

B-67



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Douglas Foster

Reconsideration

CSC Docket No. 2016-2539

DEC 22 2016

ISSUED:

(EG)

Douglas Foster, represented by Mark A. Gulbranson, Jr., Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on December 16, 2015, in which the Commission upheld the petitioner's removal.

By way of background, the petitioner appealed his removal on charges of conduct unbecoming a public employee, neglect of duty, and violation of policies and regulations. Specifically, it was asserted that the petitioner failed to accurately and honestly report his activities and filed a false report. An initial decision was rendered by the Administrative Law Judge (ALJ) on November 23, 2015 upholding the removal. At the hearing, the petitioner had sought to introduce evidence concerning alleged actions of other police officers in Pennsauken Township but was not permitted to do so because it was deemed not to be pertinent. In his initial decision, the ALJ found that while the petitioner indicated in his officer's log that from 1:50 a.m. to 2:20 a.m. he was on patrol, the record clearly demonstrated and the petitioner acknowledged that he was not on patrol but was in headquarters. The petitioner had argued that the clocks were inaccurate but the ALJ did not find this explanation sufficient or credible. Therefore, the ALJ upheld the charges against the petitioner. Additionally, the ALJ found that the petitioner's contention that he was the victim of retaliation from Police Chief John Coffey was wholly unpersuasive. The ALJ found that it was not Coffey that sought to probe the petitioner's actions after 1:50 a.m., but rather it was internal affairs officer Lieutenant Scott Gehring. Based on the foregoing, the ALJ determined that

removal was the proper penalty in this matter. Upon its *de novo* review of the matter, the Commission upheld the petitioner's removal in its December 16, 2015 final decision.

In the instant matter, the petitioner contends that the Commission erred in its determination upholding the removal. The petitioner reiterates the arguments made before the ALJ concerning his time and his claims of retaliation. In this regard, the petitioner indicates his vocal support of his Union in getting shift hours changed and his involvement in a lawsuit against Chief Coffey. The petitioner also provides a narrative of the conduct and lack of discipline of other officers in Pennsauken Township. The petitioner claims that the ALJ should have admitted the evidence of the conduct of these other officers. Further, the petitioner claims that during the Commission's meeting, Chairman Robert M. Czech mistakenly indicated that the appellant was not patrolling from 11:00 p.m. to 2:00 a.m. The petitioner argues that only the time from 1:50 a.m. to 2:20 a.m. was in question and that the Commission made its determination based on incorrect information. In that regard, he requests a transcript of the December 16, 2015 Commission meeting. Finally, the petitioner presents numerous letters of recommendation attesting to his good character and provides several commendations he received as a Police Officer.

The appointing authority, represented by Joseph G. Antinori, Esq., argues that the petitioner has not presented any new evidence nor has he identified any clear material error. It contends that there was an abundance of evidence that the petitioner misrepresented that he was on patrol when he was actually at police headquarters.

### CONCLUSION

*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.

In the instant matter, the petitioner does not provide any new evidence for the Commission to review. He merely reiterates the arguments made at the Office of Administrative Law. The Commission previously upheld the ALJ's findings of fact and conclusions and nothing submitted in the present petition provides any basis for the Commission to change its prior decision. In this regard, the Commission notes that the ALJ properly excluded evidence regarding the actions of other officers in Pennsauken as it is clearly irrelevant to the petitioner's actions and the penalty he received. Further, the petitioner claims that the Commission Chairman mistakenly indicated at the public meeting that the time in question as

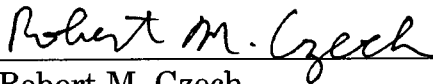
11:00 p.m. to 2:00 a.m. rather than 1:50 a.m. to 2:20 a.m. Thus, he contends that the Commission made its decision based on incorrect information. In that regard, he requests a transcript of the December 16, 2015 Commission meeting. The Commission is not persuaded by this argument. Initially, Commission meetings are not recorded or transcribed, thus, no such transcript is available. Regardless, even assuming the accuracy of his contentions, comments made by Commission members during its review of matters are not controlling. Rather, it is the written decision issued by the Commission that is controlling. In the present matter, the Commission's written decision adopted the findings of fact and conclusions as contained in the ALJ's initial decision, which clearly spelled out the time in question. Accordingly, under the circumstances presented, 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 21ST DAY OF DECEMBER, 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: Douglas Foster  
Mark A. Gulbranson, Jr., Esq.  
Joseph G. Antinori, Esq.  
Kelly Glenn  
Records Center



A-8

STATE OF NEW JERSEY

In the Matter of Douglas Foster  
Pennsauken Township,  
Police Department

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-3131  
OAL DKT. NO. CSR 8032-15

ISSUED: DECEMBER 18, 2015 BW

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The appeal of Douglas Foster, Police Officer, Pennsauken Township, Police Department, removal effective May 22, 2015, on charges, was heard by Administrative Law Judge Jeff S. Masin, who rendered his initial decision on November 23, 2015. Exceptions were filed on behalf of the appellant.

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 December 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

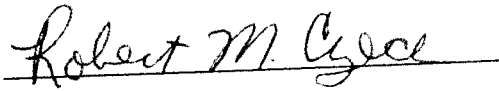
ORDER

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 Douglas Foster.

