

**STATE OF NEW JERSEY**

In the Matter of Willie Smith,
Youth Justice Commission¹

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-827
OAL Docket No. CSV 09458-22

ISSUED: JANUARY 8, 2026

The appeal of Willie Smith, an Assistant Superintendent, Residential Group Center, with the Youth Justice Commission, of his removal, effective June 30, 2022, on charges, was heard by Administrative Law Judge Ernest M. Bongiovanni (ALJ), who rendered his initial decision on November 13, 2025. Exceptions were filed on behalf of the appointing authority.

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 December 17, 2025, did not adopt the ALJ's Findings of Facts and Conclusions of Law and his recommendation to uphold the removal. Rather, the Commission reversed the removal.

DISCUSSION

The appellant was removed on charges of insubordination, conduct unbecoming a public employee, and other sufficient cause. Specifically, it was asserted that the appellant failed to comply with Executive Order 283 and 290 regarding the COVID-19 vaccine. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In his initial decision, the ALJ found that after seeking and being denied a religious exemption, the appellant made no effort to abide by the terms of Executive Orders 283 and 290. Although the appellant complained that the appointing

¹ The agency was previously known as the Juvenile Justice Commission.

authority never mentioned an acceptable accommodation that it could make, the ALJ determined that the burden was on the appellant to offer an accommodation and that there was no need for the appointing authority to suggest accommodations it could make. Based on the testimony of the appointing authority's witnesses and job specification, the ALJ found that employees in appellant's title, Assistant Superintendent, have to have a presence in the facility and have to be walking the facility and interacting with staff and young people throughout the day every day and found that the appellant's claim that he rarely had to interact with stuff not credible. He also determined that the evidence demonstrated that there was no accommodation other than getting someone else to perform some of the appellant's duties. Accordingly, the ALJ recommended that the charges of insubordination and conduct unbecoming an employee be affirmed but made no finding regarding the charge of other sufficient cause. The ALJ concluded that the appellant's removal was sustained.

Upon its *de novo* review of the record, the Commission rejects the recommendation of the ALJ that the appointing authority sustained its burden of proof and that the charges should be sustained. Rather, the Commission dismissed all the charges and reversed the removal.

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

Upon its review, the Commission finds that the record does not evidence that an actual interactive process for a religious accommodation had occurred. In *US Airways, Inc v. Barnett*, 535 U.S. 391 (2002), the United States Supreme Court set out a burden-shifting scheme for reasonable accommodation cases. Plaintiff generally bears the burden of proving that the proposed accommodation “seems reasonable on its face, i.e., ordinarily or in the run of cases.” *Barnett*, 535 U.S. at 401; *see also* 535 U.S. at 409-410 [O'Connor, J., concurring]. If plaintiff makes this showing, the burden shifts to the defendant to show that the accommodation, though

reasonable as a general matter, imposes an undue hardship on the defendant due to the defendant's particular circumstances. *Id.* 535 U.S. at 402.

The former Administrative Officer for the Youth Justice Commission testified that in implementing Executive Order 283, it first split staff into two categories, one "covered workers" and another, "noncovered workers." "Covered workers" were those individuals that would regularly enter the building or have a need to enter the building. The appellant's denial of a religious accommodation was based solely on his status as a "covered worker" and that the "kids" in their care require face to face interaction. In other words, instead of going through the interactive process, the appointing authority pre-determined that the "covered workers" would not be eligible for an accommodation, improperly shifting the appointing authority's burden to show undue hardship to the appellant. Regardless, while the appointing authority's witnesses testified that the appellant was not allowed to work remotely, the appellant's testimony was undisputed that at the time of his termination in 2022, "his work hours had been changed so that two days out of five of the work week he was permitted to work 'remotely' on Sunday and Monday, while continuing to work at the juvenile residential facility in Newark [on] Tuesdays[,] Wednesdays and Thursdays." Thus, it appears that an accommodation was in fact possible that was reasonable on its face. Under these circumstances, the charges against the appellant should be dismissed and the appellant reinstated.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. Moreover, as the appellant has prevailed, he is entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

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

ORDER

The 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 Willie Smith.

