



## STATE OF NEW JERSEY

In the Matter of R.P.,  
City of Camden, Fire Department

## DECISION OF THE CIVIL SERVICE COMMISSION

CSC DKT. NO. 2025-262  
OAL DKT. NO. CSR 11057-24

**ISSUED: DECEMBER 19, 2025**

The appeal of R.P., a Fire Fighter with the City of Camden, Fire Department, of his removal, effective June 11, 2024, on charges, was heard by Administrative Law Judge Joan M. Burke (ALJ), who rendered her initial decision on November 6, 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 of December 17, 2025, accepted and adopted the Findings of Fact and Conclusions as contained in the attached ALJ's initial decision and her recommendation to reverse the removal.

The Commission has no issues with the ALJ's determinations regarding the charges and affirms her dismissal of those charges as it finds the appointing authority did not sustain its burden of proof by a preponderance of the evidence. However, the Commission does have concerns with the ALJ's recommendations regarding reinstatement and the award of back pay.

In her initial decision, the ALJ ordered, in pertinent part:

that the penalty of removal by the appointing authority is **REVERSED** in its entirety. It is also **ORDERED** that if Dr. [Keith] Semler's behavioral health treatment protocol that the appellant engaged in along with attending Atlanticare Mental Health Intensive Outpatient program does not comport with the recommended treatment from the IFP [Institute for Forensic Psychology] dated March 22, 2024, appellant should undergo a satisfactory fitness-for-duty evaluation and any other

prerequisites ordered by the City-selected psychiatrist or psychologist. Since the penalty has been reversed, I **ORDER** that appellant is entitled to back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. The amount of back pay awarded is to be reduced and mitigated for that period of time when back pay was waived.<sup>1</sup>

The Commission agrees that, given the concerns with the appellant's psychological health as well as acknowledging his position as a public safety employee, it is appropriate for his actual reinstatement to occur after a psychological fitness-for-duty examination. In this regard, it disagrees with the ALJ that any treatments the appellant may have received or is continuing to receive from Dr. Semler should be considered. Rather, it orders that, regardless of Dr. Semler's treatment, the appellant is to undergo a current psychological fitness-for-duty examination with a qualified psychiatrist or psychologist. The selection of the psychiatrist or psychologist shall be by agreement of both parties within 30 days of the date of this decision. The appointing authority shall pay for the cost of this evaluation. As the appellant's psychological fitness is a condition of his reinstatement, if the appellant is found not fit for duty, the appointing authority may then issue a new Preliminary Notice of Disciplinary Action setting forth the current charges and the penalty to be imposed.

The Commission also disagrees that the entitlement to back pay should be limited in this matter. In her initial decision, the ALJ based the limitation of back pay on the appellant's apparent waiver of the "180-day hearing requirement." In that regard, it is assumed that the ALJ is referring to the provisions of *N.J.S.A. 40A:14-200, et seq.*, and *N.J.A.C. 4A:2-2.13*, which indicate, in pertinent part, that for law enforcement and fire removal appeals, where such matters are not decided within 180 days from removal, the employee is entitled to begin collecting "base salary" starting the 181<sup>ST</sup> day. Waiver of the entitlement to "base salary" during the pendency of an appeal in no way constitutes a waiver of a potential award of back pay under *N.J.A.C. 4A:2-2.10* should such removal be reversed and modified. Accordingly, since the removal has been reversed in this matter, the appellant is entitled to mitigated back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from the date of removal to the date of reinstatement or the issuance of new disciplinary charges.

Accordingly, this decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court states in

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<sup>1</sup> Earlier in the initial decision, the ALJ footnoted that "[o]n September 9, 2024, the appellant waived the 180-day hearing requirement."

*Phillips, supra*, subject to the aforementioned fitness-for-duty examination, the appointing authority shall immediately reinstate the appellant to his permanent position.

### ORDER

The Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses the removal and grants the appeal of R.P.

The Commission also orders that the appellant undergo a current psychological fitness-for-duty examination with a qualified psychiatrist or psychologist. The selection of the psychiatrist or psychologist shall be by agreement of both parties within 30 days of the date of this decision. The appointing authority shall pay for the cost of this evaluation. If the results of that examination indicate the appellant is fit for duty, he shall be immediately reinstated to actual duty. If the results indicate that the appellant is not fit for duty, he shall be, as applicable, be issued a new Preliminary Notice of Disciplinary Action with current disciplinary charges and the penalty to be imposed.