Re: Douglas Foster

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  
DECEMBER 16, 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 8032-15

01/23/2015

**IN THE MATTER OF DOUGLAS FOSTER,  
PENNSAUKEN TOWNSHIP.**

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**Katherine D. Hartman, Esq.**, for appellant Douglas Foster (Attorneys Hartman  
Chartered, attorney)

**Joseph Antinori, Esq.**, for respondent Pennsauken Township (Brown &  
Connery, attorneys)

Record Closed: October 30, 2015

Decided: November 23, 2015

BEFORE **JEFF S. MASIN**, ALJ t/a:

On August 22, 2014, the Pennsauken Police Department filed a Preliminary Notice of Disciplinary Action against Douglas Foster, a patrol officer with the Department since 2005. Subsequently, on October 9, 2014, Foster was the subject of a second Preliminary Notice of Disciplinary Action. By Final Notice of Disciplinary Action dated May 22, 2015, the Department's appointing authority upheld a series of charges and removed Officer Foster from his position with the Department. As the matter involved a removal from a law enforcement position, Officer Foster filed an appeal concurrently with the Civil Service Commission and with the Office of Administrative Law. Prior to the commencement of the hearings before this judge, Foster waived his right to a hearing within 180 days of the date of his termination.

The Final Notice advises that Officer Foster was found guilty of violations of N.J.A.C. 4A:2-2.3, specifically of violations of portions of the Pennsauken Police Department rules and regulations, regarding conduct unbecoming an officer, section 3.2.8; neglect of duty, 3.3.3; the requirement that officers "shall give suitable attention to the performance of duty and perform their duties as required or directed by law . . . .," 3.3.6; the requirement that officers "promptly and accurately prepare and submit such reports as are required by the performance of their duties or by a supervisory officer," 3.4.5; and of the requirement that officers "shall not knowingly submit written or oral communications that are fabricated, factually inaccurate or intentionally misleading . . . .," 3.4.6. These were the charges that were the subject of the original Preliminary Notice issued on August 22, 2014. In addition, the Final Notice sustained a "charge" of "Repeated violations", 4.1.6, a provision of the Rules and Regulations that, while not itself involving a substantive charge, directs a penalty that is to be assessed where an officer is found to have been guilty of "repeated violations of the rules and regulations, policies, procedures, directives or orders," a circumstance which the Rule provides "shall be indicative of an employee's disregard of the obligations of all employees and shall be cause for dismissal . . . regardless of the severity of the offense and reckoning period, and regardless of whether the violations are of the same type."

The Final Notice provides a Specification of the offense. It notes that on June 4-5, 2014, Officer Foster was assigned to District 6 during the 7:00 p.m. to 7:00 a.m. shift. It states that he wrote on his Daily Officer Patrol Log that on June 5, he was patrolling the Highland Park section of the Township between 1:50 a.m. and 2:20 a.m. when a video recording made at police headquarters (HQ) at that time showed that he was in fact at headquarters throughout that time and remained so until he is shown exiting the rear door at 2:17 a.m. The GPS unit in his patrol car indicated that the vehicle was stationary at HQ from 11:04 p.m. on June 4 until 2:20:42 a.m. on June 5.

During the hearing, the video recording made within HQ was played and it shows without dispute that Officer Foster was in that building during the period from before 1:50 a.m. and remained there until he is viewed as exiting the rear door at 2:17 a.m. While the appellant offers reasons for the discrepancy between the video and the log

he prepared for that time period, R-3 in evidence, which lists him as patrolling in Highland Park from "0150" to "0220," he does not dispute the accuracy of the video.

Pennsauken Police Chief John Coffey testified that the Township is divided into six districts, and that an officer assigned to patrol duty in a district is expected to be "omnipresent" in the assigned district, unless sent by a dispatcher to another district. The presence of the officer in his assigned district is important to allow for appropriate response time and accountability for incidents within the district. An officer who wants to leave his assigned district needs approval to do so. Officers on patrol are required to check certain key locations in their district for about five to seven minutes each. There are usually about six to seven of these locations, listed on a memo to personnel issued in May 2014 and effective June 1 of that year. The Chief described District 6 as "busy." Officers are required to prepare patrol logs, which list their activity during shifts. These are used both to document such activity and to hold officers accountable. They are therefore expected to be accurate.

In June 2014, Chief Coffey reviewed activity logs to see if his directive regarding the need to check locations within districts was being adhered to. He was looking for any inconsistencies that might appear. He reviewed about six or seven night-shift logs and some day-shift logs. He noted that some officers appeared to be taking more than the allotted thirty-minute dinner break. During this review, Coffey noted some concerns about Officer Foster's log, which showed that Foster was in headquarters on June 4-5 for approximately two hours and was not patrolling his district during that time. More specifically, the log sheet for that night listed Foster's location as "HQ" for the period beginning at 23:50 (11:50 p.m.) to "0000" (midnight), with a description of the "action taken" as "Latrine;" then from "0005" to 0045" for "Dinner;" and then from "0050" to "0150" for "IO Relief." "IO" refers to the "information officer." Chief Coffey noted that during the entire time that the officer remained in HQ, he took himself out of service in his assigned district.

