STATE OF NEW JERSEY

In the Matter of Darrius Brown, City of Newark, Department of Water and Sewer	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2022-719 OAL Docket No. CSV 08788-21	:	

ISSUED: June 23, 2026

The appeal of Darrius Brown, a Laborer 1 with the City of Newark, Department of Water and Sewer, of his removal, effective August 7, 2019, on charges, was heard by Administrative Law Judge Matthew G. Miller (ALJ), who rendered his initial decision on May 11, 2026. No exceptions were filed.

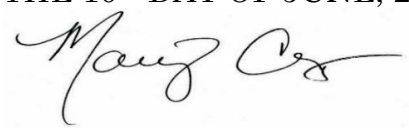
Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on June 10, 2026, adopted the ALJ's Findings of Fact and Conclusions of Law and her recommendation to uphold the appellant's removal.

ORDER

The Civil Service Commission finds that action of the appointing authority in removing the appellant was justified. The Commission, therefore, affirms that action and dismisses the appeal of Darrius Brown.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10th DAY OF JUNE, 2026



Mary Cruz
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Shannon L. Dalton
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 08788-21
AGENCY DKT. NO. 2022-719

IN THE MATTER OF DARRIUS BROWN, CITY OF NEWARK, DEPARTMENT OF WATER AND SEWER.

Darrius Brown, petitioner pro se

John J. Zidziunas, Esq., for respondent, City of Newark, Department of Water and Sewer, (John J. Zidziunas & Associates, L.L.C., attorneys)

Record Closed: May 1, 2026 Decided: May 11, 2026

BEFORE **MATTHEW G. MILLER,** ALJ:

STATEMENT OF THE CASE

Appellant, Darrius Brown, a Laborer 1 ("Laborer") for respondent, Newark Department of Water and Sewer ("Department" or "the City"), appeals the termination of his employment arising out of an incident that occurred on August 6, 2019. Respondent alleges that while on the job, Mr. Brown physically assaulted a co-worker and subsequently left the job site without authorization and then left department headquarters prior to the matter being investigated further.

PROCEDURAL HISTORY

On or about August 7, 2019, respondent served Mr. Brown with a Preliminary Notice of Disciplinary Action ("PNDA") charging him with insubordination, failure to perform duties; conduct unbecoming a public employee, neglect of duty and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(2), (3), (6), (7) and (12).

He was then served with an Amended PNDA on or about August 27, 2019 which detailed the criminal charges that were brought against him arising out of the incident in question. An interim FNDA was issued on September 6, 2019 suspending Mr. Brown indefinitely pending the outcome of the criminal charges. (R-11A.)

A departmental hearing was held on September 1, 2021 and thereafter, on or about September 21, 2021, respondent served Mr. Brown with a Final Notice of Disciplinary Action ("FNDA"), in which he was notified that all charges against him had been sustained and that his employment had been terminated effective August 8, 2019. (R-13.)

The appellant timely requested a fair hearing, and the matter was transmitted to the Office of Administrative Law on October 21, 2021, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A.52:14F-1 to -13. The matter was initially conferenced on November 30, 2021. Following a January 5, 2022 conference, a scheduled February 24, 2022 conference was adjourned to March 2, 2022. An April 15, 2022 conference was rescheduled to April 14, 2022 and took place that day. A hearing was then scheduled to begin on June 28, 2022 but that was adjourned at the request of the respondent and rescheduled for July 29, 2022. Respondent failed to appear for that conference as well as a conference that was scheduled for September 8, 2022.

Conferences then took place on October 13, 2022 and December 8, 2022, but a scheduled January 19, 2023 hearing date was adjourned by the appellant and was transformed into a conference that was scheduled for February 9, 2023. That date was

mis-diaried by the respondent and was rescheduled for February 22, 2023 and then February 23, 2023.

The hearing commenced on May 10, 2023, but in the midst of opening statements, Mr. Brown fired his attorney. Counsel was formally relieved later that day. (C-1.)

Following conferences on June 21, July 20 and September 7, 2023, a hearing date was scheduled for October 10, 2023. That date was adjourned due to a scheduling issue. A May 8, 2024 hearing date was adjourned as both parties failed to appear and an August 16, 2024 hearing date was rescheduled to October 4, 2024 due to defense counsel's scheduling conflict.

The matter was then rescheduled for November 13 and 14, 2024. Those hearing dates were adjourned by the respondent due to witness unavailability. The hearing finally commenced on January 15, 2025, continued on July 29, 2025 and concluded on December 1, 2025.

The record was held open for the submission of post-hearing submissions and argument and formally closed on May 1, 2026.

CHARGES AND SPECIFICATIONS

While the charges and findings remained the same, there was a modest difference in the description of the events in question from the PNDA to the FNDA, reflecting the filing of criminal charges against Mr. Brown.

Respondent sustained all of the charges listed in the PNDA (R-10) in the FNDA. (R-11A.) Those are violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties, N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

Mr. Brown was also suspended immediately per N.J.A.C. 4A:2-2.5(a)(1) as a hazard to another person and N.J.A.C. 4A:2-2.5(a)(2), as he was charged with an indictable offense.

The incident was described in the amended PNDA as follows:

> On 8/6/19 Mr. Brown physical (sic) assaulted Mr. Bertin by punching him causing him to fall to the ground and hit his head. This was observed by several employees at the job site located on Dickerson St. & Jay St around 3 45 pm. Brown then left the job site without authorization. He returned to 239 Central Ave, punched out, and left the building prior to the matter being investigated further.
>
> [R-10.]

The FNDA described the events as follows:

> On 8/6/19 Mr. Brown physical (sic) assaulted Mr. Bertin by punching him causing him to fall to the ground and hit his head. This was observed by several employees at the job site located on Dickerson St. & Jay St around 3 45 pm. Brown then left the job site without authorization He returned to 239 Central Ave, punched out, and left the building prior to the matter being investigated further. Mr. Brown has been charged with aggravated assault...
>
> [R-11a and R-13.]