The Commission orders that the appellant be granted back pay, benefits, and seniority from the date of removal to the date of reinstatement or the issuance of new disciplinary charges. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.10* the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 17<sup>TH</sup> DAY OF DECEMBER, 2025

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 11057-24

AGENCY DKT. NO. N/A

**IN THE MATTER OF R [REDACTED] P [REDACTED],  
CITY OF CAMDEN, FIRE DEPARTMENT.**

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R [REDACTED] P [REDACTED], pro se

**Jumba M. Mugwanya**, Assistant City Attorney, for respondent City of Camden,  
Fire Department (Daniel S. Blackburn, City Attorney, Law Department-City  
of Camden, attorney)

Record Closed: September 22, 2025

Decided: November 6, 2025

**BEFORE JOAN M. BURKE, ALJ:**

**STATEMENT OF THE CASE**

Respondent, City of Camden, Fire Department (City), removed appellant, R [REDACTED] P [REDACTED], from his position as a firefighter, effective June 11, 2024. The City alleges there was just cause for the disciplinary action under 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; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, because appellant did not comply with an April 3, 2024, letter directing

him to initiate a recommended course of intensive medical treatment within thirty days of receipt of the letter.

### **PROCEDURAL HISTORY**

On June 11, 2024, the City issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth charges against appellant, removing him effective June 11, 2024. Appellant did not request a departmental hearing. The following charges were incorporated into a Final Notice of Disciplinary Action (FNDA) dated July 1, 2024, with removal from his position effective June 11, 2024: 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; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

Appellant requested an appeal, and the matter was filed with the Office of Administrative Law (OAL) on August 1, 2024, to be scheduled for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and 14F-1 to -23. I received the matter for further handling on August 28, 2024. Status conferences were held on September 9, 2024, and October 9, 2024. Appellant also agreed to toll the 180-day rule until the next scheduled hearing date. Status conferences were held on December 10, 2024, and February 6, 2025. A hearing was scheduled for May 29, 2025, and May 30, 2025. Appellant was represented by counsel. On April 29, 2025, counsel for appellant notified the undersigned that based on a lack of communication he wished to be removed as counsel for appellant. At a status conference on April 30, 2025, based on mutual consent, I granted the request for attorney Michael A. Bukosky, Esq., to be removed as counsel. I also granted appellant thirty days to obtain new counsel. Appellant did not obtain counsel and decided to appear pro se. A hearing was conducted on September 4, 2025. The parties requested that they obtain transcripts and submit their closing summations in writing. The record was also held open to receive appellant's Family and Medical Leave Act (FMLA) application from November 2023. The closing summations were received on September 22, 2025, and the record closed then.

**DISCUSSION AND FINDINGS OF FACT**

The following facts are not in dispute, and I therefore **FIND** them as **FACTS**:

1. Appellant began employment with the City on May 1, 2017. (R-A.)
2. His permanent Civil Service title at the time of removal was "Fire Fighter." (R-F.)
3. The City referred appellant to the Institute for Forensic Psychology (IFP) for a psychological examination. (R-C.) Appellant was tested by the IFP on March 14, 2024, and interviewed on March 15, 2024. (Ibid.)
4. On March 22, 2024, the IFP submitted the "Recommendations Page" regarding appellant's fitness for duty. (Ibid.) Krista Dettle, a licensed psychologist who is board certified in Police and Public Safety Psychology, conducted the examination of appellant. In the March 22, 2024, letter, Ms. Dettle made eight recommendations. (Ibid.) One of the eight recommendation states, "The subject is not psychologically fit for duty at the present time." (Ibid.)
5. On April 3, 2024, the City sent a letter to appellant. The letter states the following:

The City of Camden is in receipt of your return to work medical evaluation conducted by The Institute for Forensic Psychology (the "Institute") on March 15, 2024. Pursuant to said medical evaluation, you are not medically cleared to return to duty with the City at this time. Attached you will find a recommended course of treatment developed by the medical professionals from the Institute.

The City is willing to provide you with ninety (90) days to complete the above-referenced treatment. You therefore have until Thursday, July 4, 2024 to complete all recommended treatment. Upon completion, you will be required to submit to another evaluation to determine if

you are fit for duty. If you have not initiated treatment within thirty (30) days of this letter, the City reserves its rights to take all necessary personnel actions, including terminating your employment with the City.

[R-D.]

