward employees and seniors. He has had no hostile work environment complaints since Gutierrez's termination.

Michelle Jasper

Gutierrez continually documented when she arrived and left, and Gutierrez photographed her office door, and photographed her inside and outside the building, even after being instructed not to. Gutierrez photographed and video/audio recorded participants at the Senior Center, and Gutierrez photographed her inside and outside the building. Gutierrez was stalking her. Gutierrez stood near the Outreach door on the other end of the building and took photos of her. She did not know what Gutierrez was going to do with the photos. Once, Gutierrez kind of charged toward her outside, walking fast, stomping, with closed fists as she was returning from lunch, and she froze, unsure if Gutierrez was going to hit her. Gutierrez frequently stood in front of her office to stare her down and give her evil looks several times a day, even when she was in Outreach and had no reason to be on her side of the building. Sometimes Gutierrez would bang on the office door when she was with a client if there was a client waiting, but they take appointments first and Gutierrez had no business being by her office. She kept the door closed in order to keep focus when with a client because of Gutierrez, who was supposed to be answering phones for Outreach and had no reason to even be on the Senior Center side of the building. She was worried, scared, uncomfortable, intimidated, and anxious about Gutierrez and unable to focus on her job. She could not sleep at night and did not want to go to work. Since Gutierrez left, she is able to do her job efficiently and effectively and she is not afraid to go to work.

Susan Polito

She has had issues with Gutierrez because Gutierrez was invading people's privacy, including hers. Gutierrez took photos of the seniors when there were speakers and vendors there. Gutierrez was definitely photographing or recording. Gutierrez would be right in the middle of the group with her camera in hand, facing people. Gutierrez always made it a point to be there when the nutrition main office staff was present, and she always had her phone facing everything as if she was recording or photographing.

She did not appreciate that and told Gutierrez so more than once. She observed Gutierrez walking around with her cell phone on other occasions. Once, when she returned with coffee and breakfast with P.M., Gutierrez took their photograph. She told Gutierrez she did not like that and asked her to delete it but does not know if Gutierrez did. She never gave Gutierrez permission to photograph her. She complained about the photographing to the Senior Center office. Other seniors were upset about the photos. She did not see the photos but could see stuff moving on the phone screen and could see the click. She observed Gutierrez taking photos of notices outside the Senior Center office doors (Jasper/Nysk) and on the board and at the site manager's desk. Gutierrez's interactions with seniors were gruff—she was not very cordial or kind, and she had a harsh, nasty tone all the time and seemed angry at the world. There were tempers flaring many days at the Senior Center, and things were very tense.

Deidre Hughes

After Gutierrez had been in Outreach for about a year, she became very dominating and did not get along with drivers, especially Rudnicki, Portillo, and Gindhart, and she had many confrontations with Rudnicki and Portillo. After one incident between Gutierrez and Portillo, she told both of them enough was enough and she sent Portillo home because he was upset and she did not want him driving seniors in that state of mind. Gutierrez always wanted to know why drivers were doing things, but her job did not involve interaction with or monitoring of drivers. Gutierrez photographed drivers walking in and out of another office and things going on between drivers. If there was a discussion by the County or others, Gutierrez would go out and photograph people. Drivers, seniors, and others said they were being photographed and felt uncomfortable. Gutierrez's job duties did not include her leaving her desk to photograph people in Outreach or the Senior Center. Gutierrez continued to photograph people after being instructed not to by her and by Biegel. She explained to Gutierrez that photographing is against policy. Complaints were made by drivers. She could not speak with anyone, including drivers, seniors, and bus representatives, in front of Gutierrez because Gutierrez would interfere in the conversations having nothing to do with her. When drivers called in, Gutierrez would not answer the phone, or hang up on them, or not transfer the call to her, so drivers had to call her on her cell phone to get instructions on what to do

during the day. It was very uncomfortable, but she was afraid to say anything. Seniors felt uncomfortable with Gutierrez. She was uncomfortable with Gutierrez sitting behind her. Gutierrez made noises. She never knew if Gutierrez was photographing/video recording her or her conversations because she watched her every move. Gutierrez was causing a hostile work environment and significant stress. She left work with her heart pounding, and she was afraid to be at work alone. Since Gutierrez left, she has been able to return to her open-door policy, and the environment is very friendly and nice.

