



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Dennis Young,
Township of Irvington

CSC Docket No. 2015-3300

Request for Reconsideration

ISSUED: **NOV 3 0 2016** (DASV)

Dennie Young, a former Police Sergeant with the Township of Irvington, represented by Andrew Moskowitz, Esq., requests reconsideration of the attached final decision of the Civil Service Commission (Commission), rendered on April 15, 2015, which upheld his removal effective June 25, 2014.

As background, the petitioner was removed, effective June 25, 2014, on the charge of inability to perform duties. Specifically, the appointing authority asserted that on January 13, 2014, the petitioner underwent a fitness for duty examination and was found by Dr. Matthew Guller, a psychologist, to be unfit for duty. The petitioner appealed his removal and a hearing was granted at the Office of Administrative Law (OAL). The Administrative Law Judge (ALJ) issued his initial decision, finding that the petitioner had drafted a letter to the Attorney General's Office which alleged numerous claims, beginning in 2008, that he was being followed and spied on and that someone was entering his apartment and placing hidden cameras, hacking into his computer and cell phone, as well as his girlfriend's cell phone, placing a tracking device on his car which he found, and poisoning his food. Many of the allegations were directed against members of the Irvington Police Department, including the Police Chief. However, the ALJ found that the allegations lacked a factual foundation. Moreover, the Attorney General's Office referred the matter to the Essex County Prosecutor's Office for further investigation. As a result of an interview with the petitioner, the Prosecutor's Office requested that the Mobile Crisis Team of the East Orange General Hospital evaluate the petitioner. However, the petitioner needed further evaluation and was thereafter referred to Dr. Guller, who found the petitioner to be unfit for duty based

on a reasonable degree of psychological probability. Moreover, Dr. Guller sent the petitioner for additional treatment with Dr. Lee Hindin, a psychiatrist, to determine, among other things, the medical basis for the petitioner's mental state. Upon his meeting with Dr. Hindin, the petitioner refused any additional treatment. Thus, based on this refusal, the ALJ indicated that the petitioner remained unfit for duty. It is noted that during Dr. Guller's testimony at the OAL, the ALJ indicated that Dr. Guller was presented with the report of Dr. Ambrose Mgbako, a psychiatrist, who ruled out delusional disorder but recommended that the petitioner undergo outpatient therapy. Dr. Guller responded that Dr. Mgbako's report was not inconsistent with his position. Furthermore, the petitioner did not present any credible evidence at the OAL hearing to contradict the foregoing. Therefore, the ALJ determined that the charge of inability to perform duties had been sustained. Regarding the penalty, the ALJ stated that the petitioner's inability to perform his duties presented a sufficient basis for his removal. Upon its review, the Commission accepted and adopted the ALJ's findings and the recommendation to remove the petitioner from employment.

On or about May 28, 2015, the petitioner filed an appeal with the Superior Court of New Jersey, Appellate Division. He also requested reconsideration of the Commission's decision by letter on May 29, 2015. Since the petitioner filed an appeal with the Appellate Division, the Court's jurisdiction was invoked and the Commission could no longer review his request for reconsideration. However, on or about June 19, 2015, the petitioner requested to withdraw his appeal with the Appellate Division and pursue his request for reconsideration with the Commission. The Order Dismissing Appeal was issued by the Court on June 24, 2015. Thereafter, the parties were given the opportunity to submit additional information.

In his request, the petitioner states that he has worked for the Irvington Police Department for 14 years, three of which as a Police Sergeant. Since his brother Walter Young, a former Police Lieutenant, was removed from employment,¹ the petitioner alleges that the Irvington Police Department subjected him to surveillance and hacked his cell phone and computer. The petitioner also describes his various claims, which culminated in the complaint filed with the Office of the Attorney General in April 2013. The petitioner asserts that upon receiving knowledge of his complaint, Internal Affairs did not investigate his allegations other than briefly interviewing him and verifying a license plate that he had reported. Moreover, he emphasizes that Dr. Guller had only been licensed as a psychologist for less than seven years at the time, despite that the ALJ indicated that he performed fitness for duty examinations for "over twenty years." Prior to that time, Dr. Guller worked in a legal capacity at The Institute for Forensic Psychology. Additionally, the petitioner notes that while Dr. Guller discussed the condition of a delusion disorder, he did not actually diagnose the petitioner with