CRIMINAL CHARGES

On August 7, 2019, Mr. Brown was charged with a single count of second-degree aggravated assault in violation of N.J.S.A. 2C:12-1B(1) "by punching victim in the face, causing victim to lose consciousness, and suffer a fractured nose". (R-11b.)

Per the Affidavit of Probable Cause, the Newark Police Department first responded to the job site but were advised that Mr. Bertin had been taken to the E.R. at St. Michael's Hospital. He advised the police that he had been "assaulted by his coworker" with whom

he had gotten into a "verbal dispute" about "the digging of a hole". He described Mr. Brown as "drunk(en)" and provided a narrative as to how the incident unfolded:

> While shoveling inside of the hole, to remove dirt() from a pipe, Victim says he did feel a hit to his upper back and suspect sliding off the ledge onto him. Both individuals got into a verbal dispute. Both were separated. Suspect left from the hole as victim continued to work. Victim says when he finished the work that needed to be done, he approached his supervisor and begin (sic) speaking of the incident. While speaking about incident suspect approached him from the right side and punched victim with a closed fist. Victim say he woke up to coworker pouring water over his head.

That same day, Mr. Brown walked into the precinct "to tell his side of the story", claiming that "he was punched and hit with a shovel first". It was also noted that while he showed signs of bruising, he "had been drinking."

That affidavit is consistent with the Newark Police Incident Report, which noted that upon meeting with him, they made an "observation (that) Mr. Brown was possibly intoxicated. Through further questioning Mr. Brown stated that he had a few alcoholic beverages after work. (R-4.)

Ultimately, on February 22, 2021, Mr. Brown pled guilty to an amended charge of simple assault in violation of N.J.S.A. 2C:12-1A(1), a disorderly persons offense. He was fined $125.00 and received nine days of jail credit (August 7 - 15, 2019). (R-12.)

TESTIMONY

For Respondent:

Kareem Adeem, Director of the Department of Water & Sewer Utilities, City of Newark

Mr. Adeem testified that he has been the Director of the Department of Water & Sewer Utilities for about six years and oversee the entire department. As part of his job

duties, he performs disciplinary investigations to see if they are truly disciplinary issues or "BS". (T2 at pg. 8:24-25.) He analyzes the investigation findings and performs some independent checking as well. Mr. Adeem participates in disciplinary hearings with the Department of Law and averages about two or three investigations per month.

He has presided over a total of six hearings over the past few years. Mr. Adeem was the assistant director for a few years, then the Acting Director before becoming Director in March 2020, with essentially the same duties. He was the Acting Director when this event occurred. Mr. Adeem has drafted PNDAs and FNDAs in the past. Mr. Adeem testified that he started in the Department as a laborer in 1994 and moved up the line to the Assistant Director of Maintenance and ultimately to his current position. He personally hired Mr. Brown in 2014 (actually as a re-hire from a previous layoff) as a laborer and had frequent interactions with him both on job sites and during weekly and monthly staff meetings.

Mr. Adeem testified that he is familiar with the incident and saw Mr. Bertin's incident report shortly after it was completed. Mr. Bertin was a plumber who had supervisory responsibilities over Mr. Brown, who was a laborer. The plumber would give guidance to a laborer during excavation and would supervise for safety reasons. While reviewing the report, he had no independent knowledge about Mr. Brown's on-the-job alcohol or drug use but noted that Mr. Brown had walked away from the site following the incident and had clocked out. Mr. Brown never completed a report, which is required following an incident such as this.

Mr. Adeem also reviewed the police report and saw a reference to Mr. Brown possibly being intoxicated. He noted that the city has a zero-tolerance policy for alcohol and drug use on the job and that alcohol use could explain Mr. Brown's decision to leave the scene and clock out. While there are no prohibitions on alcohol use off the job, Mr. Adeem was deducing that if there is a note of possible alcohol use on the job and that Mr. Brown showed up intoxicated at the police station, he was probably under the influence while on the job. If he had shown signs of intoxication back at the garage, he would have had to have undergone a drug and alcohol screening.

Mr. Adeem then reviewed the report of the engineer (Tosin Adetutu), who was also on-site and supervising the entire crew. He felt that Mr. Adetutu's version of events was very similar to Mr. Bertin's and also explained why Mr. Bertin was in the hole.

Mr. Adeem testified that he saw this as a three-stage incident:

1. Push in the hole.
2. Getting out of the hole.
3. Punch outside of the hole.

Mr. Adeem authored the original PNDA on August 7, 2019, prior to the criminal charges being brought. Once Mr. Brown was charged with aggravated assault in Superior Court, he drafted an amended PNDA on August 27, 2019 and added charges of insubordination and failure to perform duties.

The workday is normally from 8:00 a.m. to 5:00 p.m. This incident occurred at about 3:45 p.m. and caused the workday to extend so that the job could be completed. After he was told about the incident, Mr. Adeem came to the scene and arrived there about ten minutes after it occurred. As he arrived, Mr. Bertin was being placed into an ambulance. He stayed there for about an hour, and he was told that Mr. Brown had left already. He immediately called over to the Central Avenue facility and spoke to the night supervisor and asked if Mr. Brown was there. He was told that he was, and he advised the supervisor to tell him to stay until he got there.

When Mr. Adeem arrived back to Central Avenue at about 4:00 p.m., he was told that Mr. Brown had clocked out and left. At the scene, he contacted Mr. Bertin's family and let them know what had happened. He would have wanted to obtain written and oral statements from Mr. Brown, and he would have taken an oral statement as well.

As for the job itself, it involved a fire hydrant being repaired or installed. They were working in a trench that was about six feet wide and four-and-a-half feet deep. In order to complete the work, Mr. Brown had to be replaced, and other employees were timing out of the job.

The next day, Mr. Adeem learned that Mr. Brown had gone to the police station. The police had come to the job site and then went to the maintenance garage looking for him immediately after the incident.