Kimberly Castellano

In February 2022, Gutierrez took photos of her and of Power of One volunteers, which included Clifton High School Key Club students, seniors, and disabled individuals. Volunteers noticed and asked her why they were being videotaped and photographed, so although she felt uncomfortable doing so, she had to tell Gutierrez to stop. Gutierrez did not respond. An adult Power of One intern told Gutierrez to stop taking pictures of her because she did not like it and felt uncomfortable, resulting in an altercation between Gutierrez and the intern. When they asked Gutierrez to show them the photos, Gutierrez responded that it was for a court case. They told her they did not want to be part of that, and there were words back and forth, and it got out of control. She instructed one of the volunteers to contact the police. She asked Gutierrez to delete the photos, but Gutierrez told her no and that it was her cell phone and she could take photos if she wanted to. Gutierrez was never given permission to photograph her or any students. No parents or guardians gave permission for students to be photographed. Power of One was put in an awkward position because Castellano was responsible for the students. Every Tuesday, when Power of One arrived, Gutierrez would come out of the office and stand there with a stern look and her arms folded, and it made her very scared and anxious about their safety. She was afraid to approach Gutierrez for fear of an altercation. She observed Gutierrez taking her photograph and photos of individuals at the Senior Center and of the office door. She did not want her photograph taken. She observed Gutierrez taking photos from a distance on other occasions. Gutierrez's conduct caused a lot of emotional trauma. She is still recovering from the toxic environment. She would not address the photos with Gutierrez because Gutierrez had said "don't talk to me" and if there is a problem to put it in writing or give it to Nysk. If she saw Gutierrez taking photos

she would let Nysk know. Since Gutierrez left, there has been no interference, nobody photographing Power of One, no one stalking her, and no one standing in a threatening pose. She gets her job done and she leaves. She was traumatized by Gutierrez, and discussing it still causes her anxiety.

### Margaret Nysk

Gutierrez was always photographing her and documenting when she was in and out. Gutierrez photographed the office door when she was out or in a closed-door meeting. She did not know why Gutierrez was keeping track of her coming and going and did not know what Gutierrez was capable of doing. She was anxious and fearful for her safety, not knowing if Gutierrez was going to do something to her or get someone to do something to her. Daily, Gutierrez stood by the door where employees scan in and out with her phone in hand, taking videos and photos and trying to provoke a confrontation. Seniors complained about Gutierrez taking photos of them with her phone. Gutierrez was always angry, talking over people, and raising her voice. Nysk kept the door closed for client appointments because she is a Medicare specialist and the information is confidential, and the note on the door would say "meeting in progress, do not disturb" or sometimes "knock before you come in." On several occasions, Gutierrez banged on the door, including when she was assigned to Outreach, so even clients got shaken up. Seniors complained about Gutierrez. Gutierrez asked seniors a lot of questions when all Gutierrez was supposed to do was ask who their appointment was with and tell them to please have a seat and someone would be with them shortly. Gutierrez should not have asked for names or phone numbers or taken photos of a driver's license on her personal cell phone. Only Nysk deals with Medicare, and no copies are kept of documents. The client whose license was photographed was very angry and wanted it deleted and wanted to contact the police. Gutierrez caused problems every day. Even when she was in Outreach, Gutierrez was still watching and trying to provoke confrontations because she had to pass the Senior Center office to go down the hall. Gutierrez always stood by the door with her phone in front of her face, photographing people, especially her. She was fearful of Gutierrez, anxious, and unable to concentrate at work. She sought medical attention because she was stressed, unable to sleep, and losing her hair. She was put on medication and is still emotional about it and talking about



it brings back a lot of stress. Since Gutierrez left, seniors are happy, and everything is great with employees and drivers.