The Commission orders that the appellant be granted back pay, benefits and seniority from the time of his removal to the date of his actual reinstatement. The

amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

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

Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12* the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fees dispute.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF DECEMBER, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09458-22

AGENCY DKT. NO. 2023-827

**IN THE MATTER OF WILLIE SMITH,
JUVENILE JUSTICE COMMISSION.**

Joseph Alter, Esq., for appellant (The Pope Law Firm, attorneys)

Gina M. Labrecque, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: August 4, 2025

Decided: November 13, 2025

BEFORE ERNEST M. BONGIOVANNI, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Willie Smith (Smith/appellant) appeals his termination as an Assistant Superintendent at the Residential Group Center by the respondent, the Juvenile Justice Commission (JJC/respondent.) After a disciplinary hearing, a Final Notice of Disciplinary Action (FNDA) sustained charges under N.J.A.C. 4A:2-2.3 (a) 2. Insubordination, 6. Conduct Unbecoming a Public Employee 12. Other Sufficient Cause, in failing to comply with Executive Order 290 and JJC Policies implementing Executive Orders 283 and 290, and also upheld the immediate suspension and removal of Smith. The charges stem from Smith's refusal to take a COVID-19 vaccine, as then required by

Executive Orders 290 and 283, while working as Assistant Superintendent, at the Residential Group Center for the Juvenile Justice Commission. (JJC) Smith argues he should have been granted an exemption, as permitted by the Executive Orders, owing to his "sincerely held religious belief, practice or observation."

After being discharged as a result of the disciplinary proceeding, Smith filed an appeal, and the matter was transmitted by the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law on October 19, 2022. On March 18, 2024, respondent timely filed a motion for Summary decision. Briefs and exhibits in support and opposition to the motion were also timely filed and on May 7, 2024, oral argument on the motion was heard via Zoom, which was denied by written decision and Order dated July 25, 2024. Hearings were held in person on December 8, 2024, December 12, 2024, and April 8, 2025. Post hearing briefs were requested and an extension of time within which to file said brief was granted, the last brief being received August 4, 2025, at which time the record closed. An Extension of time to file the initial decision, owing to voluminous caseload, was granted September 29, 2025.

FACTUAL DISCUSSION

Testimony for respondent

Roy Edward Hambrecht, former administrative officer of JJC

Mr. Hambrecht testified he was the chief administrative officer of the JJC from May 2021 through November of 2024. Immediately prior to that he had been a special projects manager for the for six years. In all he had spent 25 years working for the State of New Jersey. As part of his duties at the JJC, he was familiar with the Northern Regional, Independence and Reentry Success Center (called NRI), located in Newark, NJ, which is where appellant Smith worked as the Assistant Superintendent. Hambrecht would visit such facilities to meet with staff and observe operations. He conducted audits of the financial books at the facilities. He described the facility as having "narrow hallways" and overall being "a very tight space" compared to other facilities. He recalled it has three floors with the dormitories being on the upper level.

While describing the assistant superintendent's job duties, (J-7) Hambrecht stressed that "paramount to everything was the safety and security of the residents." The Assistant Superintendent is in charge while the Superintendent is not present. Usual activities of the Assistant Superintendent would be to "make regular rounds checking out the cleanliness of the place, checking the condition of the building and the condition of the residents." For safety reasons, it would be a common thing for the Assistant Superintendent to make sure the perimeter of the facility was secure.

Hambrecht noted that many residents have experienced "a lot of trauma" in their lives so it was expected the superintendent (and assistant superintendent) "to kind of lead and guide" them to work with them, and "give them the positive contacts that maybe eluded them for most of their lives." Consequently, he sets a model for "the senior youth workers and Youth work supervisors to act in the same manner." Finally, he is responsible for disciplining of the residents and that included having "to bring the resident into the office for a meeting with the assistant superintendent on a regular basis." At this facility, the Assistant Superintendent's office was located on the second floor, in a "ten by twenty" foot space.

During the COVID-19 crisis which caused the vaccination mandate, the facility and its operators had to make "tough decisions" insuring that the staff entering the buildings did not bring in any infection. Despite all the precautions such as testing and vaccination programs, by December 2020 the facility was experiencing "fifty positive (for COVID-19) testings per week." They had major staffing problems with some staff unable to work owing to the virus.

The JCC developed a policy implementing Executive Order 283 (J-3) which instructed staff to get vaccination and gave dates for the vaccination, such as February 16, 2022, for the first vaccination and March 30, 2022, for the second vaccination. The policy included providing for a religious exemption when updated owing to Executive Order 290. (J-4). The updated policy also extended the date for the second vaccine to May 11, 2022. A committee was developed to hear applications by those not wishing to be vaccinated. Regarding Smith's request not to be vaccinated, Hambrecht testified

they considered suggestions that masking or frequent testing of Smith be used in lieu of vaccination. Hambrecht said the Committee considered this. First, they had already split staff into two categories, one, "covered workers" and another, "noncovered workers"

Covered workers were those individuals that would regularly enter our buildings or have a need to enter our buildings....the non-covered workers would be those that didn't enter into the building , secretarial staff at our central office, ...So we had to evaluate based on again, considering the safety of the residents and the staff at the building.

The Committee would make a recommendation regarding any request by an employee to avoid the vaccination, but the final decision would be made by Sarah Pasquale. In Smith's case, the Committee recommended denying the request that he avoid the vaccination, because all the employees "had to put the safety and security of the building first...[.] " As "Smith was regularly entering the buildings and was considered a covered worker...we made the decision to deny his request for religious exemption of the vaccinations."