Officer Foster's log for June 4-5 continues to list his reported activity after 0150, with the next entry listing Foster as on patrol in Highland Park from "0150" to "0220." However, when Chief Coffey wrote a memorandum on June 5, 2014, to the supervisors



for the 12-8 shift, directing that they have Foster submit a report concerning the Chief's questions about his activities on June 4-5, the Chief noted the time Foster listed himself as at HQ from 23:50 through 01:50, but made no mention of the time from 01:50 to 02:20 when Foster listed himself as on patrol in Highland Park. In the memo, the Chief notes that he does not understand why the information officer would need to be relieved for one hour. He focuses on a concern about Foster spending two hours in headquarters when "we need officers on the street."

Apparently in response to this memo and the demand of his superiors, Foster completed a memo dated June 6, 2014, in which he asked that the information therein be sent up through the chain of command to the Chief. He advised that he had come to HQ to use the restroom, then requested from dispatch that he be allowed to take his dinner break and did so from 0005 to 0035, and then relieved Officer DiCamillo, the IO, at that officer's request, while DiCamillo took his dinner break from 0050 to 0150. He notes that it has been the custom and practice throughout his service with the Department for the information officer to take a one-hour lunch break.

Chief Coffey was not satisfied with the explanation offered by Foster. He therefore contacted Lieutenant Gehring, the Internal Affairs Officer for the Department.

On cross-examination, the Chief acknowledged that he was aware that there was another officer assigned that evening to District 6, to what is referred to as District 6b. This assignment of an extra officer to a district was not an uncommon event. He agreed that when the IO goes for his lunch break, an officer is called in from the street to relieve that officer. Regardless, Coffey could not conceive why Foster would have been in HQ for two hours. He was also not aware that the IO took a one-hour lunch, a length of time that was in his understanding of the Department Rules and Regulations "not appropriate." Chief Coffey could not recall if any of the other officers whose log sheets he reviewed were then suing him. Officer Foster and several other members of the Department were in fact suing him at that time.

Detective Lieutenant Scott Gehring serves as the Internal Affairs officer for the Department. At the direction of Chief Coffey, Gehring conducted an investigation

regarding Officer Foster concerning the officer's activities on June 4 and 5. He was approached by Chief Coffey, who came to him with Foster's memo produced in response to Coffey's request for information. He also was given Foster's trip sheet and the Chief's letter. No other documents were provided to him. The Chief told him that he was concerned about the entries on the trip sheet with the "PPD" codes, "9", "16" and "10" covering the period from 23:50 to 01:50. Gehring prepared a "Reportable Incident Report" (R-8), documenting that he received the inquiry on June 6, 2014. He provided Foster with an "Internal Affairs Complaint Notification Form," advising the officer of an allegation of "rules and regulation violations during your tour of duty" on June 4-5, 2014. On June 30, he contacted Foster and arranged for an interview on July 2, which was held that day. Gehring retrieved the trip sheet and reviewed video taken in headquarters during the late evening of June 4 and the early morning of June 5. He also reviewed GPS data for Foster's vehicle, unit 206.

Lieutenant Gehring testified that from his review of the records, he determined that the trip log was "inconsistent" with the GPS record, which showed that the vehicle operated by Officer Foster was at HQ until 2:20 a.m. Also, the surveillance tape showed Foster leaving the building at about 2:17 a.m.

Review of the video during the hearing indicated that Officer Mike DiCamillo was present for a portion of the time. Foster is noted at the IO desk at 1:44:35. Other officers appear in the video at different points in time, including Officer Fabiani. Foster exits the door to the lobby at 2:16:30. It would normally take about 1.5 to 2 minutes to travel from HQ to District 6.

During the interview on July 2, Officer Foster was questioned about the entries on his log sheet: his activities during the time covered by the three entries that Chief Coffey had expressed concern about; his understanding regarding the need for permission to come to HQ from his District 6 assignment, and the accuracy of the entries. He noted that DiCamillo took a one-hour lunch, although he thought that DiCamillo was only away for forty-five minutes. Foster noted that during the time he was relieving DiCamillo, he saw Officers Marietta, Cooper and, he believed, Fabiani, in the building. When asked about the entry that showed that was patrolling in Highland

Park from 1:50 to 2:20, the officer stated that "I have Highland Park so I guess somewhere in Highland Park." Asked again if he was on patrol in Highland Park at 1:50, he replied, "I'd say yes, somewhere around there yeah." As for whether he was "on patrol in that area from 1:50 to 2:20," Foster replied, "Correct, I mean that's what I wrote." Asked if what he wrote was "correct," he said, "As far as I can remember it yeah." And asked if he documented "things on your trip sheet 'correctly,'" he said, "Yeah."

During the interview, Officer Foster advised Gehring that "I also want you to know like I feel I'm being harassed okay and I understand you as internal affairs you're not allowed to investigate the Chief." He asked if Gehring "could direct me to who I need to go to, to speak to," mentioning such possibilities as "Human Resources and the Public Safety Director." Gehring said that if Foster had a complaint against the Chief he could approach "a couple different avenues whether it be the Public Safety Director or the County Prosecutor." Foster asked if he could speak "freely" to them, and Gehring replied that "I would you know refer you to speak with a member of the union, maybe Matt Henkel the president."