Mr. Adeem then reviewed the written statements of James Harvey, the Field Operations Supervisor and Mr. Bertin. (R-1.) Mr. Harvey had received a call from Ronald Johnson, the supervising repairman who told him that Mr. Brown had assaulted Mr. Bertin. Mr. Harvey reported the incident and then came to the scene and saw Mr. Bertin lying on the ground waiting for paramedics to arrive. Mr. Brown had already left, because he was "in fear of the police unit being called".

He next reviewed the Newark Police Incident Report, including the notation that Mr. Brown may have been intoxicated when he came in at 7:00 p.m. and Mr. Adeem testified that he was concerned that he may have been intoxicated while on the clock. By leaving the scene of the incident, failing to provide a report and possibly being intoxicated, Mr. Brown was guilty of the charges in the PNDA and FNDA. Mr. Adeem also reviewed Mr. Bertin's medical records and the report from the criminal investigation and disposition of the charges.

Mr. Adeem testified that Mr. Brown pled guilty to simple assault (a petty disorderly persons offense) on February 23, 2021. Mr. Bertin was never charged criminally. The disciplinary hearing was then held on September 21, 2021, but Mr. Brown failed to appear for same. He was found guilty of all charges, and he was removed from his position effective August 7, 2019.

Mr. Adeem testified that Mr. Brown was removed from his position because there is no tolerance for workplace violence, he had abandoned the job site and then improperly clocked out. No one had told him to leave or had dismissed him for the day. He had also been insubordinate to his superiors and Mr. Brown's "conduct during that day from the initial start of the incident to him being the aggressor in the incident." (T2 at 39:1-3.) Mr. Adeem had concerns about bringing him back to the job and working with other members

of the crew, particularly given that Mr. Bertin had suffered a broken nose that necessitated treatment at St. Michael's Hospital.

On cross-examination, Mr. Adeem conceded that Mr. Bertin had shoved Mr. Brown and reiterated that there is a zero-tolerance policy for workplace violence in the department. He also testified that if a worker is suspected of being under the influence of drugs or alcohol while on the job, he is immediately taken for a test. Mr. Adeem did not know why he was not called about Mr. Brown's possible intoxication that day.

Mr. Adeem then reviewed the reports of Tosin Adetutu, Ronnie Johnson and Jose Garcia with the focus on the allegation that Mr. Bertin shoved Mr. Brown during the altercation. He denied that the shove was an "assault". He expanded that if there is a minor shoving match between employees, there are both formal and informal ways to handle it depending on its severity. "If it needs to be documented to the point where you think it's going to create a problem, they put it on paper." T2 at 68:14-16.

Ronnie Johnson was the supervisor on site that day and he was supported by two plumbers and Mr. Adeem felt that his statement clearly supported a conclusion that Mr. Brown was the aggressor. Mr. Adeem testified that he interviewed and collected statements from Mr. Harvey, Mr. Bertin, Mr. Adetutu, Mr. Garcia, Jay Mitchell, Tyrone Welcher and Ronnie Johnson and that Mr. Brown never provided a statement.

Tosin Adetutu, Supervising Engineer, Newark Department of Water & Sewer Utilities

Mr. Adetutu testified that he was hired by the city in 2017 and was employed as an environmental engineer when the incident occurred in 2019. He is currently a supervising engineer in the Department. At the time, his job duty was to be in charge of the hydrant crew, which included maintenance and installation. He would create a schedule of jobs, issue it out to a field crew to do the installation. He would occasionally be on-site "to observe or give technical advice to the staff." T2 at 83:1-3.

Mr. Adetutu would occasionally run into Mr. Brown at work, but he did not have a relationship with him. He was a laborer, not like the hydrant crew that he was managing, which included Ronnie Johnson, Brisma Bertin and Roberto Acevedo, who he would interact with frequently. However, per the chain of command, Mr. Adetutu would be Mr. Brown's superior on a job site.

On August 6, 2019, the hydrant crew was assigned to replace a fire hydrant at the intersection of Jay and Dickerson Streets. The job had expanded to include the hydrant lateral and hydrant gate, which is the reason he went to the site. Mr. Bertin, with whom he has a professional relationship only, was at the site as was Mr. Brown. At that time, he would see Mr. Bertin every day or, at the very least, hear from him, dolling out assignments to either him or Ronnie Johnson and receiving reports back from them. Mr. Bertin was a "good employee". T2 at 86:10-12.

Mr. Adetutu then related the events of the day. He was present when Mr. Brisma entered the hole at about 3:00 p.m. to expose the pipes at the job site. Roberto joined him in the hole on the right side to create space from pumping water out of it. He explained that to connect the hydrant to the water main, they had to extend the trench. Mr. Adetutu is standing outside and looking down and watching the work. It would be typical for Darrius or Brisma to get in and sometimes you have to manually shovel to expose the pipes.

He testified that Brisma told Darrius to leave the hole, because Darrius was in the way. People outside the hole were saying the same thing. Eventually, Brisma pushed Darrius and Darrius punched Brisma.

> He was digging, it was in the hole, you know, clean up a pipe and Mr. Brown was over him just talking or just continued. It started as an argument. It started as Mr. Brown was supposed to be doing the work, Brisma was telling him, do this, do that, he wasn't listening and so Brisma had said, all right, you get out the way so I could do it myself, right, and that was the part of get out the way so I can continue working.
>
> [T2 at 88:18-25.]

Brisma and Darrius were in a confined area "that's not conducive for two adults to be standing right there especially if you're not working." T2 at 89:5-6. It was Mr. Adetutu's impression that Mr. Brown was provoking Brisma and that both Brisma and the workers outside the hole were trying to get Darrius to give him some space, but they were ignored.

Brisma then shoved Darrius out of the way and Darrius punched him in the head or shoulder and knocked Mr. Bertin's helmet off. Roberto interceded and separated them and eventually, Mr. Brown left the hole as did Mr. Bertin. Darrius then turned back and sucker punched Brisma, who was speaking with Mr. Garcia, twice in the area of the head. Mr. Bertin dropped to the ground and Mr. Adetutu went over to assist.