Under cross examination, Hambrecht noted that Smith was not allowed to work remotely because "the kids in our care require face to face interaction which is paramount." He noted that even education staff that asked to work remotely were denied that exemption "in the best interest of the children in our care." He noted that Smith would have been the only assistant superintendent working at the facility at the time. Hambrecht reiterated under cross that Assistant Superintendent Smith would have been "the authority figure at the facility"

So a decision was made by our executive director that...the residents and our chair need to have the attention of the staff. That's why I explained the education staff and social worker staff were not allowed to meet through teams...[.]So the best care we can give them is face to face care. These residents need to understand that people are there to care for them...That's why we had to ensure people entering these buildings were safe, because we require fact to face interaction with the kids...It's no different than

finding these kids that were being taught remoting generally during Covid why they've fallen behind in school in their education levels.

Hambrecht testified the Committee gave consideration -a "thorough discussion" or what could be allowed, in consideration of Smith's request for exemption such as accelerated testing and masking, but that [W]hen it came right down to it, the general approach was that anyone entering the buildings was a threat of bringing Covid in, and they needed to be vaccinated. Thus, for Smith, "there was no scenario [that an accommodation] could work." Hambrecht noted that even if vaccinated covered employees were required to mask and get frequent temperature testing.

Gregory August Spellmeyer

Mr. Spellmeyer is a general counsel in the Office of General Counsel within the New Jersey Division of Administration. Part of his duties was to provide legal counsel to the Human Resources office within the JJC. As such, he provided counsel regarding religious and medical exemption requests. He worked with Hambrecht and other employee relations employees in assessing these religious/medical exemption requests. They would consider if the request was based on a "sincerely held" religious belief. The second part of their job was to consider the practical consequences of the exemption request. To do that, they would consider the CSC title and the more practical question of what the employer actually did. As a practical matter, for example was whether the job had as an "essential function" "[T]o be present in the facilities and to have contact with custodial staff and residents, and that contact was not fleeting or insignificant, [but] would be more substantive in time and activity."

While Spellmeyer and the committee he worked for, in considering Smith's requested exemption, found the Committee did not disagree that Smith had a sincere religious belief, they did not find he articulated "that getting vaccinated against Covid -19 is in conflict with the sincerely held religious belief or practice." His recollection was, however, this lack of determination about the supposed conflict between the sincerely held belief and the taking of the vaccine, was not the basis for the committee's decision. The committee couldn't determine that the whether taking the vaccine was contrary to

the teachings of the church or simply Smith's position about the religious belief. Regardless, the committee's decision is denying the exemption was not based on the Committee members lack of being convinced that Smith had a sincerely held religious belief concerning the vaccine. They did not doubt Smith's religious sincerity. Rather, the committee's decision focused on the fact that Smith's position was "essentially a managerial one and a supervisory decision with regard to facilities that house juvenile residents...[and that] the job duties would require [him]...to have direct physical contact with his custodial staff within the facility and part of the managing and the supervising [of them] as well as with the residents." As to the job duties specified in his job title his work required "[W]ithin that congregate care environment, interacting physically and for...more than fleeting moments of passing with custodial staff and residents."

Sara Pascale

Ms. Pascale is a retired, 25-year veteran of a career with the State of New Jersey, including three years as a Deputy Chief Administrative Officer. In that capacity she worked with the JJC, where she did "general oversight of different projects," with a focus on COVID issues. Among COVID issues, she was put in charge of final review and approval of issues such as work from home, or, as she related, "anything that was outside the box of any rules that were in place."

Ms. Pascale discussed the decision to deny the exemption sought by Smith. She testified they considered information about his job, the exemption requested, which he provided, his job title and duties, to determine if the information Smith provided supported his request. She agreed that many of Smith's duties as described in his job title by the Civil Service Commission were administrative or fiscal in nature, which wouldn't necessarily require close contact between Smith and the residents. However, she said, his duties were broadly stated and many job duties encompassed would be outside the description of administrative and fiscal. She said she would be "hard pressed to not assume that he would be with residents on a day-to-day basis, based on the job title alone." The job title as outlined (J-7) is in the context of working in a residential facility.

Ms. Pascale admitted that she "checked off" the box that said "Accommodations: Denied." She could not recall the specific accommodation requested. She recalled that Mr. Smith did not personally articulate why the COVID vaccine was in conflict with any sincerely held religious belief. All he produced was an unsigned letter purporting to be from his church. Ms. Pascale stated they her committee had approved "quite a few" religious exemptions. She regarded the burden of proof to be on the employee, like Smith seeking an exemption. The bottom line was that Smith's job duties and unvaccinated status presented an *undue hardship for the JJC*. She noted that many of Smith's duties required collaborative effort with other employees working at the facility. She "didn't know if some or all of those duties could be equally performed by using telephone communication or formats such as Microsoft teams." She did say that any person given an accommodation is "expected to do [perform] the same level of job. An accommodation doesn't allow for a different or easier job, just a different way of doing the same job."