6. On May 5, 2024, a letter was sent from Kazeem Olajide, APN, at Green Oak Professional Health Services, stating that appellant has been under his care since December 2, 2023. "Medication is recommended for this client which he started in December 2023. Patient has seen moderate improvement in symptoms." (R-G.) It was his recommendation that appellant "return to work with accommodation to start in a light duties capacity." (Ibid.)
7. On May 10, 2024, a letter was sent from the attorney for appellant's union.<sup>1</sup> In that letter, the attorney states as follows:

As you are aware there is an issue with Fire Fighter P██████. It is unclear to us, as the Union, precisely what status the City has placed him in, and there seems to be a difficulty in the area of health benefits. It appears that the City may have discontinued his health benefits but at the same time is requiring him to seek some type of evaluation or treatment from a health benefit provider which of course is difficult if he no longer is covered under a plan. Fire Fighter P██████'s status is unclear to the Union which does not have the full information or background concerning this Firefighter. From the little background that we have been made Aware of, we are requesting that Fire Fighter P██████ be reasonably accommodated concerning his ongoing medical conditions and treatment and we ask that the interactive process be initiated. We ask that you attempt to coordinate with the Union as far as possible to protect the rights and health of this impacted Firefighter.

[R-H.]

8. On June 11, 2024, the City issued a PNDA alleging violations of N.J.A.C.

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<sup>1</sup> Michael Bukosky's office represents IAFF Local 788. (R-K.)



4A:2-2.3(a)(2), (3), (6), and (12). (R-E.)

9. On July 1, 2024, the City issued an FNDA substantiating the charges with removal effective June 11, 2024. (R-F.)
10. On November 26, 2024, a letter was sent from Keith Semler (Dr. Semler), D.O., stating that the appellant has an ongoing behavioral treatment plan through his office and was under his direct psychiatric care. Dr. Semler opined that "[a]fter extensive chart review and personal evaluation Mr. P [REDACTED] does not currently suffer from psychiatric symptoms significant enough to prevent his active engagement in the competitive work force. It is through his active engagement in our programming that Mr. P [REDACTED] has been able to recover." (R-J.)
11. On December 6, 2024, the Union's attorney sent a letter regarding the appellant in which he again raised the issue of accommodation under the Americans with Disabilities Act and the New Jersey Law Against Discrimination. (R-K.) He attached the letter from Dr. Semler and stated that it was appellant's treating physician.

### **Testimony for Respondent**

**Captain Edward Vincent** (Captain Vincent) works for the Camden City Fire Department. He has been employed by the City since 2006. He is currently assigned to engine company #8. He started with this company in late 2023. The engine company is staffed with four people: three firefighters and an officer. The engine company's main role is to bring water to a fire or fire suppression. His job is to ensure that the engine company is "up to spec." He oversees the firefighters and ensures that they are fit for duty. Each shift has three employees. Each has assigned duties. When they report for duty they are given their assignment. The assignment is as follows: one person is assigned as the nozzleman; one is assigned as the backup; and the third one is assigned as the driver. According to Captain Vincent, appellant could be assigned any one of the three positions, as they rotate among the staff.

A typical day begins with roll call. Captain Vincent examines their fitness for duty by ensuring that they are properly attired. They are then assigned to review equipment in the truck, making sure all is working correctly. Each shift is forty-eight hours, which is two days straight (twenty-four hours each day). Each firefighter works two days each week. There were disciplinary issues with appellant, in that he would not come in at his designated time, and they had difficulty contacting him. Captain Vincent testified that whatever issue a firefighter has, they try to handle it in house. They usually refer individual firefighters to employee assistance. The fire department also offers free support initiatives. Appellant usually uses up all of his allotted sick days for the year and would be in the negative for the same. Captain Vincent testified that when appellant shows up for work, he does his job, and he has no issues doing his work.

**Battalion chief Daniel Baker** (Chief Baker) has worked for the City for over thirty-two years. He oversees half of the fire department. His role includes a mixture of hiring overtime and addressing any issues the captain has relayed to him. He oversees four engine companies. He is familiar with appellant from engine company #8. Appellant had some disciplinary issues, such as not showing up for work. If someone was absent from work, he would be notified by the captain. Chief Baker would determine the penalty, which could either be an oral reprimand or a write-up; he would also inform the individual what is necessary to correct the issue, and then it would be up to the individual to comply.