He testified that Mr. Brown walked around the scene but left the area about five minutes later. He did not see him leave, but assumed he went back to the office, which was not appropriate. Mr. Brown should have provided a statement immediately, as every other witness was required to. Mr. Adetutu authored his own report that day. (R-3.)

Once he submitted his report, he had no further involvement in the case until this hearing.

On cross-examination, Mr. Adetutu explained that he didn't intervene when Mr. Bertin shoved Mr. Brown because it was all part of the entire incident. He also emphasized that he wrote an incident report, not one that focused solely on Mr. Brown's actions. He testified that he was "pretty sure" that he would have written an incident report if the only action had been Mr. Bertin shoving Mr. Brown. T2 at 105:5-11.

He also testified that he and the crew were actively attempting to de-escalate the situation by getting Mr. Brown out of the hole and that they were being ignored;

> Q. All right. So you and your team are asking repeatedly to exit the hole and he's not exiting the hole at first, is that fair?
>
> A. Yes.

> Q. All right. Then at that point is that fair that while Mr. Brown was hovering over Mr. Bertin that Mr. Bertin shoved him to get off him, is that fair?
>
> A. Yes.
>
> [T2 at 108:7-14.]

Brisma Bertin, Plumber, Newark Department of Water & Sewer Utilities

Mr. Bertin testified that he was hired by the city in 2016 as a plumber and still holds that position, although he currently works at the water treatment plant. As a plumber, he received the assignment, grabbed two laborers and went to the job site to expose the pipe. He would then do his plumbing job, the hole would be filled back in and then blacktopped. The day in question, while he was a plumber, he was acting as a repairman on the fire hydrant crew. He did not recall if he had worked with Mr. Brown before but knew that he was a laborer.

More specifically, on the day in question he received a call at about 3:00 p.m. and was told that the hydrant job had expanded. He then took his laborer, Roberto Garcia, to see what was going on. Once they saw the job, they went back to the office to get everything they needed. When they returned to the site, no one was in the hole, despite the fact that Mr. Brown and his partner were supposed to be digging. In the hole, there were twenty-four and six-inch gas mains and a six-inch water main in between them. Since the mechanical excavator cannot go down further, it requires a laborer to hand dig to expose the pipe.

He testified that he looked at Roberto and said, "if we rely on those guys the job will never get done", so they both went down there. (T2 at 119:9-11.) Mr. Brown then said to him that he (Mr. Brown) was now the plumber, and Mr. Bertin was the laborer and Mr. Bertin replied that Mr. Brown should have been doing his job. As he was talking, Mr. Brown was outside of the hole, "talking trash". (T2 at 120:3.) Mr. Bertin told him to stop and while he was bent over in the hole, Mr. Brown jumped in the hole, causing Mr. Bertin to fall.

Mr. Bertin grabbed his shovel and as he did, he "smell alcohol on him". (T2 at 120:25.) At that point, everyone was telling Mr. Brown to get out of the hole and let Mr. Bertin work. Mr. Bertin's back was hurting and he started crying. Mr. Brown was "on top of me...we come face to face. Then I push him to make room for me to work." (T2 at 122:9-12.) He didn't attack him but only tried to make room for himself.

He then told Roberto that he was going to go home, but he felt that he wasn't being protected. He got out of the hole and was talking to Roberto and Mr. Brown came up from behind and hit him in the face. He dropped to the ground "like a tree going down." (T2 at 127:3-4.) He was unconscious for about fifteen minutes, and he had no idea what was going on. Roberto threw cold water on him and that aroused him. Mr. Bertin was taken by ambulance to St. Michael's Hospital and it was determined that he had broken his nose. (R-5.) He also went to Concentra Medical Center the next day. (R-8.)

Mr. Bertin testified that he was unaware of the police report mentioning that Mr. Brown smelled of alcohol when he wrote his incident report that same day. (R-1.) He also claimed to have hurt his back during the incident and was out of work for about six months. It was recommended that he undergo an epidural steroid injection, but he declined due to the possible risk.

He was aware that Mr. Brown was prosecuted criminally and was in contact with the Essex County Prosecutor's Office. (R-9.) He would not be comfortable working with Mr. Brown again "(b)ecause I was close to lost my life and the job, I'm doing a heavy-duty job it's not worth it." (T2 at 135:17-19.)

On cross-examination, Mr. Bertin testified that he received the job from Mr. Adetutu and that Ronnie Johnson was his direct supervisor. When he was hit in the hole, he did not recall getting hit in the face, just that he fell down; outside of the hole, it was at least once, which knocked him out. While they were in the hole standing face to face, Mr. Brown was standing on the twenty-four-inch water main.

He testified that "Mr. Brown and the laborer that was working with (him) weren't doing what you felt to be their jobs which is exposing the pipe". (T2 at 149:20-24.)

Because the excavator couldn't work near the gas main and the laborers weren't doing their jobs, Mr. Bertin took the initiative and started doing it instead.

The parties eventually agreed that Mr. Welcher was Mr. Brown's partner that day, although Mr. Bertin did not have any independent recollection of that. He did not report Mr. Brown for smelling like alcohol because the first time he smelled it was when he jumped on him right when the incident began.

He then reviewed his statement and asserted that despite not mentioning the "jumping on" by Mr. Brown that this version of events is what actually happened.

For Appellant:

Darrius Brown

Mr. Brown testified that at the time of the August 6, 2019 incident, he had been employed as a laborer by the City of Newark Water Department for about two to three years. That day, he was working from 6:30 a.m. until 4:00 p.m. and was assigned to a job at the intersection of Jay and Dickerson Streets. He had first reported to the office on Central Avenue and was assigned to the work location at about 7:00 a.m.

He testified that the workers received a paper with the names of the lead man and the two laborers who are on the truck together, as well as the truck and backhoe drivers and the plumber/laborers. That day, his plumber was Jose Garcia and the other laborer was Tyrone Welcher. They were on site shortly after 7:00 a.m. and the incident occurred at about 1:30 p.m. – 2:00 p.m.