After concluding his investigation, Lieutenant Gehring prepared a report for Captain Connor, who would review it and determine whether any charges would be made against Foster. In his report, Gehring concluded that Foster had violated several rules and regulations of the Department. In his summary, Gehring noted the entry on the trip log for 1:50 to 2:20 for patrol in Highland Park and the video showing that Foster left HQ through the rear door at 2:17 am. He also noted that, "The video and the GPS records confirmed that he was not patrolling Highland Park during that time but was in the booking area talking with other officers."

On August 18, 2014, Lieutenant Gehring received a memo from Captain Connor advising Gehring that having reviewed the file he concurred with Gehring's assessment as to the violations and that formal discipline was in order. He added that a charge for a violation of Pennsauken Police Department Rule and Regulation 3.4.6, False Reports, should be added, as the patrol log showed Foster in the 6<sup>th</sup> district when the evidence showed that he was in the booking area at the time he claimed to have been

on patrol, and as during his interview, Foster "maintained that he was on patrol in the 6<sup>th</sup> district." Connor also noted that he had advised the Chief of Connor's findings. The charges were then prepared, including therein the additional charges as recommended by Connor, and these charges were presented to Connor. The charges were issued over Captain Connor's name as the authorized agent of the appointing authority. This was the substance of the Preliminary Notice filed on August 22, 2014.

On cross-examination, Gehring was unsure if there existed a Standard Operating Procedure (SOP) concerning when trip sheets were to be filled out or what clock was to be used to determine times that are recorded on these documents. He acknowledged that it was known that there was a discrepancy between clocks within HQ. Wall clocks were battery operated. The sign outside of the police headquarters was "routinely incorrect." He has seen it off by a few minutes, but could not recall if he ever saw it to be inaccurate by as much as twenty minutes. Sometimes it runs fast; sometimes slow. Each vehicle has its own clock and he is not sure that they all register the same time. The Department also has desk top computers and "Toughbooks," which are computers that are mounted in Department vehicles and each also have clocks.

Lieutenant Gehring never spoke to either Chief Coffey or Captain Connor about Officer Foster's contention that he was being harassed or was the subject of retaliation.

In June 2014, Captain Thomas Connor, a thirty-one-year veteran of the Pennsauken Police Department, was the captain in charge of Department operations, and served as the commander of the patrol function. He learned of an Internal Affairs investigation of Officer Foster on June 14. He was later asked to review charges recommended by Gehring. A draft Preliminary Notice was provided and he reviewed it and asked that an additional charge be drafted. Connor concluded that based upon the charges contained in the Preliminary Notice of August 22, including the additional charge that he had recommended for inclusion for "false reports," termination was the appropriate sanction. This conclusion was reached due to the "gravity of the issue" involving the officer's lack of truthfulness and the inaccuracy of his reports. The integrity of police documentation of activities "must be untainted" and the failure to assure accuracy violates the public trust. The Captain also considered the officer's prior

disciplinary record in reaching his conclusion. He noted that the officer had previously been sanctioned for a similar offense. He acknowledged that in connection with prior reprimands received by this or any officer, no hearings were held.

Officer Michael DiCamillo testified that he had been injured on duty. As a result on June 4-5 he was assigned as the information officer. He took a one-hour lunch break. He noted that the clocks in patrol cars that he has driven show differing times. And none of the clocks in HQ show the same time.

Douglas Foster, formerly of the Pennsauken Police Department, testified that he was first a civilian employee of that Department from October 2003 and became a sworn officer in 2005, until his removal. During his service he received four commendations; one when he arrested a person who had a shotgun; a second when he confronted someone in a bar who had a gun; a third when he tracked and arrested a store robber; and a fourth when he investigated a "lurker" who turned out to have burglary proceeds in his possession. He also received the third highest award in the Department, the Richard Dawson Award, during Police Week, although he did not know the criteria for the award.

From 2005 until 2010, Officer Foster did not receive any disciplines. The first such was issued to him in June or July 2011, a written reprimand from Lieutenant Probasco. He was not interviewed in regard to the matter that resulted in the reprimand and no hearing was permitted. He received one suspension, for the so-called "Pinsetters" incident, which is currently on appeal in the Appellate Division. He is a party to a lawsuit filed in April 2013 against Chief Coffey, now pending in Federal Court, in which he and other officers contend that they have been subject to harassment in retaliation for their support of twelve-hour shifts for the Department, which he contends Chief Coffey has consistently opposed and been unwilling to convert the Department to. Foster supported this change in 2011 and he then started to receive disciplines. He was a union representative for the 12-8 shift and an alternate on the negotiating team. He noted that Officer Mike Killion and Officer Biazzo were among the parties to the suit and had been disciplined for the Pinsetters incident and at other times.

On June 4-5, 2011, Officer Foster was serving on the 7:00 p.m. to 7:00 a.m. shift. He identified his trip sheet for that day and described the trip sheet as a document intended to memorialize where he was at given times. He understood that he was supposed to make an entry every thirty minutes. It was not required that entries be made contemporaneously with the events recorded. He was unaware of any specific clock or device that he was to use in recording the time.