Douglas Johnson

Gutierrez began having issues with her Recreation supervisor after her supervisor complained to personnel that the quality of her work started failing, and Gutierrez in turn filed a harassment complaint, which was investigated by an outside attorney. Gutierrez withdrew the complaint, and the City allowed Gutierrez to be transferred to the Senior Center. Gutierrez was later moved to Outreach because coworkers at the Senior Center filed harassment complaints against Gutierrez and Gutierrez filed countercomplaints. There were numerous complaints from almost all her coworkers in Outreach and complaints from outside parties that Gutierrez was harassing them, recording all the activities at the Senior Center, and photographing/recording coworkers, volunteers, seniors, and students, which she had been advised not to do. Gutierrez came across as very difficult to work with, and they were at a loss as to what other department she could be moved to because every time she was moved, coworkers had problems with her and her demeanor. In October 2023, during a phone call with Gutierrez, Gutierrez was very agitated and made a comment to the effect that she felt like she was “going to lose it in this place.” The comment was unsettling and a trigger phrase, so he reached out to a doctor and repeated the comment and was advised that Gutierrez should be sent for medical evaluation for the safety of Gutierrez and others. Gutierrez was sent for medical evaluation. Gutierrez’s conduct had a negative impact on other employees. She was constantly arguing, challenging, and picking fights, and almost all the employees assigned to the Senior Center and Outreach went out of their way to avoid her. Some employees called in sick if their supervisor was not going to be in that day to avoid having anything to do with Gutierrez. Gutierrez would complain about coworkers when he notified her that coworkers had filed complaints against her that were going to be investigated.

## Estephania Gutierrez

Things became very tense at work after she filed a harassment complaint about another employee, which was founded, and after she complained that a coworker was a convicted sex offender and should not work there and Oliver chastised her. She received no assistance from personnel other than a suggestion she relocate to the Senior Center. It was clear she was being retaliated against because she had a dirty desk and broken chair outside the Senior Center office door. She did not have a phone, so she did not answer the phone for the Senior Center and was not involved in the Senior Center office work. She never worked with Nysk or Jasper other than being in the same building. Her only job was temperature checks and contact numbers for tracing. Nysk and Jasper did not communicate with her so she would note on her calendar the time when Nysk or Jasper would return because residents are not very happy if they ask her and she says she does not know when they will return. She was not secretive about the notes—the calendar was in the open.

Initially, Power of One was not on top of her, but for some reason started to work around her desk, and crates were dropped next to her desk. She was being retaliated against. She never had a confrontation with Castellano but saw Nysk whisper to Castellano and Castellano's behavior toward Gutierrez changed. Sometimes seniors brought complaints or concerns to her—like expired food and moldy bread—and she vocalized it, but Castellano did not like to be questioned, so it was not well-received. She was only being a voice for the seniors. Castellano slammed crates around her work desk.

She always carried her cell phone with her, and she took plenty of photos at work. She likes to take photos of her food, the weather, and silly things, so she does take a lot of photos. She photographed things like coffee with whipped cream she prepared and would send photos to a family member or keep them for her personal photos. She did not recall taking video. She started to document things, like moldy bread, how Castellano was preparing things around her desk, and how close crates were to her desk, so she took photos of crates and things happening at the Senior Center and made notes of it. She was not secretive about it. She did not take photos or videos of seniors or events. She took a photo of Nysk and a resident who attempted to assault her. She never stood

outside the main door photographing employees coming and going. She took photos of the Senior Center office door because the door notes would say out to lunch, or back in an hour but not show a time. The photos were for an approximate time of return because if no one answers the Senior Center calls, Outreach gets the calls. The September 2022 incident and May 5, 2023, incidents caused her to start documenting issues with Hughes because she was remaining too silent on serious matters.

The witnesses are all making false allegations against her. She was not taking photos of them. After the incident with Mrs. G., Jasper started making up accusations that she was taking photos and that others were telling her she was taking photos of them, and Jasper united with Nysk. Nysk had been a big instigator with Castellano since the February 2022 Power of One incident. Her phone is essentially like a mini-computer, and the City email is attached to her phone, so she used her phone for City emails and to text her family and friends—which others do while at work. She does not know why the witnesses believed she was taking photos other than what she reported about their behavior. She never photographed high school students. She did take photos while the high school students were present, but they were of crates being dropped on her desk and the donated food mess in the area to the left. She took the photos facing the floor. She showed the Sheriff's Officer the photos in her phone without being asked and explained that she was documenting what Castellano was doing for a retaliation issue, not litigation. The Sheriff's Officer told her it was legal if she had photographed people, but to avoid and not interact with them. Biegel had called her during the incident, and she tried to explain what was happening, but he told her to stop, and she told him no, she was taking photos for documentation purposes. He again told her to stop, so she requested he put it in writing. Biegel's instruction to not photograph was not clear—it was regarding that incident.