He had previously been on a truck with Brisma Bertin, who was a plumber and he had never had any issues with him. Their assigned job that day was to replace a fire hydrant, and he denied that the job ever expanded beyond that. There were four teams assigned to the job; repair, plumber, backhoe/truck driver and blacktop/concrete. Mr. Bertin, despite being a plumber, was actually there in the role of a repairman.

When the incident occurred, Mr. Brown had already finished digging out the hole/the main pipe for the fire hydrant. He was digging with a shovel, and the hole was about seven feet deep. The incident began after Mr. Brown exited the hole and Mr. Bertin told him that he had to dig behind the pipe, which is "not (his) job." T3 at pg. 16:3-5. Rather, his job is to expose the pipe so Mr. Bertin can put his feet under it. "Everything else is on him and his repairman crew to make enough room for him and his repairman crew to replace the pipe." T3 at pg. 16:7-9.

Mr. Bertin insisted that he continue to dig and Mr. Brown insisted that it wasn't his job and that "he had two laborers that wasn't doing anything that it was my job, so what happened was I said no, and I just stood there." T3 at pg. 16:23 – 17:1. Jose Garcia was the supervisor at the scene.

The dispute continued when Mr. Bertin asked him to finish the job. As he stepped in the hole, Mr. Bertin, who apparently had re-entered the hole, was three feet in front of him and two feet below him, pushed him off the pipe and Mr. Brown fell seven feet back and two feet down. Mr. Bertin then got on top of him and tried to hit him with the shovel. They started tussling, somebody called his name and they both stopped and climbed out of the hole. However, Mr. Brown then admitted that he wanted to fight Mr. Bertin:

> Q. After you climbed out of the hole, what happened next?
> A. Once he came out the hole, I told him to put his hands up.
>
> Q. Okay. Why did you tell him that?
> A. Because there was a fair fight now.
>
> Q. Okay. So once he got out of the hole you – did you intend to fight him once he got out of the hole?
> A. Yes.
>
> T3 at pg. 20:6-15.

Mr. Garcia had his back turned towards them and Mr. Brown didn't hear anyone yelling or screaming at them and no one stepped in between them. Mr. Brown testified that they squared up and Mr. Brown hit Mr. Bertin, who tried to grab him, one time in the

face. When Mr. Bertin tried to grab him, Mr. Brown backed into a defensive stance and Mr. Bertin fell over, ending the confrontation.

> Q. Okay. So essentially the one punch that you threw to him kind of took care of business.
> A. Yes.
>
> Q. And that effectively ended it, correct?
> A. Yes.
>
> T3 at pg. 22:1-7

After that, Mr. Brown walked off the site back to 239 Central Avenue and clocked out. It was about a two-minute walk. This was about sixty to ninety minutes before quitting time. No one at the job site told him to stay and he didn't talk to anyone at 239 Central. No one called him and Mr. Adeem never came to the scene. After he signed out, he made purchases at three liquor stores and then went and talked to the police. He went to the police because his family wanted him to press charges, "plus they understood that the Water Department was deliberately trying to have me arrested." T3 at pg. 24:17-20.

He walked into the police station after 5:00 p.m. At that point, he had not spoken to anyone from the Water Department, nor his family (which is inconsistent with his prior testimony). However, a council member and supervisor of another department called him. When he went to the police, he just gave a statement and did not press charges. He was arrested at work the next day, after the Department "sent Mr. Bertin over there to press charges on me." T3 at pg. 26: 20-23.

Mr. Brown felt that the Department was looking to fire him "(b)ecause I stood up for myself, and I didn't take no BS." T3 at pg. 27:5-8. He claimed that Mr. Adeem had sent him for a urine test about four months earlier, just for asking for overtime pay. He denied that he had ever been disciplined for any reason.

That next morning, Mr. Brown claimed that someone from the Department called the police and claimed that he had a weapon on him. The police arrested him there but

released him before he was re-arrested after "Mr. Brisma Bertin supposedly came over there and pressed charges on me." T3 at pg. 29:5-6. He was charged with second degree Aggravated Assault, and he ultimately pled guilty to simple assault and paid a $75.00 fine.

Mr. Brown testified that the incident started when Mr. Bertin put his hands on him, pushing him off the pipe and "I could have died in that hole". T3 at 30:1-2. He was also upset that he was disciplined and Mr. Bertin wasn't. He claimed that the Department's alleged zero tolerance policy for violence is not equitably applied and pointed to a 2021 incident where a worker was accused of assaulting a supervisor and received only a twenty-five-day suspension and wasn't terminated.

After he was released from the Essex County Jail after eleven days, he was served with a PNDA. There wasn't a hearing until after the criminal charges were resolved. He was then served with an FNDA and his employment was terminated.

While Mr. Brown does not believe that he's guilty of any of the charges against him, even if he was, it did not merit termination.

On cross-examination, Mr. Brown confirmed that he left the job site prior to the police arriving at the scene. He also confirmed that he drank alcohol after leaving the site, but before going to the police station. He further confirmed that he is aware of the contents of the PNDA and FNDA.

APPLICABLE LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened

with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his duties. N.J.S.A. 11A:1-2(a).

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. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied 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); In re Polk License Revocation, 90 N.J. 550 (1982). 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 tribunal 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. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959). Preponderance may also 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).

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein, 26 N.J. 263, 275 (1958). The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is defined as: "The quality that makes something (as a witness or some evidence) worthy of belief." *Credibility*, Black's Law Dictionary (10th ed. 2014).

Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

Accordingly, credibility does not mean determining who is telling the truth but rather requires a determination of whose testimony is "worthy of belief" based upon numerous factors. Credibility is not based on who presented the most witnesses. Instead, it is "the interest, motive, bias, or prejudice of a witness [that] may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952), certif. denied, 10 N.J. 316 (1952) (citation omitted). The process entails observing the witnesses' demeanor, evaluating their ability to recall specific details, evaluating the consistency of their testimony under direct and cross-examination, determining the significance of any inconsistent statements, and otherwise gathering a sense of their candor with the court. Thus, "[c]redibility involves more than demeanor. It apprehends the overall evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo, 314 F.2d 718, 749 (1963).