On June 4-5, the officer went to HQ before midnight to use the restroom. He also took the opportunity to take his lunch break. Officer DiCamillo, serving as the information officer, asked Foster if he would relieve him so that DiCamillo could take his lunch break. Foster did relieve DiCamillo, who took a one-hour lunch break. During Foster's twelve years on the force, the IO has consistently taken a one-hour lunch break. In fact, Foster was the civilian information officer for one-and-a-half years before becoming an officer in 2005. Lunch was always for one hour.

The officer had viewed the video that was shown earlier in the hearing. He acknowledged that it showed that he was in the station until 2:17 a.m. The trip log states that at that time he was on patrol in the Highland Park section of Pennsauken, but he was clearly in the station.

The officer identified photographs he personally took with his cell phone, P-4, 5, 6, and 7, which were received in evidence. P-4 shows the computer screen on the computer located in the vestibule of the HQ, where an officer sits and views various camera shots within the station area. P-5 shows the MDT computer, the Toughbook, located in the patrol car. Foster always patrols in District 6 and uses the same vehicle. The clock in the car is inaccurate, although the amount by which it is off varies, perhaps as much as five to seven minutes off between the MDT clock and the vehicle's own clock. The various clocks within HQ also vary from one another. Each photo has a ledger showing the time when the picture was taken, as recorded thereon by the cell phone camera. There is a large sign outside of HQ, which is visible on both sides from Route 130, which is also inaccurate, off by fifteen to twenty minutes. Foster does not utilize any one particular clock or device to record his times for the trip sheet.

On June 4, as Foster was departing the parking area behind the HQ, he drove past the outside sign (there was work being done on the HQ area that required that he drive past the sign to exit). He took a "mental note" of the time on the sign. As for the entry of 2:20 on the trip sheet, he is uncertain if he got that from the car clock or from the MDT. He did not understand when he recorded this that he was entering a false time. He had no reason to cover-up the fact that he had been in HQ. He had never been questioned about his trip sheets before this.

Officer Foster has discussed the clocks with other officers and the consensus was that they were not accurate. Those from the lieutenant on down all know this. As of June 4-5, Foster has never seen a SOP or a memo directing how one was to prepare the patrol log, and only was aware that it had to record at half-hour intervals.

Foster explained that he learned that he was the subject of an investigation and when he was interviewed by Gehring he stated that he was being harassed by the Chief. He asked who he could speak to about this situation and was told to speak to the County Prosecutor or the Public Safety Director. He was also told that he could talk to his union. He had previously gotten in trouble for talking to the union when it was said that he bypassed the chain of command. In this matter, he spoke to Matt Henkel, the union president, and then met with the Public Safety Director, the Township Administrator and Officer Biazzo (union rep), regarding a "furious campaign to destroy me" by the Chief, at which meeting he asked for help. About one to two weeks after that meeting he received an additional Preliminary Notice of Disciplinary Action for "repeat offender." This was the Preliminary Notice dated November 7, 2014.

Officer Foster denied that he had deliberately falsified the trip sheet. He had no reason to hide the fact that he had been at HQ for the two hours he listed. Other officers such as Cooper, Flamini, DiCamillo and Marietta were also there. Having viewed the whole video and having reviewed Marietta's log, he knows that it does not show that Marietta was at HQ when he wrote that he was, and similarly for Cooper. Fabiani's log was not in the discovery package. Officer Cooper was disciplined with a one-day suspension, but Foster does not know what for. Officer Marietta received a written reprimand.

On cross-examination, Foster noted that the trip sheet remained in the vehicle, and was not taken into HQ. He kept it inside his clipboard. If he was on patrol in his district, he would get the times to record from his car clock or the MDT computer. As for the time he was in HQ on June 4-5, he recalled that Sergeant Hartnett was there as the shift commander and was eating his lunch and talking to Foster. When Foster himself decided to eat at HQ, he had already been in HQ to use the restroom and went out to the car to retrieve his lunch bag. He agreed that there is no entry covering the period 0035 to 0050. He was still in HQ and cannot say why that period of time has no entry recorded.

Foster acknowledged that after 1:50 a.m. he had no reason to remain in HQ. However, he apparently stayed there during that one-half hour, talking to four other officers. As he left the parking area he had to go through the front parking lot due to construction and passed the southbound side of the sign outside of the front of the building on Route 130. He saw 1:50 on it. He knew it to be inaccurate and has seen this sign to be as much as twenty minutes off. As for the time recorded of 2:20, he would have obtained this time from either the clock in the car itself or from the computer in the vehicle. He is not sure which he utilized.

Foster took photos of the car computer clock and the sign outside of HQ on June 9, at a time when nobody had yet accused him of falsifying his log. Asked to explain why he had taken pictures of the various clocks even before he was accused for anything to do with the entry from 01:50 to 02:20, Foster noted that when he received the copy of the Chief's memo asking about his time, while there was no mention therein of any concern about the period from 1:50 to 2:20 am., he inferred that the Chief was questioning whether the log was falsified. He "figured that it was going to get to that" and he "thought that there would be a problem." However, when he was interviewed on July 2, by Gehring, and was questioned about the entry for 1:50 to 2:20, he did not mention anything about inaccurate clocks nor mention or produce any photos. He explained that as Gehring "works for the Chief," he does not trust him.



