

Jersey Attorney General Guidelines on Use of Force. However, the ALJ's determination is based significantly on his assessment of the testimony of the witnesses. In that 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 v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). Upon its review and notwithstanding the appointing authority's arguments in the exceptions, the Commission finds no persuasive evidence in the record or the exceptions to demonstrate that the ALJ's findings and conclusions based on his credibility determinations were arbitrary, capricious or unreasonable.

Specifically, the ALJ noted that in the appointing authority's investigator's report "Inmate Bennett . . . with his hand handcuffed behind him stood up (emphasis supplied) and showed Sergeant Strauss his hands as he explained a previous injury to that area. Inmate Bennett was forcibly seated back into the chair by the escorting officers." Thus, the ALJ found that the investigator's report lent credibility to Strauss's statement that he acted in response to the inmate's defiance to orders that Strauss may have reasonably thought that OC Spray was safer than having officers continue to physically force back into sitting. Additionally, the ALJ indicated that none of the other officers "independently" reported an unlawful use of force regarding this incident, and they were required to do so if they thought the incident involved an unlawful use of force. Therefore, the ALJ determined that the appellant deployed the OC Spray to a defiant, combative, and noncompliant inmate who was not under complete physical control of the officers who were waiting for a restraint chair to arrive. Further, the ALJ stated that the Warden admitted that if the inmate had been placed in a restraint chair, which could have easily taken five officers, the appellant would not be charged. Moreover, the Warden maintained that the use of the OC Spray involved less risk of an injury to the inmate or the officers than forcing the inmate into the restraint chair, and that under some circumstances, even when an inmate is handcuffed, deploying the OC Spray could be justified. The ALJ also noted that the expert witness:

. . . points out Strauss's motivation rather than being his own immediate fear of the harm posed by Bennett to him, could properly

have been motivated with his wanting to protect the other officers from having to again wrestle this large, and in my opinion, violent, volatile man to the ground again. Significantly, he believes, as I also do that with just one officer's hand on the shoulder of the inmate, just prior to deploying the OC Spray "without the restraint chair being in full use and operation, Bennett was not completely secure," and further in my opinion, he presented a sufficiently violent threat justifying the use of force.

Additionally, the ALJ highlighted the opinion of the appellant's expert that the "Prosecutor office did not feel that this incident was excessive force' or they 'would have taken over the investigation rather than submit it back to the agency.'" Moreover, the appellant's expert testified that "Bennett was classified as an active resister which allows an officer to use OC Spray," which the ALJ opined was "consistent with the balance of the credible testimony and documentary evidence that it was more likely than not the case that Strauss showed, in my opinion, the danger the irate and volatile inmate presented under the circumstances which reasonably warranted the very limited brief use of force to reasonably control the inmate with the least risk of harm to the inmate and others." Therefore, the ALJ reversed the penalty of the demotion, as it was "obviously . . . based on the so-called unjustified use of force."

Concerning the upheld charges, while the appellant acknowledges that he violated policy with regard to the body worn camera video, he argues that the penalty imposed should be something short of a 60 working day suspension. Specifically, the appellant states that he was unaware of the policy in accessing the video and did so to evaluate his own conduct and not for any "nefarious motive." Additionally, the appellant believes that the length of the penalty was unprecedented for a supervisory officer and unwarranted based on the principles of progressive discipline as he has no disciplinary history. However, the Commission disagrees. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior

disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990). Moreover, the Commission is also mindful that “the appraisal of the seriousness of [the appellant’s] offense and degree which such offenses subvert discipline . . . are matters peculiarly within the expertise of the corrections officials. The appraisal is subject to *de novo* review by the [Commission],” *Rahway State Prison, supra*, “but that appraisal should be given significant weight.” *Bowden v. Bayside State Prison*, 268 N.J. Super. 301, 306 (App. Div. 1993), *cert. denied*, 135 N.J. 469 (1994).

In this matter, it is undisputed that the appellant violated policy when he accessed and copied videos of the incident from the body worn cameras of two other officers, without authority to access such records, and that he failed to document this in his report of the incident. Further, while the appellant claims that he was unaware of the policy, as a supervisor, he should have been aware of the policy, despite the fact that the body worn cameras were new. Additionally, the ALJ noted that the appellant’s expert witness pointed out that the appellant downloaded the materials using different phones, which was inconsistent with his explanation that he did not know it was against any policy to do so. Therefore, the Commission agrees with the ALJ’s assessment of the charges relating to the body worn cameras and finds that the appellant’s penalty of a 60 working day suspension was appropriate.