**Deputy chief Jose Berrios** (Deputy Chief Berrios) has worked for the City for approximately twenty-nine years. Deputy Chief Berrios's duties include disciplinary action and monitoring attendance for all "engines" in the department. There are six engine companies in the City. He handles disciplinary action at the lowest level, which includes minor and major discipline. If there is minor discipline, it would be handled by coaching or retraining the employee. This could also include mundane tasks such as washing trucks, cleaning the bathroom, etc. When it is a major discipline, a formal request is sent to his office. He then reviews the employee's personal files to see, for example, if the complained-of conduct has occurred before. After his review is completed, he recommends to the citing officer what discipline should be given to the employee.

Deputy Chief Berrios is familiar with appellant, as he was part of the Camden County Fire Academy's graduating class of 2017. More importantly, appellant was in the same graduating class from the academy as Deputy Chief Berrios's son. He confirmed that appellant is assigned to engine company #8 and was hired on May 1, 2017. (R-A.) Deputy Chief Berrios testified that the chief completes the PNDA form, which is then sent to the legal department, which is responsible for preparing the FNDA. In this case, he did not recall appellant asking for accommodation.

### **Testimony for Appellant**

R [REDACTED] P [REDACTED] (appellant) testified that he went through some hardship, and he was stressed out. He has worked as a firefighter since 2017. However, his last day of work was in late November 2023. At the time, he requested FMLA leave and believed it was approved. He was under the care of Kazeem Olajide, APN, at Green Oak Professional Health Services. (R-G.) He believes that his health benefits were cut off on January 1, 2024. However, he was unsure what his position was with the City. He admitted that if you miss five shifts, you are told not to return to the job without a doctor's note. A note was provided, as he was seen in December by the APN. However, he requested FMLA leave, which he believes granted six weeks to three months off. (See P-1.)

Appellant admitted to receiving the letter from the City requiring him to seek treatment before he could be determined to be fit for duty. However, he had no insurance, since his benefits were cut off beginning in January 2024. He made an application to NJ FamilyCare in early 2024, but they only approved him sometime in September 2024. At that time he sought medical care to comply with the City's requirement. It concluded in November 2024 when the letter of compliance from the treating psychiatrist was sent to the City. (R-J.) He currently works as a security guard with Allied Universal Security.

### **DISCUSSION AND CONCLUSIONS OF LAW**

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6. The Act is an important inducement to attract qualified

personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory, and other personnel authority in order that they may properly execute their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

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

Here, appellant is charged with insubordination. The Civil Service Commission utilizes a more expansive definition of insubordination than a simple refusal to obey an order. In re Chaparro, 2011 N.J. CSC LEXIS 102, Initial Decision (Nov. 12, 2010), modified, Civ. Serv. Comm'n (March 18, 2011) (citing In re Stanziale, No. A-3492-00T5 (App. Div. Apr. 11, 2002), <http://njlaw.rutgers.edu/collections/courts/> (employee's conduct in which he refused to provide complete and accurate information when requested by a superior constituted insubordination)); In re Lyons, No. A-2488-07T2 (App. Div. Apr. 26, 2010), <http://njlaw.rutgers.edu/collections/courts/>; In re Moreno, CSV 14037-09, Initial Decision (June 10, 2010), modified, Civ. Serv. Comm'n (Aug. 9, 2010), <http://njlaw.rutgers.edu/collections/oal/>; In re Bell, CSV 4695-09, Initial Decision (May 12,

2010), modified, Civ. Serv. Comm'n (June 24, 2010), <http://njlaw.rutgers.edu/collections/oal/>; In re Pettiford, CSV 8801-07, Initial Decision (Mar. 13, 2008), modified, Merit Sys. Bd. (June 13, 2008), <http://njlaw.rutgers.edu/collections/oal/>. (Moreno, Bell, and Pettiford all concern disrespect of a supervisor.) The Civil Service Commission also has determined that an employee is required to comply with an order of his or her superior, even if he or she believed the orders to be improper or contrary to established rules and regulations. See Palamara v. Twp. of Irvington, No. A-5408-05T3 (App. Div. Feb. 28, 2008), <http://njlaw.rutgers.edu/collections/courts/>; compare In re Allen, CSV 11160-04, Initial Decision (May 23, 2005), remanded, Merit Sys. Bd. (July 14, 2005), CSV 09132-05, Initial Decision (Nov. 22, 2005), <http://njlaw.rutgers.edu/collections/oal/>, adopted, Merit Sys. Bd., 2006 N.J. AGEN LEXIS 105 (Jan. 26, 2006) (in which the Board determined that the employee's disobedience was justified by concerns for the safety of the clients on a bus and reversed his removal).