¹ Walter Young was removed effective October 19, 2010. There is no record that he appealed his removal.

that condition. Furthermore, regarding Dr. Hindin, the petitioner indicates that he was not evaluated, but rather, he was merely asked whether he believed he needed mental health treatment, which the petitioner answered in the negative. Moreover, the petitioner contends that the ALJ did not consider the report of Dr. Mgbako, who evaluated the petitioner at East Orange Hospital, since it was unsigned. However, the petitioner argues that the report should have been admitted into evidence, as it was clearly relevant and hearsay evidence is admissible in administrative proceedings. In addition, the petitioner maintains that the appointing authority did not prove its case. He reiterates that Dr. Guller was unable to state with a reasonable degree of psychological probability that he suffered from delusional disorder or another psychological condition. In addition, Dr. Hindin did not make such a determination and Dr. Mgbako ruled out delusional disorder. The petitioner also notes that there was no evidence that he was unfit for duty prior to his allegations. In fact in 2010, he was previously found to be fit for duty. Furthermore, the petitioner asserts that the penalty of removal is too severe, as he is a 14-year member of the Police Department, has received several commendations, and had been promoted. He states that, at best, the evidence demonstrating that he is unfit for duty was inconclusive. The petitioner maintains that prior to making a "drastic determination" to remove him, the Commission should have referred him for further evaluation.

In response, the appointing authority, represented by Kyana Woolridge, First Assistant Township Attorney, initially submits that the petitioner's request for reconsideration is untimely. It indicates that the petitioner filed his request beyond 45 days from the Commission's prior decision. Nonetheless, it maintains that reconsideration is not warranted in this case, as the petitioner has failed to present any additional information which would change the outcome of his case and no clear material error has occurred. The appointing authority contends that the petitioner's claims to the Attorney General's Office contained implausible allegations, and no evidence was presented to support his claims. It emphasizes that, although the petitioner was adamant that someone from the Police Department bugged his car, he threw out the alleged device. The petitioner also did not produce any pictures or other proof to prove his claim that people were on the roof of his building with infrared cameras spying on him. Moreover, the appointing authority argues that the evidence demonstrating that the petitioner was unfit for duty was not inconclusive. Dr. Guller found him to be unfit for duty, and Dr. Hindin offered the petitioner additional treatment, which he declined. Therefore, the appointing authority requests that the instant matter be denied.

CONCLUSION

Initially, the appointing authority maintains that the petitioner's request for reconsideration is untimely. In that regard, *N.J.A.C.* 4A:2-1.6(a) provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. In the instant matter, as set forth above, the

petitioner requested reconsideration on May 29, 2015, which is clearly within 45 days of his receipt of the Commission's decision, which was mailed to the parties on April 15, 2015.

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that reconsideration is not justified.

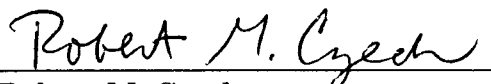
The petitioner was removed from employment on the charge of inability to perform duties based on Dr. Guller's report. Nothing in the record contradicts Dr. Guller's findings. It is noted that, regardless of the number of years he possessed a license, Dr. Guller was a licensed psychologist at the time of his evaluation of the petitioner and found him to be unfit for duty based on a reasonable degree of psychological probability. Moreover, although the petitioner contends that the ALJ did not consider nor admit Dr. Mgbako's report into evidence, the information was referred to in the testimony. Dr. Guller testified that Dr. Mgbako's report was not inconsistent with his position. Even though Dr. Mgbako ruled out delusional disorder, he recommended that the petitioner undergo outpatient therapy. Thus, there is not a basis to disturb the ALJ's determination in that regard. Furthermore, while the petitioner contends that he should be further evaluated prior to a determination of removal, he did not accept Dr. Hindin's treatment. Under these circumstances, the ALJ correctly found that the record supported the petitioner's removal from employment. Moreover, contrary to the petitioner's contention, his complaint was investigated, albeit not to the extent that he believes to be appropriate. Various organizations reviewed the petitioner's letter, which included interviewing the petitioner and verifying a license plate that he reported. However, it was determined that the appropriate course of action was to refer the petitioner for a psychological evaluation. It is noted that, apart from his allegations, the petitioner has not demonstrated any factual basis for his claims. As the appointing authority emphasized, the petitioner threw away the alleged tracking device which he found on his car. Further, the petitioner's brother was removed in 2010, and the events that the petitioner claimed commenced in 2008. Therefore, the petitioner has not demonstrated that a material error has occurred nor presented new evidence which would change the outcome of his case. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries

and

Correspondence

Director

Division of Appeals

and Regulatory Affairs

Civil Service Commission

Written Record Appeals Unit

P.O. Box 312

Trenton, New Jersey 08625-0312

Attachment

c: Dennie Young
Andrew Moskowitz, Esq.
Tony Vauss
Kyana Woolridge, First Assistant Township Attorney
Kelly Glenn
Records Center