In Outreach, she answered the phone and scheduled residents on the date and time they needed for appointments or shopping for the nutrition program, and she scheduled the drivers and communicated any changes to drivers. She and the Outreach drivers were friendly with each other, except for Portillo and Rudnicki, who only said hello and goodbye. She never had a confrontation with Rudnicki or Gindhart. Portillo was inappropriate, and after she told Hughes her concerns and Hughes spoke to him, he was

not friendly with her. Portillo also speaks Spanish. She called him a Spanish word meaning you're "scruffy" or "yuck" in response to a gesture he made towards her. She did not call him a "dirty dog." She was the one being harassed, and since she usually just ignored him, when she said "yuck," he went off. She told him he needed to get away from her, but he followed her and called her garbage and "crazy" in English and Spanish, making the "crazy sign." He made a scene inside, and Hughes started to yell at her. She told Hughes this is way out of control and considered calling the police, but instead she called Johnson. Hughes got in her face, pointing at her, and told her that she should never have gone over her head and called Johnson.

In September 2023, and early October 2023, she reported to Biegel that she was being harassed and people were trying to provoke her and she was very scared of her situation because even the seniors, like Polito, were part of it. She felt she was in danger, including of termination, and she was trying to get assistance but was only being told it would be looked into. Anything she reported was ignored, but anything anyone else lied about was addressed right away and she would receive disciplinary action. When she told Johnson "I'm going to lose my mind" in October 2023, it was just a figure of speech and he twisted her words. She was already being called crazy by Nysk, Jasper, and Portillo, and was not responding to them, yet she had to be evaluated. She requested but never received the results of the evaluation, and while she was out, the City brought more charges against her.

### **Discussion and Additional Findings of Fact:**

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony."

State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

The City's witnesses testified credibly about Gutierrez's conduct and the effects on them and the workplace, which was consistent with the other witnesses and with the various written complaints. Hughes's testimony was particularly compelling because Hughes and Gutierrez had been friends at work—which included sometimes going to lunch together and exchanging texts and photos about their families—and Hughes had requested that Gutierrez work in Outreach and testified that initially there were no issues. Accordingly, I credit the testimony of the City's witnesses.

Gutierrez admits that she did photograph the Senior Center office door and wrote down names and times on her desk calendar in open view, but her reason for doing so is implausible. While she testified that she did it in order to keep track of when Nysk or Jasper left in the event a senior asked Gutierrez when the office would be open, because the notes did not indicate a time—Gutierrez was under no obligation to keep track of Nysk's and Jasper's breaks, and nothing would have prevented her from saying that she did not know, or that it would likely not be more than one hour to give a general indication of time. Likewise, while she was in Outreach, she testified that she still photographed their door because the phone lines would transfer to Outreach if the Senior Center did not answer. However, there is no reason—when tension was already extraordinarily high between the coworkers—for her to routinely keep track of Senior Center employees when her job duties were to answer the Outreach phone. If she was receiving Senior Center calls for more than one hour, or on a regular basis, and believed that her job was being affected by Senior Center staff, there was nothing to prevent her from reporting the Senior Center's failure to answer their phone calls to her supervisor. As such, it instead appears that her visibly keeping track of Jasper and Nysk was calculated to intimidate or unnecessarily antagonize them.

Similarly, Gutierrez's testimony relative to her photographing things was not credible under the circumstances. She was instructed multiple times not to take photographs, and rather than refrain from utilizing her personal cell phone to take photographs and/or video at work, she admits taking "lots of" photographs—but claimed

they were of her lunch and “silly” things, and occasionally of the Senior Center office door or of inanimate objects to document “retaliation.” While implausible that she was not actually photographing any seniors, volunteers, or coworkers given the numerous complaints from all three groups that she was observed to be doing so, even accepting as true her testimony that she was not actually photographing or video recording, she was then clearly instigating unease and chaos by purposefully making people believe that she was photographing or recording them, because the credible witness testimony reflects that she was repeatedly observed with her phone in hand being held up in a manner in which it would be held to photograph/record.