Doctor Edward Lifschitz

Dr. Lifschitz is the Medical Director of Communicable Disease Service at the NJ Department of Health. He has held that tile for 14 years, and oversees a staff of about 100, including epidemiologists, veterinarians, nurses, communicable disease specialist, among others. He was in clinical practice for 17 years before then, and is Board certified in internal medicine. He is an adjunct Assistant Professor at Rutgers Medical School. For these and other reasons he was qualified an expert in infectious diseases.

As the Medical Director, he explained the Communicable Disease Service is charged with monitoring and response to communicable diseases such as and including COVID-19. His department works with such agencies as the United States Center for Disease Control and worked to establish best practices that organizations could take to "protect themselves, their staff, their clients, their patients, including such organizations as schools, hospitals, long term care facilities, correctional facilities" and others. Regarding COVID-19, some of their work included providing input if requested before the Executive Orders pertaining to Public health were issued.

In his opinion, the COVID-19 pandemic “absolutely” posed a significant threat to New Jersey. As of the time he testified, he said over “30,000 New Jerseyans had died” which constituted “toughly twice the number of New Jerseyans who have died in every war since the country was founded.” Additionally, hospitals were close to becoming overrun by the spread of the virus.

By their nature, he said, correctional facilities involve a large number of people living together in confined space for long periods of time, making it “easy to pass communicable diseases from person to person.” Further, while younger people are generally healthier than the general population, those confined to their facilities “tend to be more prone to medical problems, and make it more likely” to have adverse outcomes with COVID-19. In NJ agencies in general, they strongly recommended vaccination. In his opinion, by the end of 2021 vaccines were far more effective than masking. He testified that if vaccinated and boosted, a person had roughly one twelfth the risk of contacting COVID, one fourteenth the risk of being hospitalized for COVID and one twentieth the risk of dying from it compared to one who was not vaccinated and boosted. Likewise, vaccination was far more effective than just testing for COVID. Further studies showed that in facilities where NJ employees were given the choice of being vaccinated or being tested twice a week, outbreaks and poor medical outcomes were much higher than in facilities that required vaccines. While in cross examination, the Doctor admitted he was not personally familiar with the facility where Smith worked and did not have statistics with him, he did not have statistics on COVID cases in JJC facilities with him, he said he could produce that.

Jennifer LeBaron

Ms. LeBaron is the Executive Director of the Juvenile Justice Commission, Immediately prior to appointment in that role in early 2023, she had been the Acting Executive Director since 2022 and prior to that the Deputy Executive Director for a number of years. As such she has oversight and leadership responsibilities for “all aspects of agency operations” oversees policies, fiscal and budgetary matters and does “essentially everything a CEO would do.” The JJC’s mission is to look after the well people of the “young people committed by the courts to our care.” There are three

"secure" and ten "residential" facilities throughout the State. She testified that "(W)e work to implement safety and security measures, rehabilitative programming, educational and vocational opportunities" and to "support young people throughout the State impacted by the Justice System."

She was familiar with Executive Orders 283 and 290 as the JJC was subject to them, being a "high risk congregate care setting." She gave the context for the disciplinary action in this case. She stated that the COVID-19 pandemic "was the most significant operational impact" that she experiences in her 28 years at the JJC. She elaborated:

On a daily basis, we were in crisis mode, we were trying to prevent illness and death in our facilities among young people and among out staff...[O]n any given day we had to identify quarantine and isolation areas in every facility they were operating....[W]e had to immediately implement...new policies, practices and protocols...[S]o many people were put out on sick leave due to required quarantine and isolation protocols...that we were constantly managing manpower shortages. We had to...temporarily close or consolidate housing units to deal with the staffing shortages...[.] So, for that stretch of time, it was all hands-on deck.

Although the juveniles residing at the facility in Newark where Smith worked were not locked in the same way they are at the secure care facilities, they are not allowed to leave the facility. It is called a staff secure facility, with all residents being ordered to remain there, and operates 24 hours a day, 7 days a week.

As an Assistant Superintendent, Smith's job included both supervising juveniles, and supervising other employees performing those tasks of looking after these residents. She pointed out that the job description (J-7) includes the phrase "managing the staff and activities of a residential group center." That means he is managing the activities of the residents as well as staff. The Superintendent and Assistant Superintendent "have to have a presence in that facility, have to be walking that facility...[you] must be interacting with staff and young people throughout the day every day."