STATE OF NEW JERSEY

In the Matter of Dennie Young
Township of Irvington
Police Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-51
OAL DKT. NO. CSR 08914-14

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ISSUED: April 15, 2015 PM

The appeal of Dennie Young, a Police Sergeant with the Township of Irvington, Police Department, removal effective June 25, 2014, on charges, was heard by Administrative Law Judge Michael Antoniewicz, who rendered his initial decision on March 23, 2015. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on April 15, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

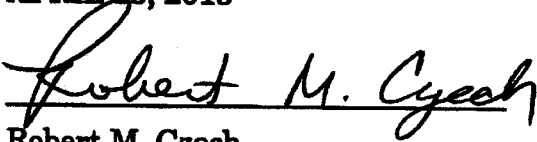
ORDER

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

Re: Dennie Young

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
APRIL 15, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 08914-14

CSC DKT # 2015-51

**IN THE MATTER OF DENNIE C. YOUNG,
TOWNSHIP OF IRVINGTON.**

Dennie C. Young, appellant, pro se

**Kyana Woolridge, First Assistant Attorney, for respondent Township of Irvington
(Ramon E. Rivera, Township Attorney)**

Record Closed: February 20, 2015

Decided: March 23, 2015

BEFORE MICHAEL ANTONIEWICZ, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Dennie C. Young, a sergeant with the Township of Irvington Police Department (Department or respondent) who began his employment in July 2000, appeals his removal by the Department on allegations that he was unfit for duty pursuant to Civil Service Regulations, inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3). On February 26, 2014, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) by respondent seeking removal. Appellant was charged with N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties.

Specifications of Charges

The Department's decision to remove appellant was based upon the finding that he was unfit for duty. On January 13, 2014, Dr. Matthew Guller, a psychologist, conducted a fitness for duty examination on Sergeant Dennie Young and as a result of the examination Dr. Guller concluded that Young was unfit for duty. On June 26, 2014, respondent served a Final Notice of Disciplinary Action (FNDA) removing Young, effective June 25, 2014, based on Dr. Guller's examination.

Appeal and Hearing Date

Appellant appealed such action on July 11, 2014, and the matter was then filed with the Office of Administrative Law (OAL) on July 14, 2014 as a contested case. Following the adjournments of the hearing at the parties' request, a hearing was held on February 20, 2015, on which date the record closed.

TESTIMONY

Detective Sergeant Jerry Alston

Detective Sergeant Jerry Alston (Alston) testified on behalf of the Appointing Authority, the Township of Irvington. Alston has worked for the Township Police Department for over twenty years. He was in the Internal Affairs Unit and assigned to investigate this matter. Alston stated that the Prosecutor's Office had received a letter from Young. In the letter, Young had made numerous complaints, including having his cell phone and home computer hacked, people entering his apartment and tampering with his property, cameras being placed in his outlets and infrared cameras on his roof, hacking into his girlfriend's cell phone and having her text messages erased. The letter further stated that Young believed that he was being followed by the Irvington Police Department and that his motor vehicle was bugged by the Department.

Alston explained that Young mailed the letter to the New Jersey Attorney General's Office. Thereafter, the Attorney General sent the letter to the Essex County

Prosecutor's Office in order to take appropriate action. It was then sent to the East Orange Crisis Department, who then recommended treatment for Young and a fitness for duty evaluation. Once that fitness for duty evaluation was taken, it was determined that Young was unfit for duty.

On February 26, 2014, Young was served with a PNDA. He was charged with being unfit for duty (Charge: 4A:2-2.3(a)(3)). A hearing was held, where Young represented himself, and the decision by the hearing officer was to remove Young from his position as a police officer. On June 25, 2014, a FNDA was created which removed Young as of that day. (R-6.)