I **FIND** the following additional **FACTS** in this case:

Photographing/video recording was not within Gutierrez’s job duties. Gutierrez was instructed by Biegel not to photograph/record anyone in the workplace. Gutierrez was advised by Hughes that photographing/recording was a violation of City policy, and she was instructed by Hughes not to photograph/record anyone. Gutierrez continued to photograph/video record City employees, Power of One staff and volunteers, Senior Center volunteers and participants, visitors, and others and/or purposefully led those individuals to believe they were being photographed or video recorded. Gutierrez’s photographing/video recording was disruptive and caused people to feel uncomfortable, intimidated, and harassed. Gutierrez had conflicts and confrontations with numerous coworkers, including Nysk, Jasper, Outreach drivers, Power of One staff and volunteers, supervisors, and Senior Center participants and volunteers. Once reassigned to Outreach, there was no reason for Gutierrez to interact with or monitor Nysk or Jasper, but Gutierrez continued to monitor Nysk and Jasper, and the Senior Center office door. Gutierrez monitored and interfered with conversations and business unrelated to her or her job duties. Gutierrez did not answer the Outreach phone, or hung up on drivers, or refused to transfer driver calls to Hughes, resulting in drivers having to contact Hughes on her personal cell phone. Gutierrez’s demeanor toward others was combative. Numerous complaints were made about Gutierrez by City employees and others, including Senior Center volunteers and participants. Gutierrez’s conduct caused stress, fear, and anxiety for others, and created a hostile work environment.

## **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 “incompetency, inefficiency or failure to perform duties,” “insubordination,” and “conduct unbecoming a public employee,” N.J.A.C. 4A:2-2.3(a)(1), (2), and (6).

On January 23, 2024, Gutierrez was served with a PNDA charging her with incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause for the following specifications:

1. From on or about September 2022 to October 2023, ESTEPHANIA GUTIERREZ, has repeatedly failed to work cooperatively and courteously with her co-workers at the Clifton Senior Center and regularly exhibits disruptive, discourteous and inappropriate behavior despite having been instructed on numerous occasions that she must remain civil and courteous to her co-workers and that improper behavior toward the senior citizens would not be tolerated.

. . .

2. From on or about February 2022 to December 2022, ESTEPHANIA GUTIERREZ, knowingly continued to film and

photograph her co-workers after having been repeatedly ordered to stop by her supervisor and after having been previously disciplined for said conduct.

. . .

3. From on or about February 2022 to December 2022, ESTEPHANIA GUTIERREZ, neglected her own duties due to her constant efforts to inappropriately observe and track her co-workers by filming and photographing them instead of carrying out her own job duties.

4.<sup>4</sup>

. . .

[J-1.]

A departmental hearing was held on February 20, 2024, and April 11, 2024, and the City of Clifton issued a Final Notice of Disciplinary Action (FNDA), dated May 23, 2024, sustaining the charges of incompetency, inefficiency or failure to perform duties, insubordination, and conduct unbecoming a public employee, and terminating Gutierrez's employment. (J-2.) In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming, but courts have held that conduct unbecoming a public employee is "any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (quoting In re Zeber, 156 A.2d 821, 825 (1959)); Karins v. Atl. City, 152 N.J. 532, 554 (1998). A finding of conduct unbecoming need not be predicated upon violation of any 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. Emmons, 63

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<sup>4</sup> The parties stipulated that charge 4 would be omitted.



N.J. Super. at 140. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins, 152 N.J. at 553.

Gutierrez was on notice since June 2022 that she was to remain civil and courteous, work toward fostering a cooperative work environment, politely communicate and not raise her voice or yell or fight, refrain from any activities that could be disruptive to the workplace or interfere with any employees duties, not film anyone without explicit permission, and not direct any insulting language toward anyone. However, the record reflects that she failed to comply—despite disciplinary charges on December 6, 2022 (video recording/photographing a resident and an employee with her cell phone after being instructed not to and engaging in and/or provoking a verbal confrontation with a resident in September 2022) and December 14, 2022 (for video recording/photographing several residents and employees while County employees were making a presentation) that resulted in suspensions. Coworkers Nysk and Jasper, supervisor Hughes, Power of One director Castellano, and Senior Center participant/volunteer Polito all credibly testified that Gutierrez was observed photographing/recording them, as well as other City employees, Senior Center participants, and others. Likewise, they credibly testified that Gutierrez continued to act in a confrontational and combative manner, often inserting herself into conversations and work unrelated to her job duties and interfering with others' ability to perform their jobs. Disciplinary charges on December 6, 2023 (for yelling and acting in an abrasive and inappropriate manner toward a coworker and giving the coworker the middle finger and for engaging in a confrontation with a coworker by glaring for a prolonged time with arms crossed and aggressively slamming her bag) also resulted in a suspension and further confirm that Gutierrez's conduct remained unchanged despite discipline.