When determining the appropriate penalty to be imposed, the Board must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. West New York v. Bock, 38 N.J. 500 (1962.) 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, suspension for no greater than six months or a fine. N.J.S.A 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A2-2.4.

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. 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 this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. See generally, In re Stallworth, 208 N.J. 182 (2011).

The concepts of progressive and major discipline have no fixed definitions and are case-specific. As noted in In re Carter, 191 N.J. 474 (2007);

> Even so, we have not regarded the theory of progressive discipline as a fixed and immutable rule to be followed without question. Instead, we have recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See, Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197–98, 627 A.2d 602 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense). In doing so, we have referred to analogous decisions to discern the test to be applied. See Id. at 197, 627 A.2d 602. Thus, we have noted that the question for the courts is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" In re Polk License Revocation, 90 N.J. 550, 578, 449 A.2d 7 (1982) (considering punishment in license revocation proceeding) (quoting Pell v. Bd. of Educ., 34 N.Y.2d 222, 313 N.E.2d 321, 327, 356 N.Y.S.2d 833 (1974)).
>
> [Id. at 484–85.]

Both the concept and application of progressive discipline were explored in great detail in In re Stallworth, 208 N.J. 182 (2011). There, the Court noted that a worker's disciplinary history can be used to both "ratchet-up" or "support" the imposition of a more severe penalty or to mitigate that penalty. Id. at 196, cit. In re Hermann, 192 N.J. 19, 30–33. While there are "major" cases where the conduct is so egregious that the progressive disciplinary system may be bypassed, when it does not reach that level of severity, the system must be applied. In re Stallworth, 208 N.J. at 196–97, cit. Bock, 38 N.J. at 522-23; See also, In re Carter, 191 N.J. 474, 483–84 (2007).

Vitally:

> Under the concept of *progressive discipline*, one act of misconduct may result in "minor discipline" merely because it was a first offense, whereas the same misconduct, if repeated, could justify the imposition of "*major discipline*," including termination. In other words, different penalties can be imposed for the same misconduct depending on the employee's record. Thus, the contextual nature of the prior offenses is a relevant consideration when analyzing an employee's disciplinary record and renders incomplete and inadequate the Commission's imposition of discipline based on a summary conclusion that the employee's prior disciplinary record contains "only" one incidence of "major" disciplinary action.
>
> [Stallworth, 208 N.J. at 198-99.]

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside St. Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Respondent Position:

The city argues that the combination of the credible hearing testimony from its witnesses and the documentary evidence clearly demonstrate that Mr. Brown's conduct warrants removal. This includes not only the testimony of Mr. Adeem, Mr. Adetutu and Mr. Bertin, but also the written incident reports, medical records, the PNDA and FNDA as well as the judgment from Mr. Brown's conviction for simple assault.

The city also cites to the legal requirements for a finding of guilt on all of the charges and argues that there is no legitimate dispute that Mr. Brown's actions and inaction satisfy the criteria for all of them. This was simply not a self-defense case and not only did the witness' testimony confirm this, but so did Mr. Brown's own testimony.

As for the punishment of removal, the city argues that the assault on Mr. Bertin was severe and that Mr. Brown had the opportunity to stop or mediate his behavior as the incident progressed and failed to do so. The case relied on by Mr. Brown in an attempt to mitigate his penalty "involve(d) an entirely separate incident, different employees,

different factual circumstances, and a different disciplinary record." Resp. brief at 7. Compared to what happened here, where Mr. Brown assaulted a co-worker/foreman at an active worksite, failed to submit an incident report, and was later convicted of simple assault", that incident was much less severe. Ibid.

Given the severity of the incident, even with Mr. Brown's negative disciplinary history, progressive discipline is simply not warranted, and termination is the only legitimate outcome. West New York v. Bock, 38 N.J. 500 (1962); In re Carter, 191 N.J. 474 (2008); In re Hermann, 192 N.J. 19 (2007).

Appellant Position

Mr. Brown argues that the incident in question was initiated by Mr. Bertin and that he was at least as much of a victim as a perpetrator, but "because I did not comply or align myself with Mr. Adeem, I was instead portrayed as the aggressor" Pet.'s brief at 1. He points to deficiencies with Mr. Adeem's investigation and inconsistencies with Mr. Adetutu's testimony.

While he does not believe that he is guilty of any of the charges, he argues that the punishment of termination was excessive and noted that he spent time in the Essex County Jail as a result of this incident

While the respondent claims that there is a "zero tolerance" policy for violence in the workplace, Mr. Brown points to another arguably similar case where the aggressor was only suspended and not terminated.

> In closing, I maintain that this case is based on falsehood and mischaracterizations, and I respectfully request a fair and just review of the facts.
>
> Pet.'s brief at pg. 4.

CHARGES

As detailed above, Mr. Brown was found to have committed five separate violations: insubordination; inability to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(1), (2), (6), (7) and (12).

INSUBORDINATION

Insubordination encompasses an employee's failure or refusal to follow a directive, order or instruction of a supervisor. Eaddy v. Dep't of Transp., 208 N.J. Super. 156, 158–59 (App. Div.), certif. granted, 104 N.J. 392, order vacated, appeal dismissed, 105 N.J. 569 (1986); City of Newark v. Massey, 93 N.J. Super. 317, 322 (App. Div. 1967).

This definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

INABILITY TO PERFORM DUTIES

Once again, the Administrative Code provides no specific definition of this term. N.J.A.C. 4A:2-2.3(a). However, case law has determined that an employee can be found guilty to inability to perform duties where they cannot competently perform the work required of his position. Klusaritz v. Cape May Cty., 387 N.J. Super. 305, 317 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007). In Klusaritz, the panel upheld the removal of a principal accountant on charges of failure to perform duties, among other things, based on proof that the employee had consistently failed to perform the duties of his position in a timely and proper manner, and had also failed or refused to accept direction with respect

to performance of these duties. See also, In re: Shanika McNair, Northern State Prison, 2014 N.J. Agen. LEXIS 30 (Feb. 24, 2014).