On cross-examination, Young asked Alston if he received Young's complaint. When asked if Alston investigated Chief Mitchell, Alston responded that he is not permitted to investigate the chief. Alston stated that he could investigate anyone but the chief. Alston was there when they transported Young to the East Orange Hospital emergency room. As far as Alston determined and knew, there was no surveillance of Young.

Dr. Lee Hindin

Dr. Lee Hindin (Hindin) has practiced as a doctor for approximately thirty years. Hindin met with Young in order to evaluate him from a referral from Dr. Guller. Hindin and Young met for approximately fifteen minutes and mutually agreed to end the meeting as Young expressed no need for further treatment. Hindin reviewed about forty pages of material, including Young's letter to the Attorney General's Office. Hindin is not an investigator. Hindin made no determination as to Young's fitness for duty.

On cross-examination, it was Young's belief that he had no need for treatment and that everything was fine. Hindin advised Young that he was available to see him if he needed him. Hindin did no further evaluations on Young. It was Hindin's belief that he could not make Young get treatment if he did not want such treatment. It was Hindin's position that it made sense for Young to have an evaluation but that Hindin could be of no help to Young since he did not want any help.

Dr. Matthew Guller

Dr. Matthew Guller (Guller) is a licensed psychologist in the States of New York and New Jersey. Ninety-five percent of his work is to evaluate public safety personnel for fitness for duty exams. Guller did such work for over twenty years.

Guller was conducting a fitness for duty exam on Young. Young was referred to Guller by the Department. It was Guller's understanding that it was Young's letter to the Attorney General that caused this referral for evaluation. Guller reviewed Young's letter. The letter contained many allegations, including allegations regarding the Irvington Police Chief following Young around, his neighbor spying on him, poison in his food, people entering his house and moving his property around, a car with an HP Inc. license plate which Young alleged the car was from Hewlett Packard (the computer company) was following him, and people were hacking his computer and his cell phone as well as his girlfriend's cell phone.

Guller did a standard battery of tests, including a written test. There was an extended period of tests and a clinical interview (of forty-five minutes). Guller obtained background information from the Department, the letter of complaint and the Internal Affairs records for Young. Guller's finding was that Young was not fit for duty. Guller believed that Young's psychiatric condition impaired his ability to do his job. He was unable to function in his job in a safe or effective function. Young had delusions thus causing his life and functions to be affected.

Guller described Young's situation that the things Young complained about could happen, but they were not based in reality. Young had non-bizarre delusions. Accordingly, Guller referred Young for treatment. It was Guller's belief that this could be caused by a medical condition. Guller was unable to diagnose such a condition, thus he referred Young to a medical doctor, Dr. Hindin. The result of the referral was Hindin's exam and letter to the police department. It was Guller's understanding that Young was not receptive to treatment. Dr. Hindin reviewed Guller's assessment and it was Guller's position that if his assessment was "way off," Dr. Hindin would have said

so to him when they spoke. Dr. Hindin did say to Guller that he agreed with Guller's assessment.

On cross-examination, Guller explained that his interview lasted sixty-five minutes, which included a social history, family history, medical history, and he asked Young why he was there. Guller stated that he did not get the evaluation from Dr. Mgbako and did not get blood work. He admitted to no background in cyber crimes, military training, and only fit for duty assessment with regard to police work. Guller stated that he recommended treatment for Young to the Department and not to Young directly. Guller sent Young to Dr. Hindin for treatment options. Guller's view of Young's letter of complaints was that individually the allegations could occur, but taken together they appeared to be bizarre. Examples included being poisoned and that he needed an appendectomy and Young's neighbor with a listening device. The sheer number of allegations raised a red flag. Another example was Young's allegation of a tracking device in his vehicle. Yet Young "threw away" the device when he found it, even though Young was a trained police officer. Guller described the allegations as not so much bizarre but rather as delusional.

Guller was then presented with Dr. Mgbako's report which ruled out delusional disorder, but recommended outpatient therapy. It was Guller's testimony that Dr. Mgbako's report was not inconsistent with his position. Guller also believed that Young was not a danger to himself or to others. Both doctors were of the opinion that therapy was recommended. Guller's opinion was that Young held impossible beliefs without any tangible evidence.