Here, appellant requested FMLA leave on or about December 23, 2023, with a return date of February 14, 2024. Appellant's testimony indicates that he has been out of work since sometime in November. He believed he was still employed by respondent, and was under medical supervision. However, sometime in January 2024 he realized that his medical benefits were discontinued. Reviewing the records, respondent sent appellant for a return-to-work evaluation at the IFP. Appellant was tested on March 14, 2024, and interviewed on March 15, 2024, by the IFP. On March 22, 2024, the IFP send a "Recommendations Page" to respondent with the complete report to follow. (See R-C.) The recommendations page set forth eight recommendations. The first enumerated recommendation states: "The subject is not psychologically fit for duty at the present time." (Ibid.) On April 3, 2024, respondent sent a letter to appellant informing him of the return-to-work evaluation that was done and that he was not medically cleared to return to work. (See R-D.) Respondent gave appellant ninety days to complete all the recommended treatment. Respondent informed appellant that "[i]f you have not initiated treatment within thirty (30) days of this letter, the City reserves its rights to take all necessary personnel actions, including terminating your employment with the City." (Ibid.)

On May 5, 2024, Kazeem Olajide, APN, from Green Oak Professional Health Services wrote a letter to respondent informing them that appellant had been under his care since December 2, 2023, and in his professional opinion, appellant could "return to work with accommodation to start in a light duties capacity." (R-G.) On May 10, 2024, the Union sent a letter to respondent. Specifically, the Union let respondent know that the City had discontinued appellant's health benefits, while at the same time requiring him to seek evaluation or treatment from a health provider when he is no longer covered under a plan. The Union representative at the time requested that appellant be "reasonably accommodated concerning his ongoing medical conditions." (R-H.) Respondent failed to respond to the Union or the letter that was received from appellant's health provider in May 2024. Instead, respondent sent a PNDA on June 11, 2024, followed by an FNDA on July 1, 2024, stating that appellant did not comply with the April 3, 2024, letter. Appellant's health provider at the time sent a letter requesting accommodations. Respondent did not notify appellant that what was required pursuant to their letter was not sufficient. Furthermore, they removed appellant from any medical benefits, while expecting him to follow through with the recommendations of the IFP. They were notified by the Union that without health benefits, appellant would not be able to complete the requested recommendations.

Appellant testified that everywhere he sought help they either requested health insurance or out-of-pocket payment, neither of which he had. He applied for NJ FamilyCare in early 2024 but was not approved until sometime in September 2024. He was accepted for treatment at AtlantiCare Behavioral Health with Dr. Semler. Eight months later he was able to complete the requested follow-up. Based on the above, respondent failed to show by a preponderance of the evidence that appellant was insubordinate. I therefore **CONCLUDE** that appellant was not insubordinate.

Appellant is also charged with conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-

of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins v. City of Atl. City, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Emmons, 63 N.J. Super. at 140 (citing Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955))).

In respondent’s brief, they posit that “unexcused absences coupled with [appellant’s] failure to complete ordered medical treatment disqualified him from performing his assigned duties within his Company and Engine in the Camden Fire Department. These facts and circumstances considered in totality therefore constituted Conduct Unbecoming of a Public Employee.” (Resp’t’s Post-Hr’g Br. at 3.) I disagree.

Appellant was out on FMLA leave since November 2023. The FMLA leave expired in February 2024. (See P-1.) Respondent sent him to the IFP for a psychological examination on March 14, 2024. On March 22, 2024, the IFP submitted a recommendation on appellant’s fitness for duty. Based on that recommendation, respondent knew that appellant was not fit for duty; appellant needed to be enrolled in an “Intensive Outpatient Program” and to “consult with a psychiatric practitioner.” Respondent terminated his health benefits while requiring him to complete these mandatory requirements to return to his position. They gave him mandatory medical evaluations without the tools needed (health benefits) to complete them. Respondent further posits that appellant did not formally request accommodation for his disability. (Resp’t’s Br. at 4.) However, this is not the case. His health provider, on May 5, 2024, requested accommodations of light duty. (See R-G.) In addition, his Union representative requested accommodation. More specifically, the Union representative requested that appellant be “reasonably accommodated concerning his ongoing medical conditions,” and “to protect the rights and health of this impacted Firefighter.” (R-H.) Appellant had serious psychiatric needs and required ongoing treatment, none of which respondent facilitated or allowed accommodations for. Instead, respondent removed him from his

employment and blamed him for his failure to obtain the treatments that they determined he required before returning to his job as a firefighter.