Accordingly, since the demotion has been reversed, the appellant is entitled to be immediately reinstated to County Correctional Police Sergeant. He is further entitled to unmitigated differential back pay¹ from May 15, 2024, the effective date of his demotion, to the date of his reinstatement less the 60 working day suspension which was effective May 16, 2024. Regarding counsel fees, since the appellant has not prevailed on all or substantially all of the primary issues on appeal, he is not entitled to an award of counsel fees. See *N.J.A.C. 4A:2-2.12*. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although some charges and the demotion were dismissed, other charges were sustained, and major discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

¹ It is noted that the mitigation requirements under *N.J.A.C. 2-2.10(d)* do not apply to a demotion.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalties imposed by the appointing authority. However, per the decision of the Superior Court of New Jersey, Appellate Division, in *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 differential back pay are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in demoting the appellant was not justified. The Commission reverses that action and reinstates Matthew Strauss to County Correctional Police Sergeant. However, the Commission finds that the action of the appointing authority in suspending the appellant was justified. Therefore, the appellant is entitled to unmitigated differential back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from the effective date of his demotion until his reinstatement less his 60 working day suspension.

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 differential back pay, benefits, or seniority. However, under no circumstances should the appellant's reinstatement to County Correctional Police Sergeant be delayed pending resolution of any potential dispute.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

The parties must inform the Commission, in writing, if there is any dispute 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 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 8TH DAY OF APRIL, 2026



Mary Cruz
Acting Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. CSV 12055-24

AGENCY REF. NO. 2024-2528

**IN THE MATTER OF MATTHEW STRAUSS,
COUNTY OF BERGEN, SHERIFF'S
DEPARTMENT.**

Matthew James Troiano Esq., (Einhorn Barbarito, Frost and Botwinick, attorneys)
for appellant, Matthew Strauss

Brian M. Hak, Esq., (Eric M. Bernstein and Associates, attorneys) for
respondent Bergen County Sheriff's Department

Record Closed: November 3, 2025

Decided: March 5, 2026

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Matthew Strauss (Strauss or appellant) challenges the actions of respondent, the County of Bergen's Sheriff's Department, of sustaining charges against him of Neglect of Duty, Conduct Unbecoming, Prohibited Activity and several other disciplinary findings, as per the Final Notice of Disciplinary Action (FNDA) (R-1), the result of which was a suspension issued to Strauss for sixty (60) days and a demotion from his position as Sergeant to Corrections Officer by action date May 15, 2024.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13 to the Office of Administrative Law, where it was filed on August 21, 2024. Hearings were held on April 7, 2025, April 16, 2025, and July 10, 2025. Post hearing briefs were submitted November 3, 2025, at which time the record was closed. Owing to voluminous caseload, an Extension of time Order for filing this decision was entered December 19, 2025. A second Order was entered February 3, 2026, extending the time to March 19, 2026.

The Final Notice of Disciplinary Action sustained multiple charges against Strauss but all of them based on two things 1) deployment of “pepper spray” of a prisoner” when such use was not warranted and 2) Strauss’s accessing records , primarily statements of other officers concerning Strauss’s’ use of force (deployment of the pepper spray) without authority to access such records The issues are, as stated in the Prehearing Order dated November 8, 2024.

The issues to be answered are: Does the preponderance of the evidence substantiate the Statement of Charges of the FDNA dated May 15, 2024, and the 60-day working day suspension, and/or the demotion from Sargeant to Corrections Officer and If the charges are substantiated, what is the disciplinary action warranted pursuant to the New Jersey Administrative Code?

FACTUAL DISCUSSION

TESTIMONY, EXHIBITS AND ANALYSIS OF EVIDENCE

Detective Raymond Paradiso, a 21-year veteran of the Bergen County Police Department now with its Dept. of Internal Affairs testified first. He has been involved in approximately 150 Internal affairs investigations. He cosigned the written charges against Strauss. He explained that if a “use of force” incident is “questionable”, it is first referred to the Prosecutor’s office for potential criminal investigation. It was his job to gather up reports and conduct interviews as necessary. He described a “disruptive Inmate” incident report which occurred May 13, 2024, at approximately 5:40 A.M. The

Inmate, at this point just named "Bennett" was at the Bergen County Jail being processed and during the fingerprinting process became disruptive. "