Whether the photographs/videos/recordings were taken during lunch or breaks or whether it is "legal" to photograph/video/record people on public property is immaterial. There was no exception made for lunch/breaks or for before/after working hours while on the City property. Further, even if legal, one does not expect to be photographed and/or video recorded by a coworker, using a personal cell phone or other equipment, while performing one's job duties. Likewise, one does not expect to be photographed and/or video recorded by a public employee while conducting business or participating at the

Senior Center. With limited exceptions for “emergency situations or as part of their officially assigned or regular or permitted duties,” City policy prohibits employees from taking any photographs, pictures, digital images, or audio recordings of people or job-related incidents or occurrences with any personal analog or digital device, camera, imaging device, audio recorder, or cellular telephone. Gutierrez was a City employee, representing the City, and she was instructed not to photograph or video record people, and her testimony that the directive not to do so was unclear or that it only applied to the Key Club students incident is unpersuasive, and contrary to her admission that her answers to interrogatories reflected that Biegel told her not to take photos at work, and contrary to Hughes’s testimony that she advised Gutierrez that it was against City policy.

Gutierrez spent much of her working hours documenting, monitoring, and photographing and/or video recording other employees, Power of One staff and volunteers, and others, and inserting herself into the conversations and business of others. Further, as a result of her numerous conflicts with Outreach drivers, she did not answer the Outreach phone, or hung up on drivers, or refused to transfer driver calls to Hughes, resulting in Hughes having to take driver calls on her personal cell phone. Accordingly, I **CONCLUDE** that respondent has met its burden of establishing, by a preponderance of the credible evidence, that Gutierrez failed to perform her duties.

Gutierrez was already on notice from Biegel and Hughes that she was not to photograph or video record anyone, and Hughes had advised her that it was against policy. Yet, Gutierrez continued to do so—or even accepting her testimony that she did not photograph or record anyone, she at the very least purposefully led others to believe she was photographing or video recording them. Accordingly, I **CONCLUDE** that that respondent has met its burden of establishing, by a preponderance of the credible evidence, that Gutierrez was insubordinate.

Despite having been previously suspended for similar conduct, Gutierrez nevertheless continued to photograph/record at work and continued to engage in behavior at work that created significant fear and anxiety, as well as complaints of stalking and harassment. That Gutierrez continued to utilize her personal cell phone at work is particularly troubling given the significant number of complaints from City employees,

Power of One staff and volunteers, and Senior Center participants and volunteers. While her testimony that she did not record people was implausible, even if Gutierrez did not actually photograph or record people, she purposefully and openly held her cell phone in such a way as to otherwise make people believe that she was photographing/recording—and the actual or perceived photographing/recording was causing significant stress and anxiety to City employees, Power of One staff and volunteers, Senior Center participants and volunteers, and others, some of whom made complaints of stalking and harassment. That photographing or recording is not illegal in a public place is of no moment. Gutierrez was not in the building or on the building grounds as a member of the public. Gutierrez was a public employee—representing the City—and she was photographing and/or recording or purposefully making people believe she was photographing or recording them during her scheduled working hours. There were countless complaints by coworkers, seniors, and volunteers who were anxious and uncomfortable about being photographed or recorded. While a member of the public may be able to photograph or record in the Senior Center, Gutierrez's job description does not include photographing or video recording, and it is understandable that individuals whose financial and life circumstances have resulted in food insecurity may not wish to have the same documented.