The appellant acknowledged that on June 5 he made entries on a "Record of Confinement" document concerning one G.M., who had been confined in the Pennsauken Police Department on June 4 and was released from custody at 1:44 a.m. The witness made the last two entries on the form by hand, recording the time when the inmate was observed "sitting/breathing" at 0114 and "released on summons" at 0144. On the video played in the hearing, he is observed "probably filling out the Record of Confinement" at 1:44:39 and agrees that the clock observable on the wall in the video and the time shown on the video monitor itself appear synchronized.

On rebuttal, Chief Coffey testified that he does not recall if he was actually aware of Foster's meeting with the Administrator. He did not recall asking Matt Henkel what it was that Officer Foster wanted to meet with the Administrator about. He did recall having mentioned to Gehring that he believed that a citation to Rule and Regulation 4.1.6 had been overlooked. He acknowledged that he may have been aware that Foster contended that he was being retaliated against. He denied that he had told officers that their GPS records which had been produced in connection with an arbitration matter were produced because of Foster.

The Chief was questioned about patrol logs filed by Officer Cooper for June 4-5, 2014. Cooper had been involved in a car stop for drunk driving and had arrested an individual at 47<sup>th</sup> and Westfield Avenue. The log shows that he listed codes 1036-1038 for the time from 21:55 to 01:23. On the video record, Cooper is seen in HQ during the twenty minutes of time that the Chief viewed from that night's recording, which twenty minutes fell within this lengthy period listed by Cooper for the traffic stop and arrest. Cooper did not record that he was in headquarters during any of that time. Lieutenant Gehring testified that he saw Cooper on that recording and was aware that he was in headquarters for an hour, "maybe two hours." Gehring agreed that there was some time within this period when Cooper had no reason to remain in headquarters. Cooper received a written reprimand for loafing, as did Foster. In regard to the log, Gehring explained that

"it's routine that if an officer is on a job and they come to headquarters that they'll call out on the radio that they're at headquarters. So the supervisor hears it, so dispatcher hears it,

so the other officers hear it. Even though his log doesn't state that he's out at headquarters in relation to that call for service that's how the officers list it."

Gehring did not believe that Cooper's log for this period was "false." He is not sure if he showed it to Captain Connor, but given that Cooper received a written reprimand, "it's possible." Officer Marietta's log for that night had a similar situation involving his being in headquarters for a period when he may have been doing paperwork concerning a burglary call. Based upon a review conducted after questions were raised at the departmental hearing for Officer Foster for the charges here at issue, Marietta received a written reprimand, possibly for loafing. No charge was issued for falsification of the log.

Gehring denied that he took any action about Foster's claim of retaliation after the officer voiced it to him during the July interview, and he denied that he spoke to either Connor or Coffey about it at any time prior to the issuance on November 7, of the "repeated violations" charge.

Matt Henkel testified via telephone with the consent of both parties. He did have a conversation with Foster regarding a meeting with the Township Administrator. When the Chief sent a memo to Henkel asking who Foster wanted to meet with and why, Henkel told the Chief that it was "personal and no one's business." Henkel did not attend the meeting and had no further communication about the subject with either Chief Coffey or Officer Foster.

#### Discussion

Although Chief Coffey's memorandum of June 5 to Internal Affairs discusses his concern about why Officer Foster listed himself as being in HQ from 23:50 p.m. to 01:50 a.m. on June 4-5, 2014, the charges that were filed on August 22, 2014, did not actually address that period of time. Instead, they address the period from 01:50 to 02:20 a.m. on June 5, when, according to the officer's log, he was on patrol in the Highland Park section. As the record demonstrates clearly and as Officer Foster concedes, during that entire time he was not in Highland Park, was not on patrol, was

not within District 6 to which he was assigned, was not in his car, but was instead at headquarters. While it may well be that his two-hour stay there from just before midnight until 1:50 in the morning, time which he listed as being in headquarters, was not justified, and might have been grounds for a written reprimand (as he was initially issued and as other officers were also disciplined), the stakes regarding Officer Foster were raised when Lieutenant Gehring, in the course of looking into Chief Coffey's concerns, which did not extend past 1:50 am, discovered from his review of the video recording that Foster had remained in headquarters until he was seen exiting the rear door at 2:17 a.m., despite his listing himself as having been on patrol from 1:50 onwards to 2:20. That he was not on patrol is not in dispute, and that the filed log is at the very least inaccurate is also not in dispute.

Officer Foster's explanation for this is that he was not purposely attempting to deceive, not trying to cover up for his being in headquarters when he should have been out on patrol. It was all a matter of inaccurate clocks.