Paradiso learned that owing to this disruption Bennett was handcuffed with his hands behind his back and transported to the medical unit-the nursing staff- to be cleared for placement in a Disciplinary Unit. The officers, attempting to handle Bennett at some point at the Medical unit, determined a restraint chair was needed to control inmate Bennett. According to Strauss's Operations report: "While waiting for the restraint chair to arrive, Inmate Bennett continued to behave irrationally, I gave [him] a final warning to stop mov[ing] and comply with the order to remain seated I then applied one, one short burst of Oleoresin Capsicum (OC) Spray¹ to Inmate Bennetts facial area." Strauss further stated just prior to spraying Bennett he believed "Inmate Bennett was going to make another attempt and stand up and break free of Officer control." After the spray blast, Strauss immediately instructed the other responding officers to bring Inmate Bennet to decontamination.

Paradiso testified that four officers Strauss, Kryzsiak, Sixon and Flynn all wrote out separately use of force reports. Paradiso pointed out that in Strauss's report he referred to, by checking off boxes on the report form, "resisted police officer" and "physical threat, attack on an officer or another", in reference to Inmate Bennett. Paradiso noted that three of the officers stated they utilized a "compliance hold on Bennett when he was disruptive and resisted police officer control."

Officer Paradiso described how according to Officer's Kryzsiak's report, Inmate Bennett continued to be disruptive during the fingerprinting stage of the processing, "He wasn't following the command of turning his head the proper way they wanted to photograph him,,,,...[as] they were trying to fingerprint himI believe he [Bennett] might have reached it toward Kryzsiak and then, that's when a little scuffle came into play and he was handcuffed." As stated in his report, **"Inmate Bennett continued to resist [and] based on my report Bennett continued to resist while saying "spray**

¹ Common usage "pepper spray"

me”, and then he’s taken to the ground by officers Daxon Flynn and Kryzsiak (emphasis supplied,)

Paradiso then explained a closer look of the pepper spray incident.

Once they’re in the Medical unit, the officers that escorted Inmate Bennett „,seated him in a exam chair in the exam area and—I don’t know why a few seconds later they walked away from him and then Inmate Bennett stood up and,,,based on the video it appears he is turning to show the officers „,that he had some sort of issue with his wrist, a previous injury and—and then the officers returned to him—responded back towards him and they had to forcibly seat him in the chair-

Q. And once they-

A. j—just putting like their hands on his shoulders.

Q. Once they sat him back in the chair what happened?

A, ...Sergeant Strauss approached him and made a statement...to him, “Stop fucking moving around or I’m going to spray you, you understand.” And then Inmate Bennett was still in the chair, he appears to raise his chin and responds, “Spray me” and Sergeant Strauss complied and sprayed OC in his face. ²

Paradiso explained that during this incident did not “lean forward while seated in his chair but rather was “almost being belligerent, He wasn’t making any threats that he was going to do anything but be[ing] just being I guess loud and obnoxious.” At this time, he continued, “three or four” of the other officers—they had their presence around... inmate Bennett...[with] Bennett in his chair and his hands cuffed behind his back.”

Paradiso compared these observations with Sergeant Strauss’s own operations report (R-4) which stated: “While waiting for the restraint chair to arrive Bennett continued to behave irrationally, I gave [him] a final warning to stop moving and comply with the orders to remain seated. I then applied one short burst of Oleoresin Capsicum (OC) spray to Inmate Bennett’s facial area *when I believed Inmate Bennett was going to*

² All material indented, unless otherwise noted, are quotes from the testimony of the hearings at the OAL.

make another attempt to stand up and break free of officer control. (Emphasis supplied).”

Paradiso noted that he had questioned Strauss about any attempts he made to deescalate the situation. Strauss stated, “I tried to use Command presence. Sometimes you need that kind of language to get through to people that are that irate. In that situation it did not have an effect on him.” Strauss explained that the “textbook de-escalation training” explains when you can use de-escalation effectively”

[W]hen you are dealing with inmates that are halfway reasonable or depending upon their emotional state based off 12 years I've been doing this, that was not one of those situations where he was going to be listening to any kind of reason until after I sprayed him, which got him to calm down which was one of my objectives. I was trying to avoid him having to be reseated forcibly in that chair in which he was likely to get hurt or [hurt] someone else in that process. In my opinion, OC was the most appropriate use that I had available to me at the time while awaiting on the restraint chair.

