

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
JULY 13, 2017



Robert M. Czedz, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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. CSR 09076-16

AGENCY DKT. NO. N/A

**IN THE MATTER OF FELIX RIVERA,
CITY OF MILLVILLE, POLICE DEPARTMENT.**

Michael L. Testa, Esq., for appellant, Felix Rivera (Testa, Heck, Testa & White, attorneys)

Stephen D. Barse, Esq., for respondent, City of Millville Police Department (Gruccio, Pepper, DeSanto & Ruth, attorneys)

Record Closed: April 11, 2017

Decided: May 26, 2017

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE

City of Millville Police Officer, Felix Rivera, (appellant) appeals the decision of the City of Millville Police Department (respondent, City,) to remove him from employment. A Preliminary Notice of Disciplinary Action, (PNDA) dated June 19, 2015, seeks the removal of appellant based on the following charges: N.J.A.C. 4A:2-2.3(a)1—Incompetency, Inefficiency, or Failure 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; N.J.A.C. 4A:2-2.3(a)12— Other Sufficient Cause; Millville Police Department (MPD) Rules & Regulations 3.3.2

Oath of Office; 3.3.6 High Ethical Standards; 4.1.1 Performance of Duty; 4.1.3 Obedience to Law & Rules; 4.1.8 Compromising Criminal Cases; MPD General Orders III A1(a) General Conduct; III A2(a) Conduct Unbecoming; and III A3(c) Accountability, Responsibility and Discipline. After a departmental hearing, charges against appellant were sustained and incorporated into a Final Notice of Disciplinary Action (FNDA) 31-C (J-1) with a proposed penalty of removal from employment. The FDNA also sustained charges against appellant for violating MPD Rules & Regulations 4.3.3 Inaccurate/ False Report; 4.12.6 Truthfulness and General Orders 4-78 Evidence.

PROCEDURAL HISTORY

Appellant appealed his removal to the Office of Administrative Law (OAL), where it was received on June 17, 2016. Appellant waived the 180-day period for completion of the case on September 26, 2016. The hearing in this matter was held on January 17, 2017, February 3, 2017 and February 6, 2017. The parties agreed to file their briefs with the court on April 10, 2017, and the record closed on April 11, 2017.

FACTUAL DISCUSSION

The respondent alleges that in June 2015, the City filed disciplinary charges against appellant seeking his removal from employment for violations of Civil Service Regulations, Rules and Regulations and General Orders of the City's Police Department. Appellant was one of several city police officers who were disciplined as a result of what respondent summarizes as a failure to perform the job responsibilities that was discovered initially by an investigation by the Cumberland County Prosecutor's Office ("CCPO"). The City's Internal Affairs (IA) department conducted its own investigation and ultimately issued the charges that resulted in the termination of appellant.

The investigation of the various officers was initiated by a complaint filed by another Millville police officer alleging that certain Millville police officers were not conducting criminal investigations properly and was closing cases before investigations

were completed. Upon learning of the lawsuit, Millville Police Captain, Matteo Rabbi, investigated the allegations and then referred the matter to the CCPO, concerned that criminal activity may have taken place. Ultimately, after an investigation that lasted in excess of one year, the CCPO referred the matter back to the City to be handled administratively. CCPO Special Agent, Ron Cuff, led that investigation. During his investigation, Agent Cuff initially investigated thirty-one cases that had been identified by one officer as not having been properly investigated and were improperly closed out. Agent Cuff decided that he should examine all cases handled by the MPD Detective Bureau (DB) during the two-year period of 2012 and 2013. Appellant served in the DB during that time period and Agent Cuff reviewed all of the cases assigned to him during that time period. Agent Cuff prepared spread sheets listing cases assigned to each officer and issuing findings about the investigations conducted.

Upon receipt of the CCPO declination letter in May 2015, Sergeant Brian Starcher (Starcher) conducted an IA investigation for the City. Starcher testified that the CCPO declination letter identified seven or eight officers who should be subject to administrative investigation and that his investigation included reviewing all cases handled by the DB during the period of 2012 - 2013. Starcher utilized the spreadsheets prepared by Agent Cuff to identify the cases he investigated for each officer. After considering the evidence gathered during the investigation, the City issued and served appellant with the June 15, 2015, PNDA.