According to his log, Officer Foster arrived at headquarters at 23:50 to use the latrine. He then decided to have his dinner, from just after midnight until 12:35 a.m. (0035). He then lists himself as relieving the information officer for one hour, till 01:50. With the exception of a few minutes within these two hours that are not specifically accounted for, Officer Foster lists as his reasons for his presence at headquarters plausible grounds for his being there: a bathroom break, a meal and relief of a fellow officer who was having his own meal. Whether the proper dinner break for the IO officer was a half-hour or one hour is apparently in some dispute, but that is not a significant issue here. Conceding that the Information Officer took about one hour for his meal, this means that Officer Foster can claim that his presence for this two-hour period was justified. If the question was whether he was loafing for some of this time, then he might have a beef about receiving a reprimand that he could not effectively challenge. But that is not the gravamen of the series of charges here. After 1:50 am, the officer has not offered any justification whatsoever for remaining in headquarters until 2:20 am, which he surely did. Thus, in filling out his log, he had no such excuse to cover this half-hour as he had for the two hours before. He either had to leave the time unaccounted for or list himself at headquarters for some reason that he might not be

able to justify, or for no reason at all. Instead of these choices, at least as the log shows, he covered that half-hour by asserting in an official record that he was on patrol in Highland Park, which of course he was not. If he had been fortunate, no one would have ever discovered the truth that the recording revealed. But he was not so lucky. Chief Coffey's memorandum to Internal Affairs is quite specific as to the time frame encompassing the Chief's curiosity about the officer's activities during that particular evening. He makes no mention whatsoever about the time after 1:50 a.m. It is only during Gehring's investigation about the two-hour period that concerned Coffey that Gehring discovered the truth about what happened, and did not happen, from 1:50 until 2:20.

Foster's "inaccurate clock" story does not impress. It simply does not "hang together." His log claims he patrolled Highland Park for thirty minutes, until 2:20 am. The log then lists him at the PUB, a local restaurant, from 2:30 to 2:40, on what was presumably a normal patrol. He did not testify as to where he obtained the 2:30 time from. If we start from the premise that he did conduct a patrol of Highland Park for approximately thirty minutes, as he represents in the log that he did, when did this occur? True, there may well be a difference in the time that the various clocks in the station, in the car, and on the computers show. But the officer was very clear in listing his patrol time as starting at 1:50. We know he actually departed HQ at 2:20, one half-hour later than he claimed. He did not specifically identify which clock he used to obtain the alleged time of the end of his Highland Park patrol, 2:20. If he had actually patrolled Highland Park for about one half-hour, as he claimed in the log, and had actually used such a device to see when the patrol ended, and it actually read 2:20 when he ended the patrol, it would have had to have been about thirty minutes out of time, for if he really only started patrolling at 2:20, and did so for one half-hour, then the actual time would have been about 2:50, not 2:20 as he claimed the "end" clock showed. And his PUB visit would have then started at about 3:00 am, not 2:30 as claimed. As for the starting time, he claims that he used the outside sign, which he knew to be generally inaccurate, to learn the time when he departed the building. If he patrolled for a half-hour, and the clock he used to obtain the end time did show 2:20, then it would have had to read approximately 1:50 when he started the patrol, the same time that the outside clock allegedly showed. That would mean that the outside clock

and the clock used to determine the end time of the patrol were each about one half-hour off, since the "real" time of departure was 2:20. This means that if a half-hour patrol occurred, the outside clock and the "end" clock" would have had to have been, curiously, in sync. Given all of this, I **FIND** that Foster's story is simply not credible. Instead, I am persuaded that he simply left at 2:20 to resume his patrol, that he needed to cover the half-hour of time after the Information Officer returned from dinner, that he did not patrol Highland Park for anywhere near a half-hour, if he did so at all before going to the PUB, and that his entry on the log was knowingly false and intended to deceive. Given this, I **CONCLUDE** that Foster engaged in conduct unbecoming an officer, neglected his assigned duties and failed to perform his assigned duty, failed to accurately and honestly report his activities as required and filed a false report. He is guilty of each charge and therefore violated both the rules and regulations of the Pennsauken Police Department, Article III, Section 2.8; 3.3, 3.6, 4.5 and 4.6., as well as Civil Service regulations that are included in N.J.A.C. 4A:2-2.3.

Foster's contention that he is the victim of retaliation in regard to these charges is wholly unpersuasive. Chief Coffey did not seek to probe into the officer's whereabouts or activities after 1:50 a.m. It was Gehring who discovered the fact that Foster remained in HQ after 1:50 and that the log was not an accurate reflection of what happened after that time. As for the addition of the later Preliminary Notice concerning the "repeated violations" section of the rules and regulations, 4.1.6., this section is not in fact a charge of wrongdoing, but a direction to one establishing the sanction for an officer found to have committed "repeated violations" that such multiple violations "shall be cause for dismissal." It is not at all the case that this section need even be cited in a Preliminary Notice, as it goes to a possible sanction rather than a notice of what the accused is alleged to have done. But to the extent that the Preliminary Notice does include within it a section addressing the sanction sought if the charged person is indeed found to have committed the charged violations(s), its inclusion is proper. Here, the original Preliminary Notice already sought Foster's removal. And, it is noted, neither the Civil Service Commission nor this judge, sitting for the Commission, is bound by the penalty recommendations or frameworks established by appointing authorities, although of course due note and care must be paid to such "guidelines."