However, Paradiso said he failed to see Strauss employ proper de-escalation techniques and did not observe inmate Bennett leaning forward towards the officers nor attempt to lunge in Strauss' direction. Further Strauss when questioned by the IA officers if any training and experience exemplified that spraying OC at an inmate in custody while sitting in a chair handcuffs behind his back, was appropriate, Stauss admitted it was the “first time” he'd ever done it and because the result of doing it was this investigation, it would be “the last time” he would ever do it. He explained: “If the powers that be would prefer that he is forcibly reseated as many times as it takes prior to the restraint chair arriving then that's what I'll have to do.”

However, it should be noted that Paradiso's own report (page 22) states that “Inmate Bennett... with his hand handcuffed behind him stood up (emphasis supplied) and showed Sergeant Strauss his hands as he explained a previous injury to that area.” Inmate Bennett was forcibly seated back into the chair by the escorting officers. Thus, Paradiso's own report lends credibility to Strauss's statement that he acted in response

to Inmate Bennett's defiance to orders and that Strauss may have reasonably thought the OC Spray was safer than having officers continue to physically force Inmate Bennett back into sitting.

Paradiso did note however that force is supposed to be used as "a last resort when lawful objectives cannot reasonably be achieved through verbal commands, critical decision making, tactical deployment or de-escalating techniques." However, at the time of deployment of the OC Spray, the restraint chair was about to be deployed because of the perceived threats and noncompliance of inmate Bennett. Paradiso, however, did not believe at the time the OC spray was deployed Inmate Bennett was attacking officers or attempting to cause harm to himself. Hence, Paradiso had a difference of opinion on the reasonableness of employing use of force. However, I did not find his testimony of the events leading up to the deployment of force to be significantly factually different than Strauss's. The key point is all the officers believed Inmate Bennett's threatening and uncooperative actions warranted the use of the restraint chair and they undoubtedly have forced him into the chair once it got there. I fail to see a significant difference between the use of the restraint chair and the deployment of the OC spray. They both involve the use of force. Section 2 Policy Provision B, for example, does distinguish the use of OC Spray from force such as placing a handcuffed inmate into a restraint chair.

Cross Examination of Officer Paradiso.

Many critical details came out during cross examination that were hardly touched on or not mentioned at all on direct examination. As noted in cross examination of Paradiso, none of the other officers involved "independently" reported an unlawful use of force regarding this incident. When interviewed by IA, none of the officers reported a concern about Strauss's deployment of the OC Spray. All the officers were aware, Paradiso said, that the officers have an obligation under policy directives to report any suspected unlawful use of support, but no one reported what they witnessed to be unlawful use of force. Paradiso admitted that prior to the OC Spray being deployed Bennett showed noncompliance by refusing to sign "initial paperwork."

Interestingly, it was also noted also noted that Paradiso claimed he was unaware when writing his report and before his testimony that Inmate Bennett was at the jail on the date in question for resisting arrest, terroristic threats and contempt for violating a judicial order. Also noted in cross examination was Inmate Bennett's height 6' 1" and weight 280 lbs. Paradiso had not mentioned this fact in his 40-page report regarding the incident. Also missing from Paradiso's report was any mention that officer Kryzsiak institutionally charged inmate Bennett, with among other things, "assault" of a corrections officer, in the physical touching incidents that led up to his being restrained. Bennett also refused to sit down initially before being asked three times to please sit down. Paradiso admitted this was an act of defiance. Bennett also was not initially compliant with going to the fingerprint and ID station and again had to be asked three times. Paradiso also conceded that this was defiance. Further despite the officers acting with a calm demeanor, inmate Bennett was continuously verbally combative with officers. Also, when being photographed Bennett continuously refused orders to look in the directions he was asked to do so. He continued to move his body contrary to the officers' directives. Further while the officers were trying to photograph him, he volunteered that he had "gunshots" on his body. This unprompted comment indicated that the inmate was letting the officers know he had been in serious violent incidents before. At another point a third officer entered the room and Bennett said "I don't need a third one, and then without being prompted stated "You're gonna beat me up "

Paradiso agreed that Bennett resisted being fingerprinted by starting to physically resist and by yelling at which point he grabbed Officer's Kryzsiak's arm. At that point a call within the jail announced, "Disruptive Inmate in intake." This accelerated the response so that other officers got involved. Paradiso also agreed the officers had "a hard time" getting Bennett cuffed. He was unable to be cuffed while he was standing and had to be taken to the ground by multiple officers to ultimately be cuffed. While being cuffed he was tensing his body which Paradiso stated is a form of resistance.