As his position included supervising employees who were also supervising residents, to perform that role, she said:

You do that by walking around the facility and making sure that your supervisors are doing their jobs and interacting with young people....the Assistant Superintendent also intervenes when supervisors are having problems, everything in this job description the buck stops in that facility with the Assistant Superintendent and the Superintendent...in order to insure ...your facility is operating appropriately, you have a presence, you talk to kids, you talk to staff, you walk the facility you make sure that everything that's supposed to be happening in that facility is happening..

LeBaron noted that while the facility might only be housing as many as twenty young people at a given time, most of them are serving sentencing, which could be a "typical" two-year sentence, but could be as high as five, ten fifteen or twenty years.

Testimony for Appellant

Wilie Smith

Former Assistant Superintendent/appellant Smith was his only witness.

He is 51, has been married for 31 years and has five children, three of whom reside with him and his wife. He started as a Youth Worker with the JJC in October of 2000. He moved up the chain of authority, becoming a Senior Worker in 2002 and Youth Worker Supervisor in 2005. In 2007 he was promoted to Assistant Superintendent, the position he held until he was terminated in 2022.

At the time of his termination in 2022, his work hours had been changed so that two days out of five of the work week he was permitted to work "remotely" on Sunday and Monday, while continuing to work at the juvenile residential facility in Newark Tuesdays Wednesdays and Thursdays. Prior to the Covid-19 pandemic, the usual

number of juveniles living at the facility would be 12 in number but could go as high as 25. Usually, three supervisors under Smith were on duty at all times. Working under those supervisors were additional Youth workers

The facility has three floors, the top floor for residence of the juveniles, the first floor largely being the kitchen and cafeteria area and the second floor mostly for operations. All the employees on that floor including Smith had their own office or "area." At the time of COVID, the employees employed masks and kept a distance of six feet from each other. Their seated areas had plexiglass installed around them. Employees were tested once a week for COVID and had their temperatures checked before entering the building every day.

Smith said that when the vaccine mandate was issued for all employees, he sought a religious exemption, having been a member of "Islam" for thirty years. He said he attended a mosque once a week sometimes more. He obtained a letter (J-5) from the religious leaders of his mosque to "provide a reasoning why I requested the exemption."

Smith noted his exemption came with an offer that he was "open for discussion of alternative options" to the vaccine. He testified that the letter denying his request for exemption did not accurately describe his job duties. In particular he believed his job duties did not require "close contact with fellow employees and juveniles" residing in the confined facility he was supervising. He claimed his "primary role was to manage the facility "through my supervisors." For example, if he was to see that the residents were to be given medication, he would not necessarily be present while that took place.

Much of his job, Smith said was "administrative." Moreover, he had to delegate because he couldn't be there all the time. At the facility he had his own office and estimated his desk duty would be 90% of the time. As to contact with juveniles during COVID, he had face to face time with the juvenile residents "very rarely," especially as they were attempting to limit outside contacts between the residents and others, at the time. The residents would have meals prepared on the second floor but instead of coming downstairs for dinner the meals would be brought upstairs. Residents could call

him or reach him through an intercom. During COVID he did not remember a single instance when he had to visit the third floor where the residents lived. Smith observed that after he asked for the exemption, no one from administration discussed with him possible accommodations.

On cross examination, Smith said that prior to COVID, residents would occasionally walk into his office, although primarily he communicated with the residents through his supervisors. He would, however, interact face to face with other supervisors and employees although not every day. He would, for example, explain in person to other supervisors disciplinary issues concerning the residents. His door was open to his employees although they understood one didn't just barge in.

He was aware that the policies mandating and implementing the COVID-19 vaccine mandates to employees applied to him, and that failing to get vaccinated could lead to his termination. After some quibbling over terminology, Smith had to admit that he doesn't and can't delegate all of his duties and he does personal, face to face work with other employees and residents "when needed." He also used the same entrances and exits and bathrooms used by other employees.

To the Court's questioning Smith admitted the Executive Orders apply to all employees regardless of their job duties. He noted that because he adhered to his religious beliefs in refusing the vaccine, he has suffered financially for three years, although he now works as a substance abuse counselor.¹

FINDINGS OF FACTS

The parties stipulated to, and I find, the following as FACTS:

1. Appellant Willie Smith was employed at the Juvenile Justice Commission as an Assistant Superintendent Residential Group Center until June 30, 2022.

¹ When the form for religious exemption asked Smith what accommodations he could suggest, he merely said he was "open" to ideas. I note that neither at that time nor at the hearing did Smith suggest that maybe a transfer to a different position within the JJC was possible. There were, according to the job statistics of the JJC noted by the Appellate Division in Murphy, *infra*, at that time 89 out of 1083 employees who were not covered by the vaccine mandate.