There is no basis to conclude that Chief Coffey instigated the set of charges that arose from the facts of what did or did not occur from 1:50 am to 2:20 a.m., nor that he was retaliating against Foster when he merely pointed out the possibility that if Foster was found guilty, Regulation 4.1.6 might well apply. Indeed, in respect to the sanction to be imposed after a determination of guilt, it is not necessary to invoke this provision at all to justify the termination of this officer. Police officers are held to a higher standard of performance and responsibility than almost any other civil servant. Township of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965). Honesty is a fundamental, perhaps the fundamental, requirement for police officers. Records of police activity must be as accurate as possible, and while it is true that time can vary from instrument to instrument and that absolute accuracy as to the time of events cannot always be achieved, purposeful misrepresentation is another thing altogether. The police authorities and the public should not have to employ officers who cannot honestly report their activities. Progressive discipline is not necessarily always a requirement when it comes to such matters, and case law supports the termination of officers who purposely fail to provide honest renderings of their official responsibilities. This can apply even where the officer has no disciplinary record, or one with only limited entries.

[w]e 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 (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. 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 (1982) (considering punishment in license revocation proceeding) (quoting Pell v. Bd. of Educ., 313 N.E.2d 321, 327 (N.Y. 1974)).

[In Matter of John Carter, John Carter v. Township of Bordentown, 191 N.J. 474, 484-85 (2007).]

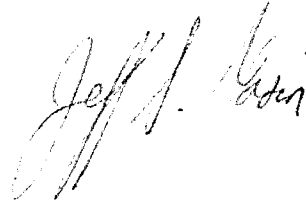
Officer Foster had previously received a number of written reprimands, as detailed in the Stipulation of his prior disciplinary record. He also received a thirty-day

suspension for conduct unbecoming an officer and neglect of duty, now under appeal. Indeed, he received a prior written reprimand for willfully making a false report. I am persuaded that even if he had no disciplinary record, a termination from his position as a law enforcement officer would be in order. Coupled with his prior record and the violations found here, termination is all the more warranted. Therefore, I **CONCLUDE** that Officer Foster shall be terminated from his position as a police officer with the Township of Pennsauken. It is **SO ORDERED**.

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, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



November 23, 2015

DATE

JEFF S. MASIN, ALJ t/a

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

mph



**WITNESSES:**

**For appellant:**

Douglas Foster  
Officer John Nettleton  
Officer Michael DiCamillo  
Officer James Hartnett  
Officer Matthew Henkel

**For respondent:**

Chief John Coffey  
Lieutenant Scott Gehring  
Captain Thomas Connor

**EXHIBITS:**

**Joint Exhibits:**

- J-1 Final Notice of Disciplinary Action, dated May 22, 2015
- J-2 Stipulation as to Disciplinary Record of Appellant
- J-3 Preliminary Notice of Disciplinary Action, dated October 9, 2014
- J-4 Preliminary Notice of Disciplinary Action, dated August 22, 2014

**For appellant:**

- P-1 Not admitted
- P-2 Not admitted
- P-3 Not admitted
- P-4 Computer screen located in the vestibule of HQ
- P-5 MDT computer screen

P-6 Photograph of time clock on Administration & Municipal Court building

**For respondent:**

- R-1 Not admitted
- R-2 Memorandum, dated May 29, 2014
- R-3 Log or Trip Sheet for Officer Foster, June 4-5, 2014
- R-4 Memorandum, Chief Coffey to 12-8 Supervisors, dated June 5, 2014
- R-5 Supervisor Daily Log, Sergeant Harnett, June 4-5, 2014
- R-6 Memorandum, Chief Coffey to All Personnel, dated February 6, 2011
- R-7 Memorandum, Office Foster to Sergeant Wheeler, dated June 6, 2014
- R-8 Reportable Incident Form, dated June 6, 2014
- R-9 IA Complaint Notification Form, dated June 6, 2014
- R-10 Administrative Advisement Form, dated July 2, 2014
- R-11 Investigative Chronology, IA Case #114-25
- R-12 Review Department's Rules and Regulations, July 2, 2014
- R-13 Weingarten Representative Acknowledgement Form, July 2, 2014
- R-14 Transcript of IA Interview of Officer Foster, July 2, 2014
- R-15 Stop Summary Report for June 4-5, 2015
- R-16 Incident Search Result Report for June 4-5, 2014
- R-17 Record of Confinement, June 4-5, 2014
- R-18 Internal Affairs Investigative Report, dated July 29, 2014
- R-19 Memorandum, Captain Connor to Lieutenant Gehring, dated August 18, 2014
- R-20 Reprimand Notice, dated August 7, 2014
- R-21 Memorandum, Chief Coffey to Officer Foster, dated March 6, 2013
- R-22 Reprimand Notice, dated January 13, 2014
- R-23 Written Reprimand, dated August 9, 2011
- R-24 Written Reprimand, dated July 21, 2011
- R-25 Final Notice of Disciplinary Action, dated September 29, 2012
- R-26 Reprimand Notice, dated October 3, 2014
- R-27 Reprimand Notice, dated October 3, 2014
- R-28 Department Rules and Regulations, May 1, 2012
- R-29 Portion of Internal Affairs Policy & Procedures

R-30 Portion of June 10, 2013 transcript of OAL hearing

R-31 SOP, Internal Affairs, December 17, 2013

R-32 Video