The officers began to walk Bennett from Intake to the medical area to be seated, and Bennett threatened "I'm going to give you a hard time every time." Paradiso agreed that officers hearing that especially considering the use of resistance and force multiple times needed for the inmate would believe that his behavior coupled with the statement,

"I'm going to give you a hard time every time" constituted a physical threat to them. Moreover, Bennett was, falsely claiming to have been "beaten and bruised" by the officers and was calling the officers "fucking pussies." He also claimed, "IA was gonna have a field day." Bennett yelled at the officers "I'm hard bodied" and "You'll get it bro." Paradiso thought at that point the inmate was saying the officers would see consequences from an IA investigation rather than threatening violence.

When Bennett first entered the medical area, he stated "I'm not going to sit." The officers tried to place Bennett in the seat he had been moved to be seated but he refused to sit in the chair. Instead, Bennett started "I have already the first reporting where you stomped my head."³ Paradiso agreed Bennett's noncompliance to sit in the chair was defiance of an order "100%." Likewise standing up was defiance. Around that point Sergeant Strauss repeated the order that Bennett complies with orders. Bennett looked, Paradiso directly in his eye and Strauss told him to "stop fucking moving around or I will spray you, do you understand." At that point, and as I believe is verified by the Body camera footage and stills from it, Bennett moved or pointed his neck and head in Strauss's direction and yelled "Spray me!" which was almost immediately followed by a blast of the OC spray. Paradiso admitted that the video does not show the three officers behind Bennett had control of him, although one officer had one hand on him and another might have been pulling the inmate's jumper. Thus, I **FIND** as a **FACT** that when Strauss deployed the OC spray, the defiant, combative, and noncompliant inmate was not under complete physical control of the officers who were waiting for a restraint chair to arrive.

After the blast of OC Spray, Inmate Bennett continued to say, "Spray me again." As Strauss awaited the restraint chair. Bennett even said "spray me again cause this is legal, spray me again. I'm handcuffed. This is legal." The restraint chair, referred to during the cross examination and agreed to by the witness Paradiso was a "Hannibal Lecter" chair. Paradiso agreed that the use of the chair was warranted "for that type of inmate" in Paradiso's words. Also, the chair is a form of "mechanical force" with multiple points of harnessing the person's body, head legs thighs and chest. Paradiso agreed

³ All the evidence is clear that none of these things Bennett complained of ever happened at the jail.

that the chair is, like the OC spray, a form of mechanical force. Paradiso agreed that the OC spray in this instance calmed the inmate down and that no one was harmed because of the deployment of the spray. It was noted that the medical unit has lots of equipment in it, medical staff, and civilians to which an out-of-control inmate the size and strength of Bennett was a threat to their safety. Paradiso agreed that the purpose of deploying the OC spray in the context of correctional officers is to “to gain compliance.” Finally, the OC policy states that “Noncompliance with an officer’s verbal commands may be considered where force is otherwise authorized.”

Paradiso admitted Strauss didn’t happen to just come along to the scene where he eventually discharged the spray at Bennett. He was, it was agreed responding to the distress call. Paradiso admitted by the time Strauss deployed the OC spray, inmate Bennett would be considered under Attorney General policy to be an “active resister.”

However as to other violations, Paradiso provided ample testimonial evidence that Strauss was less than truthful when questioned about looking at Body Worn Camera (BWC) video footage prior to writing his report. Based on the “audit trail” Strauss looked at BWC footage four times between 6:31 a.m., 8:52 a.m., 9:03 a.m. and 5:58 p.m. He viewed the BWC “outside of the IP address of the property and downloaded on his personal cellphone and didn’t document it.” “This constituted two separate violations of the Attorney General’s Policy on BWC. “

Testimony of Warden Nicholas Grella

Warden Grella testimony focused more on the aftermath of the OC spray incident rather than how the incident occurred. However, he was asked on direct examination if he had any problem with the use of the restraint chair in this matter. He said placing a person involves the use of force, but the chair itself is not a use of force. Grella said that he, Chief Giustra, Undersheriff Kim and Sheriff Cureton made a joint decision regarding sentencing after departmental hearings found Strauss guilty. He said the sixty days suspension was based on their belief the “use of force wasn’t justified.” He said the demotion was imposed because as a supervisor, Strauss set “a really poor example.” No one at the jail had been demoted before, because something like this,

which again he characterized as “using force that we thought he shouldn’t have” justified the demotion. He discussed that pending departmental hearings, Strauss could have been suspended but lessor actions were taken like giving him no overtime, not allowing him to perform his usual duties as sergeant and being confining him to one small area of the jail under a “no contact Order” (meaning no contact with the inmates) pending the outcome. The warden said the group recommending the punishment did not really consider the prior good conduct of Officer Strauss because the conduct here was egregious enough that they didn’t have to consider “incremental” punishment.