Additionally, the record reflects that Gutierrez repeatedly persisted in inserting herself into events and locations unrelated to her job duties and continued to provoke and intimidate those around her and created not just a hostile work environment for coworkers, but an intimidating and uncomfortable environment for those in and around the building. Multiple witnesses credibly detailed that Gutierrez's conduct caused anxiety and fear and negatively impacted their health and their jobs. Based upon Gutierrez's conduct, as detailed in the complaints and testimony of the City's witnesses, I **CONCLUDE** that respondent has met its burden of establishing, by a preponderance of the credible evidence, that Gutierrez's conduct was unbecoming a public employee.

With respect to the penalty, the Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York

v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since West New York v. Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30–33 (2007). However, in an instance where an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Herrmann, 192 N.J. 19. According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App. Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

[Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is

appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). The Supreme Court has noted that “the question for the courts is ‘whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness.’” Ibid. (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle, upholding dismissal where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. Id. at 485.

While true that her disciplinary history reflects oral counseling on June 6, 2022, and three subsequent suspensions of two days, three days, and ten days, and that the conduct alleged occurred prior to other disciplinary actions, this does not prevent termination. Incidents that were the subject of the prior discipline are not considered herein other than to establish the prior disciplinary history, and the record reflects sufficient other incidents and conduct to warrant termination.

As charged by the City, the record reflects that Gutierrez repeatedly failed to work cooperatively and courteously with her coworkers; regularly exhibited disruptive, discourteous, and inappropriate behavior despite having been instructed on numerous occasions that she must remain civil and courteous; knowingly continued to film and photograph coworkers after having been repeatedly ordered to stop by her supervisor and after having been previously disciplined for said conduct; and inappropriately observed and tracked her coworkers by filming and photographing them instead of carrying out her own job duties. Given the evidence of continued significant conflict during Gutierrez’s tenure with the Senior Center and Outreach, and the lasting effects of such conduct detailed in the testimony, including negative effects on coworkers and others working or volunteering at the building, and on the public, especially given that the individuals utilizing the Senior Center and Outreach are a vulnerable population who should not be made to feel anxious or uncomfortable when availing themselves of services provided by the City, Gutierrez’s continued employment with the City is untenable. The record reflects that Gutierrez’s conduct and demeanor are not compatible with that expected of a public employee and render her unsuitable for continuation in her employment with the City. Returning Gutierrez to her employment would undoubtedly

result in additional incidents not only between Gutierrez and other City employees, but also volunteers and members of the public. Accordingly, I **CONCLUDE** that appellant's conduct warrants termination.

### **ORDER**

I hereby **ORDER** that the charges of failure to perform duties, insubordination, and conduct unbecoming a public employee are **SUSTAINED**, and further **ORDER** that appellant be and hereby is removed from her employment, effective May 23, 2024.

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.

July 25, 2025



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DATE

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KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

am

**APPENDIX**

**List of Witnesses**

**For Appellant:**

Estephania Gutierrez

**For Respondent:**

John Edward Biegel, III

Michelle Jasper

Susan Polito

Deidre Hughes

Kimberly Castellano

Margaret Nysk

Douglas Johnson

**Exhibits in Evidence**

**Joint:**

J-1 PNDA, dated January 23, 2024

J-2 FNDA, dated May 23, 2024

**For Appellant:**

A-1 PNDA, dated December 6, 2022

A-2 PNDA, dated December 14, 2022

A-3 PNDA, dated December 6, 2023

A-4 (Not in evidence)

A-5 (Not in evidence)

A-6 Email, dated May 5, 2023

**For Respondent:**

C-1 Email, dated November 28, 2022

C-2 Memorandum, dated June 6, 2022



- C-3 Letter, dated October 23, 2023
- C-4 (Not in evidence)
- C-5 Passaic County Nutrition Services Application and Photo Release Form
- C-6 Emails, dated October 3, 2022
- C-7 Grievance Form
- C-8 Letter, dated May 5, 2023
- C-9 (Not in evidence)
- C-10 (Not in evidence)
- C-11 (Not in evidence)
- C-12 (Not in evidence)
- C-13 Rudnicki Complaint Letter
- C-14 Letter, dated October 17, 2022
- C-15 Employee Handbook & Personnel Policies & Procedures Manual (Excerpts)
- C-16 FNDA, dated May 19, 2023 (neglect of duty)
- C-17 FNDA, dated May 19, 2023 (insubordination)
- C-18 FNDA, dated January 23, 2024