NEGLECT OF DUTY

Neglect of duty is one of the grounds for disciplinary action in a civil service matter under N.J.A.C. 4A:2-2.3(a)(7). Although not defined by the regulation, it generally means that a person is not performing their job. The person may have failed to perform an act that the job requires or may have been negligent in the discharge of a duty. The duty may arise from specific statutes, post orders, policies, or the very nature of the job itself. See generally, In re Calio, 2018 N.J. Super. Unpub. LEXIS 2706 (App. Div., Dec. 11, 2018); Bock, 38 N.J. 500.

CONDUCT UNBECOMING A PUBLIC EMPLOYEE

Under N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to major discipline for conduct unbecoming a public employee. Although not strictly defined by the Administrative Code, "conduct unbecoming" has been described as an "elastic" phrase which encompasses conduct that "adversely affects the morale or efficiency" of the public entity or tends "to destroy public respect for [government] employees and confidence in the operation of [government] services." Karins v. City of Atl. City, 152 N.J. 532, 554 (quoting Emmons, 63 N.J. Super. at 140); see also In re Teel, 2012 N.J. Super. Unpub. LEXIS 667 (App. Div. March 27, 2012).

It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting Zeber Appeal, 156 A.2d 821, 825 (1959)).

OTHER SUFFICIENT CAUSE

N.J.A.C. 4A:2-2.3(a)(12) does not define "other sufficient cause," but this phrase is generally interpreted to mean violations of rules, regulations, policies and procedures. In re Calio.

DISCUSSION AND FINDINGS

As is often the case in discipline cases that involve what are essentially contained, time-limited events, there is overlap in the charges.

While I **CONCLUDE** that Mr. Brown is guilty of three of the five charges brought against him, for the purposes of the penalty, the number of guilty findings is, at best, a nominal factor.

At its most basic, you can't sucker punch a co-worker and keep your job. While there is some additional nuance to this case, it simply isn't that complicated.

As to credibility, this is a case where I **FIND** that both Mr. Bertin and Mr. Brown testified with an understandable bias toward their respective positions, but how the incident unfolded really isn't in dispute. The witness statements were relatively consistent and ultimately, I **FIND** that the evidence best supports the following conclusions;

1. Mr. Brown, whose distinctive personality was on display throughout the hearing, was not performing the digging-out job that Mr. Bertin, who outranked him, requested that he do.

2. Once Mr. Bertin realized that Mr. Brown would not do the requested digging, but refused to move out of the way, Mr. Bertin shoved him, more to move to him than attack him.

3. That skirmish was minor and both men exited the hole under their own power.

It is here, as Mr. Adeem testified, that the incident, which should have been at an end, boiled over. It is also here where Mr. Brown loses his case. By all accounts other than his own, he sucker-punched Mr. Bertin, hitting him from behind without warning. However, even Mr. Brown's own version of events is damning.

> Q. After you climbed out of the hole, what happened next?
> A. Once he came out the hole, I told him to put his hands up.

Q. Okay. Why did you tell him that?
A. Because there was a fair fight now.

Q. Okay. So once he got out of the hole you – did you intend to fight him once he got out of the hole?
A. Yes.

T3 at pg. 20:6-15.

This is an abject lesson in how to lose your case in three questions. No matter any other version of events, by his own admission, Mr. Brown escalated the dispute which should have been over. Instead, he initiated an attack which caused significant injury to Mr. Bertin (R-5, R-7 and R-8) and for which he pled guilty to simple assault. (R-12.)[1]

Ultimately, I **FIND** that the evidence is clear that Mr. Brown indeed sucker punched Mr. Bertin. Even Mr. Garcia's incident report, which is the most favorable to Mr. Brown, really isn't. While noting the Brisma push in the hole, it then simply says that Mr. Brown punched Mr. Bertin in the face. (A-1.) Mr. Johnson's report, while more detailed, is similar. (A-2.)

While the altercation was the beginning of Mr. Brown's issues, it was not the end. Whether Mr. Brown was intoxicated while on the job or not is both an open question and, for the determination in this case, not essential. Even assuming that he wasn't, Mr. Brown testified that he:

1. Left the job site without permission.
2. Clocked out of work early, without permission and without completing an incident report.
3. Consumed alcohol while he was still (or should have been) on the clock.

[1] Mr. Brown also claimed injury. While there is no doubt that there was contact between the two parties, the evidence supplied by the Department is substantially more impressive than the pictures supplied by Mr. Brown (A-4a and A-4b.)

While Mr. Brown's story after leaving 239 Central is confusing, the continuum of events after he left the job site is simply a litany of misconduct, all of which caps off his clearly fireable conduct.

Given all of the above and in reviewing both the testimony and the evidence, I **FIND** that respondent has proven by a preponderance of the credible evidence that Mr. Brown was guilty of insubordination, neglect of duty and of conduct unbecoming a public employee in connection with August 6, 2019 incident.

While I understand that there is some debate as to the exact job roles at the site that day, there is no question that as a laborer, Mr. Brown was the lowest ranked worker on site. Even if he had a legitimate question about his role, flat refusing to work and then interfering with Mr. Bertin is clearly insubordinate. It is here where Mr. Adetutu's testimony was helpful. He was an effective, persuasive witness and it was his impression that Mr. Brown was first refusing to do as Mr. Bertin wished and then seemingly provoking him while Mr. Bertin did the work himself.

Mr. Brown was clearly being non-complaint, uncooperative and actively disobedient, which adversely affected the morale and efficiency of the department. I therefore **FIND** that the Department has proven this charge by a preponderance of the credible evidence.