In cross examination, Warden Grella felt given the Inmate’s conduct he could have immediately been placed in the restraint chair when he entered the medical unit. Therefore, If Sergeant Strauss had simply placed with help if needed the inmate in the restraint chair instead of employing the OC Spray he would not have been charged. Warden Grella admitted he could easily have taken five officers to effectively secure Bennett in the restraint chair. The warden agreed that the use of the OC Spray involved less risk of an injury to the inmate or the officers than forcing the inmate in the restraint chair. Warden Grella also agreed that there can be some circumstances even when an inmate is handcuffed that deploying the OC spray could be justified.

Returning to the issue of punishment again, during the 23 years that Strauss had worked at the jail, no disciplinary demotions had ever taken place, with a suspension that exceeded 60 days. Grella said Strauss had no disciplinary complaints sustained against him and had never been disciplined, prior to this instant case.

Testimony of the Expert Witnesses.

Glenn Garrels

Mr. Garrels was a New Jersey State Trooper for 22 years. He has lectured over a period of years on the use of force and of deadly force by law enforcement officials. While I found his expert report to be thoughtful and generally thorough, I did not find it, not his testimony terribly enlightening. It consisted mostly of subjective or “judgement” calls by Garrels as if he had been one of the officers in the identification and the medical

unit where the incident took place. While to his credit, acknowledging that the situation was fluid and could quickly change, I found most of the testimony to insufficiently appreciate the significance of the inmate's resistant, defiant, uncooperative, violent and antagonistic behavior. Garrels complained that, at the critical moment when Bennett deployed the OC Spray, Strauss "had plenty of room to back up." To the contrary It appears that, with the inmate having already been proven to be difficult to control, assaultive (he struck an officer on the arm) and threatening that he was a violent person, being 280 and 6 ft one inch tall, the fact that he was outnumbered by the officers and with resistance had been handcuffed did not have subdue the inmate at all. Moreover, it did not seem to me that the most professional thing to do at that point was to "back up."

When the officers tried to seat the inmate in a somewhat flimsy chair, he used his weight and force to force the chair away from him so that he could remain standing. He verbally said he would not sit, which is when the restraint chair was called for. Garrels says significantly that the video evidence shows that contrary to Strauss's testimony his examination of freeze frames just as the OC Spray was about to be and then was deployed shows that while despite being partly restrained by one officer behind him, Garrells did "not believe that movement would be reasonable to perceive he [the inmate] was going to lunge at anyone." However, Garrels seems somewhat selective in his depiction of the freeze frames. The first enumerated by Garrels as Frame 114187 with a stamp indicating 5:46.27 shows the inmate's head leaning in but more straight as if he is concentrating on watching what was ahead of him which was Strauss and another officer. Less than a second later at frame 14191, the inmate is being sprayed in the face and his head slightly tilted back. [R-19 page 50].⁴ However, Strauss produced an 8 1.2'x 11" pull page color still [D-10] which shows the action one second prior to Garrell's stills and shows Bennett's head thrusting forward bearing his front teeth angrily and the officer behind him applying more pressure than seen in the stills a second later. It's obvious to me, Garrels report underemphasized at least the reasonably perceived danger to Strauss and others immediately before the spray was deployed.

⁴ The stills in the Garrells' report are about 3'x5' and in black and white

Another problem with the Garrells report was that it contradicted the other County's witnesses Paradiso and Grella who on the related issue of the need to use the restraint chair were very clear in their belief that's it use would have been justified when Garrells is just as clear in his analysis that contrary to his fellow witnesses for the County he thought the restraint chair 's use also would have been unjustified.