2. On June 28, 2022, respondent issued appellant a Preliminary notice of Disciplinary Action, (PNDA) based on the following charges, N.J.A.C. 4a:2-2.3(a)2, insubordination; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee N.J.A.C. 4a:2-2.3(a)(12), other sufficient cause.
3. Following the issuance of the June 28, 2022, PNDA, appellant failed to provide respondent with proof of the vaccine.
4. On September 28, 2022, respondent issued a Final Notice of Disciplinary Action (FNDA) which removed appellant effective June 30, 2022 based on the following sustained charges :N.J.A.C. 4A:2A-2.23 (a)(2), insubordination, N.J.A.C. 4A:2-2.3 (a) (6), conduct unbecoming a public employee and NJAC 4A:2-2.3(a)(12), other sufficient cause.

Additionally, where the testimony was disputed and where the credibility of the witnesses was being considered, based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, and in other instances where the evidence was essentially undisputed, I **FIND** the following additional **FACTS**.

5. Appellant, Willie Smith was aware that by refusing to provide proof of vaccination and proof of a booster shot by the May, 2022 deadline set by JJC policies implementing EO 283 and EO 290, that he was subject to discipline, including termination.
6. After seeking and being denied a religious exemption, Smith made no effort whatsoever to abide by the terms of the aforesaid Executive Orders and JJC policies implementing same.
7. The JJC did not question whether or not Smith the Religious exemption based on a sincerely held belief

8. In support of his religious exemption request, Smith produced a letter (J-6) which although unsigned was apparently issued by a Student Assistant Minister at A Muhammad Mosque Smith attends and has attended for many years.
9. The letter, dated January 18, 2021, said vaccines "*being deployed*, including the vaccine for COVID-19 (emphasis supplied) "are in direct contradiction to the Will and the Commandants of the God we serve."
10. However, the letter did not say that *taking* a vaccine, especially if ordered to do so, for example as a condition of your normal employment, was a violation of any spiritual edict or commandment. Further, even if it were a violation, it did not say what the penalty (e.g. excommunication) was for one violating it.
11. However, Smith did testify that "based on my religious institution I was asked not to take the COVID vaccine."
12. Although Smith complained that the respondent never mentioned an acceptable accommodation that it could make for Smith, the burden was on Smith to offer an accommodation. Thus, there was no need for the JJC to suggest accommodations it could make.
13. While Smith downplayed his interactions with residents (saying they knew they could reach him by phone or the intercom system) and claimed to have minimal contact with staff on a day-to-day basis, I did not find such testimony credible or convincing.
14. Convincing evidence to the contrary position, was the testimony of all the witnesses familiar with the workings of the JJC, particularly that of Executive Director LeBaron who emphatically stated, that the Superintendent and Assistant Superintendent "have to have a presence in that facility, have to be walking that facility...[you] must be interacting with staff and young people throughout the day every day."

15. Further the job specifications of the Assistant Superintendent state he "assists in managing the staff and activities" of the Group Center and again, "manages staff and work activities." Further he assists "in supervising all activities of the residential group facility." He "assists in managing the development implementation, and monitoring of individualized rehabilitative services and programs through a multi disciplinary team approach". He also "assists in the operation of the physical plant to comply with...regulations and codes to ensure the safety and security of the residents and staff."
16. In that context, the appellant's claim that he rarely had to interact with staff was not credible and statements such his claim that he couldn't recall visiting the third floor (the residential quarters) since COVID-19 started seemed self-serving and unrealistic especially as residents were forced to be confined there more so during COVID than before. Further, the implication by his testimony that his interaction with staff and residents was fleeting, contradicted the job specifications, the testimony of the Executive Director, who manages all of JJC's residential facilities, and for the most part, defied common sense.
17. Finally, Smith admitted some of the obviously necessary normal, unavoidable and/or expected contact he had with staff.
18. The use of Plexiglas in offices such as Smith's did not mean Smith was supposed to be confined to his office or that his duties could be performed without any personal interactions with staff and residents.
19. The respondent gave substantial competent evidence that there was no accommodation other than getting someone else to perform some of Smith's duties, and additionally they gave unchallenged specifics of how the COVID virus was negatively affecting not just the health of the residents that are in their care but the staff in meeting an unprecedented crisis and the necessity for universal application for all covered employees, at least those that require face to face contact.

20. Further respondent gave unchallenged medical testimony proving the efficacy of the vaccines and boosters and the severe negative effects (including but certainly not limited to the financial strains) of allowing staff and residents to go unvaccinated.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 governs a civil service employee's rights and duties. The act is an important inducement to attract qualified personnel to public service. It is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1 N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972) Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). One of the methods of protecting the continuing validity of merit appointments is providing for completion of a probationary or working test period, which enables the appointing authority to evaluate whether an employee can successfully perform the duties of the title meriting permanent status. N.J.S.A. 11A:4-15.