Accordingly, I **CONCLUDE** that respondent has not met its burden of proof to sustain the charges of conduct unbecoming, N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12).

Appellant is also charged with N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties. The charge of inability to perform duties has been upheld where the employee is incompetent to execute his job responsibility. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305, 317 (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county); Richard Stockton Coll. v. Parks, CSV 4279-03, Initial Decision (Jan. 31, 2005), adopted, Merit Sys. Bd. (April 3, 2005), <http://njlaw.rutgers.edu/collections/oal/> (where the employee failed to prioritize and complete tasks in a timely manner).

In the FNDA, it states: "Employee did not comply with April 3, 2024 Letter from the BA directing Employee to initiate recommended course of Intensive medical treatment within 30 days. Employee is not medically cleared to return to work. As such, Employee is unable to perform duties." (R-F.) Appellant has not returned to work since November 2023 based on medical reasons. Appellant was out on FMLA leave with a return date of February 2024. Respondent had appellant evaluated for his fitness to return to duty. From the evaluation, an eight-page report was generated. It set forth eight recommendations. There is no allegation that appellant was incompetent or that he showed up for work and did not perform. In fact, both Captain Vincent and Chief Baker said that when he came to work he did his job. Respondent knew that appellant was not fit for duty and therefore was never cleared through a medical evaluation prior to his removal on June 11, 2024. Appellant needed medical help, and none was provided. Once he was able to obtain health benefits he submitted to the care of a psychiatrist at AtlantiCare Behavioral Health (September 2024) approximately three months after he was removed from his employment with the Camden City Fire Department. Thus, I **CONCLUDE** that the City of Camden has not proven the charge of N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties, by a preponderance of the evidence.



Furthermore, there was no interactive process engaged in this case. Pursuant to N.J.A.C. 13:13-2.5: "An employer shall consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a person with a disability on the grounds that his or her disability precludes job performance." Appellant requested accommodation in May 2024, and respondent failed to present evidence that it took steps to accommodate appellant.

It must be pointed out that there was no prior disciplinary action that was presented by respondent, and the record is void of any disciplinary actions prior to June 11, 2024.

In cases involving serious offenses such as driving under the influence, reinstatement to employment has been made subject to successful completion of a fitness-for-duty exam or other prerequisites. In Wilmouth v. Department of Environmental Protection, CSV 2446-03, Initial Decision (Apr. 26, 2004), adopted as modified, Merit Sys. Bd. (July 15, 2004), <http://njlaw.rutgers.edu/collections/oal/>, a forest-fire observer employed by the Department of Environmental Protection (DEP) was charged with conduct unbecoming for assaulting a coworker and threatening a superior. The administrative law judge (ALJ) modified the proposed removal penalty to a six-month suspension and recommended anger-management classes prior to the employee's reinstatement. The Merit System Board further ordered the employee to undergo a fitness-for-duty exam prior to his reinstatement:

Although the Board agrees with the ALJ's determination to modify the removal to a six-month suspension, the Board is concerned with the unprovoked nature of the appellant's attack, and whether this is indicative of a psychological condition which may have an impact upon the appellant's ability to perform his job duties. Therefore, the Board orders that prior to the appellant returning to work, he is to undergo a psychological examination to determine his fitness for duty. See N.J.S.A. 11A:2-6(f). The DEP is to select, and pay for, the psychiatrist or psychologist who will administer the psychological examination. If the State-authorized psychiatrist or psychologist determines that the appellant is fit for duty, then he is to be immediately reinstated with mitigated back pay, benefits and seniority. Additionally, if the appellant

is determined to be fit for duty, he must undergo an anger management course. However, if the State-authorized psychiatrist or psychologist determines that the appellant is unfit for duty, then the DEP may immediately suspend the appellant as of the date of the report and issue a Preliminary Notice of Disciplinary Action for unfitness. It is noted that, even if the appellant is determined to be unfit, he would still be entitled to mitigated back pay, benefits and seniority, from the end of his six-month suspension until his immediate suspension on the new charge of being unfit for duty.