As for the neglect of duty charge, Mr. Brown admitted to leaving the job site and then signing out prior to the end of his shift. Regardless of his refusal to dig out the pipe, I **FIND** that those actions alone clearly demonstrate that he neglected his job duties.

It almost goes without saying that sucker punching a co-worker is conduct unbecoming a public employee. However, practically the entire incident constituted conduct unbecoming, step-by-step from beginning to end. Don't disobey a superior, don't sucker punch your co-worker, don't leave a job site without permission, don't clock out early without permission and don't stop at three liquor stores on the way to showing up intoxicated at the police station. Given the above, I **FIND** that Mr. Brown acted in multiple ways that were unbecoming for a public employee.

The final two charges are somewhat more questionable. Reviewing the law concerning the "inability to perform duties" charge, the evidence here shows that we seem more to have an "unwillingness to perform duties", rather than an inability. There was no evidence that Mr. Brown was incapable of performing his duties as a laborer or any testimony that his malfeasance or misconduct went beyond this specific incident. I therefore **FIND** that the Department has failed to prove by a preponderance of the credible evidence that Mr. Brown was unable to perform his job duties, and I **CONCLUDE** that he is not guilty of this charge.

Finally, as to the charge of "other sufficient cause", I **FIND** that since the specific rules and regulations that Mr. Brown allegedly violated have not been supplied, same has not been proven by a preponderance of the credible evidence. Therefore, I am compelled to **CONCLUDE** that Mr. Brown is not guilty of this charge.

PENALTY

Initially, it must be noted that there is no evidence that Mr. Brown has any prior disciplinary history, which obviously inures to his benefit.

In his defense on the issue of the appropriate penalty, it must be noted that the findings above largely argue against Mr. Brown's versions of events and who the true antagonist was. However, in conjunction with that "mutual combatant" type of argument, Mr. Brown also argued that the "zero tolerance" for violence policy espoused by Mr. Adeem has not been consistently applied. In support of that argument, he cited to the case of William Miles, a Public Works Superintendent in the Department. (A-5.)

There, in a 2021 incident, Mr. Miles was "involved in a physical altercation with a subordinate". He received a written warning, which reiterated that City's policy of "zero tolerance for threats of violence and actual violence". However, in reviewing the report of a non-involved witness who saw the beginning of the incident, the subordinate had allegedly "tried to sucker punch" Mr. Miles prior to them "tussling" and "wrestling to the

floor". This is consistent with Mr. Miles' version of the incident, although the other worker claimed that Mr. Miles was the initial aggressor.

While I appreciate Mr. Brown's "zero tolerance" argument, the two situations are not particularly comparable, except for one of the parties throwing a sucker punch (this one missed, Mr. Brown's connected). Yes, there was a physical altercation and yes, Mr. Miles was not terminated, but that case involved an insubordinate employee where the preponderance of the evidence demonstrates that the disciplined employee was not the aggressor.[2]

Here, Mr. Brown sucker-punched Mr. Bertin from behind and put him in the hospital. He had started the entire confrontation by being antagonistic and continued it after it had reached a natural stopping point. Absent the physical altercation, Mr. Brown's other actions/inactions would not have justified his termination. However, the opposite is not true. The physical altercation is more than enough to support a decision to terminate, and the other actions simply cement that decision.

The incident in the hole was a "tussle", the incident outside the hole was an "assault", which, ultimately, he pled guilty to. (R-12.)

I therefore **CONCLUDE** that the Department has proven by a preponderance of the credible evidence that the decision to terminate Mr. Brown's employment was entirely appropriate even in the absence of a prior disciplinary history.

ORDER

Based on the foregoing, I hereby **ORDER** that appellant, Darrius Brown, be and is hereby terminated from his employment effective August 7, 2019.

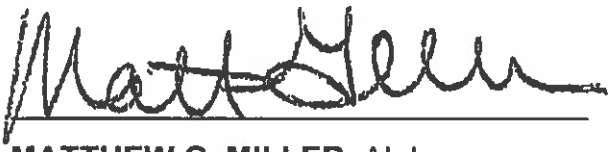
I further **ORDER** that Mr. Brown's appeal be and is hereby **DISMISSED**.

[2] It is unknown whether the other employee was disciplined.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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



May 11, 2026
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: May 11, 2026

Date Mailed to Parties: May 11, 2026

MGM/sej

APPENDIX

WITNESSES

For Appellant:

Darrius Brown, appellant

For Respondent:

Kareem Adeem, Director
Tosin Adetutu, Supervising Engineer
Brisma Bertin, Plumber

EXHIBITS

Court:

C-1 Order to Withdraw as Counsel (May 12, 2023)

For appellant:

A-1 Incident report of Jose Garcia (August 7, 2019)
A-2 Incident report of Ronald Johnson (August 6, 2019)
A-3 Attendance log (August 6, 2019)
A-4a Pictures of Darrius Brown's leg
A-4b Pictures of Darrius Brown's face
A-5 Disciplinary record of William Miles (July 20, 2021)

For respondent:

R-1 Incident report of Brisma Bertin (August 6, 2019)
R-2 Incident report of James Harvey, Jr. (August 6, 2019)

R-3 Incident report of Tosin Adetutu (August 6, 2019)

R-4 Newark Police Incident Report (August 6, 2019)

R-5 E.R. record of Brisma Bertin (August 6, 2019)

R-6 City of Newark Accident Investigation Report (August 6, 2019)

R-7 City of Newark Employee Accident Form (Brisma Bertin) (August 6, 2019)

R-8 Concentra medical records (Brisma Bertin) (August 7, 2019)

R-9 Letter and documentation from the Essex County Prosecutor to Brisma Bertin (August 9, 2019)

R-10 Amended PNDA (August 27, 2019)

R-11 Letter from respondent to appellant covering the FNDA and Complaint-Warrant (September 6, 2019)

R-11a Initial FNDA (September 6, 2019)

R-11b Complaint-Warrant and related paperwork (August 7, 2019)

R-12 Judgment of Conviction (February 22, 2021)

R-13 Final FNDA (September 21, 2021)