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the Borough of Elmwood Park bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee and other sufficient cause, among other things.

N.J.A.C. 4A:2-2.3. Hearings at the Office of Administrative Law are conducted de novo and determine the appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). Ennslin v. Twp. Of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994) cert. den., 142 N.J. 446 (1995).

In an appeal from a disciplinary action, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); Polk, 90 N.J. 550. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del Lackawanna and W.R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Preponderance may be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence needed to satisfy the standard must be decided on a case-by-case basis.

There is no precise definition for conduct unbecoming a public employee, and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit Sys. Bd. (June 26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services." Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), the court stated that a finding of misconduct need not "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."

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against appellant. The charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <http://njlaw.rutgers.edu/collections/oal/final/>. Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.

Executive Order (EO) 283.

The Order took effect immediately upon its announcement January 19, 2022. It declared that the Omicron variant of COVID-19 "spread faster" than prior variants, and further declared that vaccines and boosters were "effective at preventing serious illness, hospitalizations and death." It further declared that higher mitigation protocols in congregate settings were particularly important because of "the significant risk of spread and vulnerability of the populations served. It further designated "all congregate care settings operated by the JJC" including "secure care facilities and residential community homes" as among the types of facilities were covered. Further, "employees both full time and part time...including individuals providing operational or custodial services or administrative support" were to be vaccinated.

The Appellate Division later upheld the validity of EO 283 in New Jersey Policeman's Benev Ass'n v. Murphy, 470 N.J. Super 568,585 (App. Div. 2022). The opinion noted that the JJC had 1083 staff, 994 of whom were "covered workers." Up to the date the Order was issued, 229 JJC residents out 628 residents had since March 2020 tested positive for COVID-19. Further 585 staff members (more than half) of all covered workers tested positive. Because of sick time necessitated by the virus, the

Appellate Division noted, the JJC was required to temporarily close and consolidate housing units, had to deny vacation time and required healthy staff to work overtime.

Undue hardship and the religious exemption

Smith applied for a vaccine exemption is based on New Jersey's Law Against Discrimination, specifically, and as stated in Tisby v Camden County Correctional Facility, 448 N.J. Super 241, 248 (app. Div. 2017) that employers "cannot impose any condition upon employees that would require a person to violate...sincerely held religious practice or religious observance." That exemption must be permitted, by accommodating the religious practice or observance "without undue hardship on the conduct of the employer's business, after putting forth a bona fide effort." Ibid

Respondent argues that the JJC is a "paramilitary organization charged with maintaining order and discipline in facilities housing often dangerous, yet vulnerable populations" in a "communal or congregate setting. JJC Policy to implement EO 283 and EO 290 required covered workers, like appellant Smith, by May 11, 2022 to submit proof they were up to date with vaccinations from COVID-19. Noncompliant covered workers were subject to disciplinary action, including termination. When Smith failed to produce proof of vaccination, a PNDA, providing for removal for Smith's insubordination, conduct unbecoming and for other sufficient cause was issued.

From the mostly unchallenged evidence presented, there is little question that by a well-reasoned interactive process, respondent, with apparent good faith gave due and individual consideration to Smith's request for a religious exemption. There was no evidence that the sincerity of his religious beliefs was questioned, despite the fact that from the letter produced in support of the exemption one could not say with any degree of reasonable certainty that Smith's religion objected to parishioners taking the vaccine, specifically if ordered to do so from work, or whether they objected simply to "the "deployment" of vaccines in general. Yet Smith's statement that he was "based on my religious institution I was asked not to take the COVID vaccine," went unchallenged. Also, Smith testified his entire family also attend the same mosque and they did not take

the vaccines either. Therefore, I have no question of any religious insincerity by appellant nor of any bias about his religion on part of the Respondent.

As part of the aforesaid interactive process, Smith was given a religious exemption form, asked for the name of his position duties, the nature of the sincerely held religious belief that conflicted with the JJC policy and what accommodation he sought. He was permitted to submit whatever documentation he saw fit. Afterwards a committee composed of legal counsel JJC members knowledgeable of their facilities operations and duties and responsibilities of the worker's title and position. Committee members could reach out to the JJC a supervisor or covered workers with questions. There was no contrary evidence to the testimony that the Committee had recommended religious exemptions and granted them in some other cases. In this case they drafted a recommendation for denial, and the final decision was made by Ms. Pascale. a retired, 25-year career veteran with the State of New Jersey, including three years as a Deputy Chief Administrative Officer, and whose testimony was practically unchallenged and certainly unimpeached. I **CONCLUDE** the process of hearing Smith's request for a religious exemption was fair and followed the law. See. In the Matter of J.Z., Juvenile Justice Commission, 2023, N.J. AGEN LEXIS 198 (May 3, 2023) (cited in Respondent's post hearing brief,). See also, New Jersey State Police Benev. Association, 470, NJ. at 585.