Dennie C. Young

Dennie C. Young (Young) testified on his own behalf. Young was with the Irvington Police Department for about fourteen years and never had a problem during that time. Young referenced that his brother, who was with the Department, was terminated. After this occurred, the substance of his written complaint began to happen. Young stated that people would hang out on his roof and there were people coming into his apartment. When speaking to a neighbor, Young was told that they heard people

inside his apartment. There was an investigation by the East Orange Police Department. Young would hear loud banging inside his apartment and around his apartment. He admitted that some of what he said sounded bizarre, but everything he said was true.

Young went on to explain that there was a tracking device inside his car, about the size of a quarter. Instead of keeping the device, he threw it away. Young's main complaint is that he raised a lot of valid complaints (as detailed in his letter) and no one from the Department looked into his allegations. That was why he felt it was necessary to reach out to a higher authority. Young stated that there were other reports from the Department which discussed harassment tactics on other police officers. Officers were forced out of their positions as a result of the harassment. Young stated that at no time did he commit any illegal activity and all his allegations were real even if they seemed bizarre.

On cross-examination, Young stated that he received negative attention after his brother was terminated from the force. He did not believe that the attention was because of his brother's termination. Young admitted in cross-examination that he did not have a police report to corroborate the fact that his neighbors heard noises in his apartment when he was not home. Young stated that he never had any problems with Chief Mitchell. He had great relationships with his fellow officers. Young also said that the Essex County Prosecutor's Office interviewed him for an extensive period of time after they received his letter.

Young seemed sincere in his beliefs as expressed in his letter to the New Jersey Attorney General and again stated at the time of this hearing. Young failed to present any supporting evidence with regard to his allegations and no evidence that supported a finding that he was fit for duty.

Michael Shefton

Michael Shefton (Shefton) was a licensed screener and evaluated Young on January 10, 2014, based on the recommendation of the Essex County Prosecutor's

Office. Young was taken to the East Orange General Hospital emergency room by the police. Shefton then went back to his office. Young was not admitted to the crisis unit while he was on duty. The Essex County Prosecutor's Office contacted Shefton to advise that Young needed an evaluation. The results of the evaluation by Shefton were that Young needed further evaluation. Young was taken voluntarily to the East Orange Hospital and he agreed to the evaluation.

Millicent Brown

Millicent Brown (Brown) was a mental health screener at the East Orange General Hospital and practiced same for nine and a half years. Brown received a copy of Young's letter. Brown interviewed Young for about twenty minutes to one-half hour. Young was discharged from the emergency room and was not admitted into the hospital or into the crisis unit. Brown was advised that Young exhibited bizarre behavior and thus needed to be evaluated. Dr. Mgbako met with Young and discharged him but recommended that he receive outside treatment.

FINDINGS OF FACT

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following critical **FACTS**:

1. Appellant was a police sergeant with the Irvington Police Department starting his employment in July 2000.
2. In April 2013, appellant drafted and forwarded a letter (with attachments) to the New Jersey Attorney General containing numerous allegations involving members of the Irvington Police Department.
3. The letter contained many implausible allegations, which lacked a factual foundation.

4. As a result of the receipt of the letter and material, the Attorney General's Office referred the matter to the Essex County Prosecutor's Office for further investigation.
5. An interview between appellant and the Essex County Prosecutor's Office occurred on January 9, 2014.
6. As a result of the interview, the Essex County Prosecutor's Office called the Mobile Crisis Team from the East Orange General Hospital in order to evaluate Young.
7. It was determined that Young required further evaluation and was referred to Dr. Matthew Guller for a fitness for duty test.
8. A fitness for duty examination was completed by Dr. Guller on January 13, 2014, and he concluded that Young was unfit for duty and recommended additional treatment with Dr. Hindin.
9. Young met with Dr. Hindin who recommended further treatment; however, Young refused any additional treatment.
10. Based on Young's refusal to obtain additional treatment, Young remains unfit for duty.

LEGAL DISCUSSION AND CONCLUSION

In a disciplinary action, the burden of proof is on the appointing authority, which must prove its case by a preponderance of the believable evidence. In re Polk, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In order for evidence to meet that threshold, it must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). That is to say, 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). Greater weight of credible evidence in the case – preponderance – depends not only on the number of witnesses, but “greater convincing power to our minds.” State v. Lewis, 67 N.J. 47, 49 (1975). Similarly, credible testimony “must not only proceed from the mouth of a credible witness, but it must be credible in itself.” In re Perrone, 5 N.J. 14, 522 (1950).