Troy E. Oswald, Consultant

Strauss attempted to counter Garrells with an expert report and testimony of Troy E. Oswald. His report was useful Including [D-8 page 3) a simple in order narrative of critical events consistent I believe with most of the reasonable and credible testimony and documentary evidence and which showed, in my opinion, the reasonable belief of the danger the inmate presented under the circumstances. For example, he narrates how at 5:38 a.m., Bennett was being uncooperative in the fingerprinting process and showing irritation toward Officer Kryzsiak. He went so far as to grab Kryzsiak's wrist hard enough that the officer had to break free. To make matters more dangerous and violent, Bennett refused at that point to be handcuffed and had to be taken to the floor by three officers to be handcuffed. After being escorted into the medical area inmate Bennett pushed a flimsy seat from him and refused to be seated, and remained irate, leading the officers to call for the restraint chair.

Regrettably, Oswald did not appear to have Exhibit D-10 when Bennett appeared to try to lunge at Strauss. Even without that, Oswald points out Strauss's motivation rather than being his own immediate fear of the harm posed by Bennett to him, could properly have been motivated with his wanting to protect the other officers from having to again wrestle this large, and in my opinion, violent, volatile man to the ground again. Significantly, he believes, as I also do that with just one officer's hand on the shoulder of the inmate, just prior to deploying the OC spray "without the restraint chair being in full use and operation, Bennett was not completely secure," and further in my opinion, he presented a sufficiently violent threat justifying the use of force.

Two other parts of his opinion I thought, shed light on the subject matter. First, Oswald opines "It is clear the Prosecutor's office did not feel that this incident was

excessive force” or they “would have taken over the investigation rather than submit it back to the agency.” Second, and I believe this opinion to be more correct than what else is in the record, Oswalt opines “Bennett was classified as an active resister which allows an officer to use OC Spray.” That opinion is also consistent with the balance of the credible testimony and documentary evidence that it was more likely than not the case that Strauss showed, in my opinion, the danger the irate and volatile inmate presented under the circumstances which reasonably warranted the very limited brief use of force to reasonably control the inmate with the least risk of harm to the inmate and others.

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 constructed 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).

“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.

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. On appeals, the concept of progressive discipline guides the determination of a penalty. In re Carter, 191 N.J. 474, 483–86 (2007). Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense, Id. at 483, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness," Id. at 484 (quoting In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted)).

Progressive discipline is considered an appropriate analysis for determining the reasonableness of the penalty. See Bock, 38 N.J. at 523-24. The concept of

progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of the concept of progressive discipline is the nature, number and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, a fine or suspension of no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

It has been demonstrated easily from Paradiso's evidence and the lack of reasonable excuse or explanation given by Strauss in his own testimony that Strauss accessed and downloaded the Body Worn Camera (BWC) footage of Officer Kryziak, and Officer Grace which captured the moments when Struss administered the OC spray to Inmate Bennett. Further Strauss used his log in credentials to download Officer Kryziak's BWC video footage at Internet Protocol (IP) address which was determined to be an internet access point via Comcast Cable Communications. He also used his credentials to access and stream Kryziak's BWC footage at Internet Protocol (IP) address determined to be an internet access point via Optimum Online. Strauss again accessed and streamed BWC video footage from inside of the BCJ. Also, while generating a BCSO Operations report, he failed to document that as part of said report he reviewed BCQ video footage associated with that report. Said actions clearly violated BWC's Standard Operating Procedure and were probably done by Strauss to protect himself from further inquiry. Even Strauss's own expert witness, in his report (P-9, page 7 Mr. Oswald states Strauss violated CD-SOP-22-04.44, Section E which states "At no time is it permissible for any Sheriff's employee to record/copy or photograph any of the recorded content of the BWC through the means of any phone camera or any other electronic device." Sergeant Strauss clearly violated this section of Bergen County Sheriff's Department SOP." Further as pointed out by Oswald, the fact that he

downloaded the materials using different phones is inconsistent with his explanation that he did not know it was against any policy to do so. Finally, as noted by Oswalt, Strauss failed to document in his report that he reviewed the BWC footage, another clear violation of the Sheriff's policies and AG Guidelines] Such actions constitute Conduct Unbecoming an Officer, Neglect of Duty and constituted Prohibited conduct while on duty. Strauss again accessed and streamed BWC video footage from inside of the BCJ. Also, while generating a BCSO Operations report, he failed to document that as part of said report he reviewed BCQ video footage associated with that report. Said actions clearly violated the BWC's Standard Operating Procedure and were probably done by Strauss to protect himself from further inquiry. Such actions, I **CONCLUDE**, make Strauss culpable of Conduct Unbecoming an Officer, Neglect of Duty and of Prohibited conduct while on duty and those findings are **AFFIRMED** but only for the reasons stated above. By accessing records without authorization or without documenting same, Strauss also violated "GO-00-1.2 Employee Rules and Regulations." I cannot and do not affirm any of the other charges listed in the FNDA because it was insufficiently shown how any of the alleged conduct constituted those specific violations e.g. 3.3.8 Courtesy.