Respondent has cited convincing, and unchallenged evidence that at the time Smith was under the mandatory Order to be vaccinated as a condition of his job, there was indeed considerably more likelihood of becoming infected if unvaccinated and a far greater likelihood of undergoing a serious life-threatening illness or death than those who were vaccinated and boosted. This was demonstrated by the expert report (R-1) and testimony of Edward Lifshitz M.D., Medical Director of the Infectious and Zoonotic Disease Program at the Communicable Disease Service of the New Jersey Department of Health. The doctor's report also cites to FDA reports and other statistics that fully vaccinated and boosted persons are far less likely to spread the virus than nonvaccinated. Most germane, all of the respondent's witnesses familiar with either's facility or other facilities of the JJC gave clear, unambiguous and mostly unchallenged that it would be an undue hardship to the respondent to grant his religious exemption. I

agree with respondent's theory that there is simply no other way to perform as Assistant Superintendent's position at such facilities without a degree of common and usual face-to-face personal interaction and to have an on-site presence at the facility grounds. Again, the testimony of Executive Director LeBaron describing an Assistant Superintendent's duties at JJC facilities was practically conclusive to that issue and part of it bears repeating into.

You do that by walking around the facility and making sure that your supervisors are doing their jobs and interacting with young people....the Assistant Superintendent also intervenes when supervisors are having problems, everything in this job description the buck stops in that facility with the Assistant Superintendent and the Superintendent...in order to insure ...your facility is operating appropriately, you have a presence, you talk to kids, you talk to staff, you walk the facility you make sure that everything that's supposed to be happening in that facility is happening..

See also J-7, Job specifications of Assistant Superintendent Residential Group Center.

The JJC was entitled to, and did consider financial and non-financial undue hardship FOR the Agency and its operations if the exemption was granted. I agree with respondent's argument that the request to be exempt from the COVID-19 vaccine requirements would have constituted unreasonable interference with the safe and efficient operations of the JJC in general and Smith's facility in particular. The Committee, reviewing his exemption request reasonably concluded Smith's regular contact with staff and residents and to ensure that supervising the residents occurred, that Smith had to walk around the facility and intervene when supervisors were having issues that needed him. It bears noting the Assistant Superintendent is in charge of the entire operation whenever the Superintendent is not there.

His sincere religious beliefs notwithstanding, once the exemption was denied Smith had no legal choice but to comply with the vaccine mandate by the timetable afforded to him. He did not even attempt to do so. That is the essence of

Insubordination, and also constitutes conduct unbecoming, as Smith was willing to endanger his fellow employees and the residents who are required to be there, for his refusal to be vaccinated. As for "other sufficient cause" as the respondent made no effort to identify it in this case, I make no finding. Therefore, I **CONCLUDE** the charges of Insubordination and Conduct Unbecoming are **AFFIRMED**, and that further as no other penalty was suitable or practical to the needs of the JJC, and is otherwise lawful and fair, the decision to terminate Smith must be **SUSTAINED**,

ORDER

It is hereby **ORDERED** that the respondent's findings of Insubordination and of Conduct Unbecoming and **AFFIRMED**, that discharging appellant from his position of Assistant Superintendent is **SUSTAINED** and that Smith's appeal be **DISMISSED**.

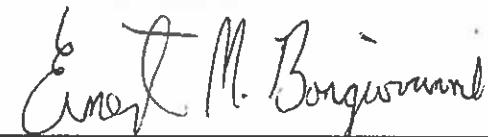
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, who 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, P.O. 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 13, 2025

DATE



ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

11/13/25

Date Mailed to Parties:

11/13/25

id

APPENDIX

LIST OF WITNESSES

For Appellant

Willie Smith

For Respondent

Roy Edward Hambrecht

Gregory August Spellmeyer

Sara Pascale

Doctor Edward Lifschitz

Jennifer LeBaron

LIST OF EXHIBITS IN EVIDENCE

Joint Exhibits

- J-1 Preliminary Notice of Disciplinary Action for removal dated 6/28/2022
- J-2 Final Notice of Disciplinary Action for removal dated September 28, 2022
- J-3 January 20, 2022, JJC Policy Implementing E.O. 283 Vaccinations for covered workers.
- J-4 March 9, 2022, Revised JCC Policy Implementing E.O. 283 and E.O. 290 Vaccination requirements for covered workers
- J-5 April 18, 2022, Request for Religious Exemption from Vaccination requirement.
- J-6 June 20, 2022, Religious Exemption Decision Letter
- J-7 The New Jersey Civil Service Job Specification for Assistant Superintendent Residential Group Center.

For Appellant

None

For Respondent

R-1 Expert witness report of Edward Lifshitz, MD