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, including inability to perform duties, N.J.A.C. 4A:2-2.3(a), and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). 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. On appeal from the imposition of such discipline, the appointing authority has the burden of proving justification for the action and the employee’s guilt by a preponderance of competent, credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson, *supra*, 37 N.J. 143; Polk, *supra*, 90 N.J. 550. The general cause for this discipline is set forth in N.J.A.C. 4A:2-2.3(a)(3). In this matter, Young was charged with a violation of N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties. This was based on an examination and the determination of Dr. Guller of January 13, 2014, wherein he found Young unfit for duty. Dr. Guller maintains that position as of the date of the hearing.

In this instant matter, it is undisputed that appellant was subjected to a fitness for duty examination, and that the doctor conducting the examination determined that he was unfit for duty. Dr. Guller, who conducted that examination, maintained that position at the time of this hearing. Furthermore, Young presented no credible evidence contradicting that position.

I **CONCLUDE** that respondent has proven by a preponderance of the competent, credible evidence, the charge of inability to perform duties.

PENALTY

With regard to penalty, consideration must generally be given to the concept of progressive discipline, involving penalties of increasing severity. W. New York v. Bock, 38 N.J. 500 (1962). However, progressive discipline is not a “fixed and immutable rule

to be followed without question.” Carter v. Bordentown, 191 N.J. 474, 484 (2007). It is well-established that when the misconduct is severe, when it is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest, progressive discipline need not apply. In re Herrmann, 192 N.J. 19, 28 (2007); In re Stallworth, 208 N.J. 182 (2011).

It has been held that termination without progressive discipline is appropriate in circumstances where an employee 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 inability 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.

In this case, the appellant’s inability to perform his duties was based on an examination by a doctor who conducted a fitness for duty test. Based on the cogent testimony by Dr. Guller and based on the mental state of Young, Young was unable to perform his duties and thus unfit for duty. Though mindful of the adverse impact on Young and his unshaken belief that he was subjected to adverse actions by the Department, I am compelled to **CONCLUDE** that the respondent has proven, by a preponderance of credible evidence, that Young is unfit for duty and thus does not have the ability to properly perform his duties and has presented the basis for Young’s removal from employment.

Based upon the above facts and applicable law, I further **CONCLUDE** that appellant’s employment was properly terminated on the charge of inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3).

ORDER

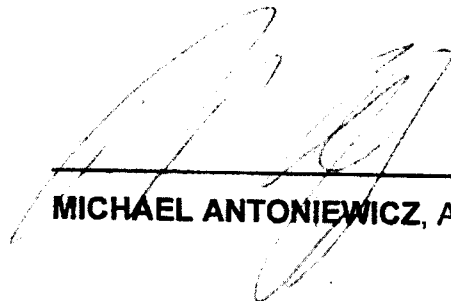
Based upon the foregoing, it is hereby **ORDERED** that appellant's appeal be and is hereby **DISMISSED WITH PREJUDICE**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

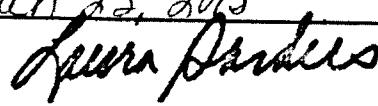
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**,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

March 23, 2015
DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency:

March 23, 2015


**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

Date Mailed to Parties:

MAR 23 2015

jb

APPENDIX

WITNESS LIST

For Appellant:

Dr. Lee Hindin
Dennie Young
Michael Shefton
Millicent Brown

For Respondent:

Detective Jerry Alston
Dr. Matthew Guller

EXHIBIT LIST

For Appellant:

- P-1 Letter to "To Whom It May Concern" from Dennie Young dated July 18, 2014
- P-2 Irvington Police Department, Internal Affairs Bureau, Investigative Summary dated January 12, 2014

For Respondent:

- R-1 Letter from Attorney General's Office to Essex County Prosecutor's Office dated December 11, 2013
- R-2 Letter from Dennie Young to Attorney General
- R-3 Preliminary Notice of Disciplinary Action dated February 26, 2014
- R-4 Written Opinion by Hearing Officer Karen Brown, Esq., dated May 28, 2014
- R-5 Final Notice of Disciplinary Action (31-B) dated June 25, 2014
- R-6 Final Notice of Disciplinary Action (31-C) dated June 25, 2014
- R-7 Report by Dr. Matthew Guller dated January 15, 2014
- R-8 Letter from Dr. Lee Hindin to Detective Jerry Alston dated January 29, 2014