See also In re Brown, 2009 N.J. CSC LEXIS 1324 (Dec. 17, 2009) (noting that "if the appointing authority has a specific and legitimate basis to require fitness-for-duty examinations, it has the authority to order the appellant, as its employee, to submit to such examinations"); In re Kingston, 2013 N.J. CSC LEXIS 32 (Feb. 7, 2013), aff'd, No. A-3288-12 (App. Div. June 2, 2015), <http://njlaw.rutgers.edu/collections/courts/> (conditioning the reinstatement of a laborer who harassed and assaulted a coworker upon his successful completion of a fitness-for-duty exam); In re Whittle, 1999 N.J. AGEN LEXIS 1233 (June 8, 1999) (employee's "history of substance abuse problems demonstrates a need for a counseling program as a condition of his return to employment").

Here, appellant was required to undergo a fitness-for-duty evaluation in March 2024. He was found not fit for duty. He was required to enroll in an "Intensive Outpatient Program." (See R-C.) Appellant did seek and attended a Mental Health Intensive Outpatient Program at AtlantiCare. He is under the care and treatment of Keith Semler, D.O. I therefore **CONCLUDE** that there is a reasonable basis for ordering as a condition of his employment, if the treatment received at AtlantiCare did not comply with the recommend course of treatment from the IFP, that a psychiatrist or psychologist selected and paid for by the City shall perform a fitness-for-duty evaluation prior to appellant's return to work to (1) confirm that he is fit to return to duty and (2) identify any additional therapies or programs that shall be required as a condition of his employment. The City shall pay for all recommended programs and treatments from the psychiatrist or psychologist; and appellant shall comply with all recommended programs and treatments.

Since respondent has not sustained any of the charges, the penalty of removal is therefore not sustained. I **CONCLUDE** that appellant is entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. The amount of back pay awarded should be reduced and mitigated for that period of time when back pay was waived.<sup>2</sup>

### **ORDER**

I **ORDER** that the charges of insubordination, inability to perform duties, conduct unbecoming a public employee, and other sufficient cause are **NOT SUSTAINED**, and I further **ORDER** that the penalty of removal by the appointing authority is **REVERSED** in its entirety. It is also **ORDERED** that if Dr. Semler's behavioral health treatment protocol that the appellant engaged in along with attending Atlanticare Mental Health Intensive Outpatient program does not comport with the recommended treatment from the IFP dated March 22, 2024, appellant should undergo a satisfactory fitness-for-duty evaluation and any other prerequisites ordered by the City-selected psychiatrist or psychologist. Since the penalty has been reversed, I **ORDER** that appellant is entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. The amount of back pay awarded is to be reduced and mitigated for that period of time when back pay was waived.

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**,

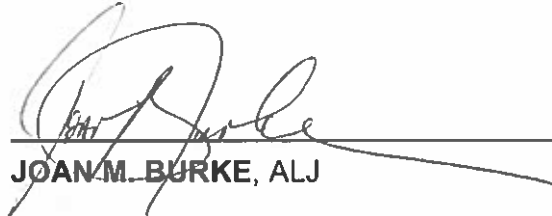
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<sup>2</sup> On September 9, 2024, appellant waived the 180-day hearing requirement.

**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.

November 6, 2025

DATE

  
\_\_\_\_\_  
**JOAN M. BURKE, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JMB/sw/sb/jm

**APPENDIX**

**Witnesses**

**For Appellant:**

R- [REDACTED] P- [REDACTED]

**For Respondent:**

Captain Edward Vincent, Camden City Fire Department  
Battalion Chief Daniel Baker, Camden City Fire Department  
Deputy Chief Jose Berrios, Camden City Fire Department

**Exhibits**

**For Appellant:**

P-1 FMLA Leave Request, December 23, 2023

**For Respondent:**

R-A City of Camden Employee Information, May 1, 2017  
R-B Job Specification, Fire Fighter  
R-C The Institute for Forensic Psychology Report  
R-D City of Camden letter, April 3, 2024  
R-E Preliminary Notice of Disciplinary Action, June 11, 2024  
R-F Final Notice of Disciplinary Action, July 1, 2024  
R-G Green Oak Professional Health Services, May 5, 2024  
R-H Letter from International Association of Firefighters Local 2578, May 10, 2024  
R-I Letter from International Association of Firefighters Local 2578, September 18, 2024  
R-J AtlantiCare Behavioral Health, November 26, 2024  
R-K Letter from the Law Offices of Michael Bukosky & Associates, December 6, 2024