While normally a lesser suspension would be imposed for a law enforcement employee with Strauss's lack of disciplinary convictions, that fact that he was obviously motivated by getting ahead of an investigation into his own conduct as a Sheriff's Supervisory employee, makes the conduct sufficiently egregious to warrant a 60-day suspension for a first-time offense.

However, I **FIND** and **CONCLUDE** by the preponderance of the credible evidence that Strauss committed no offense in the use of the OC Spray, in that it was not an unjustified use of force under the circumstances. If the officers had been quicker in obtaining and effectively placing the Inmate securely in the restraint chair before Strauss had discharged one blast of spray, then the use of the spray would not have been reasonably necessary and not sustained. However, the physical force it would have taken to have restrained the inmate would have been of equal force or greater. The OC Spray caused the inmate very temporary discomfort, which was almost immediately treated effectively with mostly or only of water. The spray had the desired

effect of immediately calming the inmate and defusing the situation. The use of the restraint chair may have prolonged the incident and in any event probably would have taken longer than the spray and treatment resulting in more discomfort and possibly more humiliation to the inmate than the OC Spray. Therefore, the findings against Strauss concerning his use of the OC Spray are hereby **REVERSED** and the penalty of the demotion from Sergeant to Officer so obviously being based on the so-called unjustified use of force is also **REVERSED**, and that Strauss be restored to his former position. I further **CONCLUDE** that the financial backpay for his Sergeant's salary from the time of the demotion until today and any benefits losses be restored and reimbursed to Strauss forthwith.

ORDER

It is hereby **ORDERED** that the Sheriff's Department's determination that Strauss's multiple violations of access and use of BWC reports and his failure to document same are **AFFIRMED** and the sixty-day suspension without pay for that conduct is **SUSTAINED**.

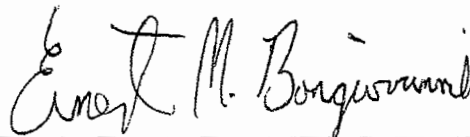
It is also hereby **ORDERED** that the Sheriff Department's findings and penalties for the excessive use of force be **REVERSED** and Strauss's appeal of that action is **GRANTED**, that Strauss be restored to his former position as Sergeant and that the financial and other benefits lost from that time frame to today be reimbursed forthwith.

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.

March 5, 2026



DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

03/05/2026

Date Mailed to Parties:

03/05/2026

id

APPENDIX

LIST OF WITNESSES

For Appellant

Troy Oswald, Oswald Consulting.
Officer Matthew Strauss

For Respondent

Detective Raymond Paradiso
Warden Nicholas Grella
Glenn Garrels, owner, Force Analysis, LLC

LIST OF EXHIBITS IN EVIDENCE

For Appellant

- D-1 Strauss No Contact Memo
- D-2 BCPO Prosecutors Admin Email
- D-3 Inmate Bennett Disciplinary Charges
- D-4 Strauss Notification Form, May 19, 2024
- D-5 Strauss Notification Form, August 22, 2023
- D-6 Strauss Notification Form, September 6, 2023
- D-7 Denard Benett OMS
- D-8 Expert Report, Troy Oswald
- D-9 Troy Oswald CV
- D-10 Full Page Color still of inmate lunging

For Respondent

- R-1 FNDA
- R-2 PNDA
- R-3 Internal Affairs Report

- R-4 Strauss Operational Report
- R-5 Dixon Operational Support
- R-6 Kryzsiak Operational Report
- R-7 Strauss Use of Force Report
- R-8 Kryzsiak Body Worn Camera Trail
- R-9 Grace Body Worn Camera Trail
- R-10 Paradiso IP address Information
- R-11 SOP For Bergen County Sheriff Dept on Use of Force
- R-12 NJ Attorney General Force Policy
- R-13 Sheriff Office SOP Body Worn Cameras Corrections Specific Policy
Camera Policy
- R-14 Attorney General Body Worn Camera Policy
- R-15 Bergen County SOP on OC Spray
- R-16 Strauss with OC Spray Screenshot
- R-17 USB Body Worn Camera Video
- R-18 USB Body Worn Camera Videos
- R-19 Garrels Expert Report
- R-20 Garrels CV