Appellant asserts that the PNDA fails to set forth any facts supporting the allegations of an inaccurate or false report. The attachment to the PNDA merely sets forth the various sections alleged to have been violated by appellant without any specific factual basis. The attachment merely sets forth four case numbers and the City Rules and Regulations alleged to have been violated by appellant regarding inaccurate/false reports and truthfulness. Those case numbers are 12-06241 (R-8), 13-06797 (R-19), 13-07684 (R-20), and 13-23873 (R-22). Appellant asserts that the remaining charges regarding inaccurate, false or untruthful reports should be dismissed for the failure on the part of the employing agency to set forth the allegations with specificity.

TESTIMONY

Detective Brian Starcher testified on behalf of the City. Starcher testified that he relied on the spreadsheet prepared by Agent Cuff while conducting his investigation, but also conducted his own investigation and reached his own conclusions and made his own recommendations. Starcher authenticated and played the recording of his IA interview of appellant, which he conducted on May 26, 2015. (R-3.) That interview formed the basis of the charges filed against appellant. Appellant was provided with an opportunity to review the reports in each of the cases assigned to him and was questioned about deficiencies in his investigation of each case. Appellant stated in his IA interview that he was fully aware that a detective's job is to investigate cases with the goal of solving crimes. (R-3; 6:25.)¹ He added that if there are witnesses, it is his job to follow-up and interview them. Appellant stated that he had the ability to go into the system and assign cases to himself. (R-3; 7:50-9:00.) He could and occasionally did go into LawSoft and assign cases to himself. (R-3; 9:30.) Appellant's statement revealed that at one point, Sergeant Redden asked the detectives to close inactive cases out so that the department could get an accurate count regarding the number of cases being assigned to each individual detective. He stated that investigations are never really closed until someone has been charged, stating that they may run out of leads but they are never really closed. (R-3; 10:50.) When Starcher asked about the many cases that were closed during the week of June 24, 2013, appellant indicated that it was probably the same period of time that Sergeant Redden asked the detectives to close out inactive cases. He explained that there may be times when he may not want to let a person know that he or she is under investigation (R-3; 12:45) but that at some point he should try to interview the accused. (R-3; 13:45.) When questioned regarding meetings with supervisors, appellant indicated that they were few and far between and that regular meetings rarely happened due to the heavy caseload. According to Starcher, these meetings are important to direct and guide detectives in their investigations, and to help manage detectives' caseloads. New guidelines on how cases are assigned have been developed as a result of this investigation. Previously,

¹ This reference is to the approximate time during appellant's IA interview when each statement was made, not to the time during the OAL hearing.

there was no set procedure to notify a detective when he was assigned a new case. Sometimes it was just done orally or with a sticky note left on their desk. Now, there is a formal written procedure to notify detectives of new assignments.

On cross-examination, Starcher testified that there were four or five working detectives during the time period covered by this case and that the majority, if not all, said they were overworked. The job of the superior officers was to review reports, not to redo investigations. Starcher also testified that Sergeant. Redden told detectives to close cases that could not be solved and for which there was no more work to be done. Initial reports are typically prepared by patrol officers although occasionally a detective will complete an Initial Investigation Report. Starcher explained that reports should contain all information generated during the investigation, including unsuccessful attempts to contact victims, those accused, and witnesses should be documented, including names, dates, addresses, phone numbers, etc. Starcher pointed out that in many of appellant's reports there was no follow-up investigation. The inclusion of this information is important for anyone else working on the case and for evidential purposes.

Starcher was questioned on cross-examination about an e-mail he sent to the City Business Administrator, Susan Robostello, on January 15, 2016, after he was notified that he was being transferred to the DB from IA. (P-2.) When challenged that his e-mail indicates that he did not have the training to investigate detectives because he had not had training for several years, Starcher explained that he was primarily seeking updates on case law. In his new position in the DB Starcher has found that he does not need to meet with detectives when he assigns cases but he chooses to do so to help him learn. If he rejects a report he explains his reasons to the officer whose report was rejected. He does not have regular meetings with detectives but will have one-on-one meetings.

Of the ninety-four cases assigned to appellant during the 2012-2013 time period, the City alleges that he erred in nineteen of those cases. Each of those cases will be addressed individually:

Case No. 12-01302 (R-4)

This case involved an alleged theft that occurred on January 12, 2012. The investigating officer was Richard Kott, Badge No. 104. Officer Kott's report indicates that Detectives Guy and Rivera arrived at the scene and processed it. Appellant recalls that he processed the scene and did some fingerprinting but he did not document his actions. (R-3; 20:15.) He stated that he should have documented what he processed. (R-3; 21:40.) After initially processing the scene, appellant never went back to speak to any of the victims. The victim of the theft indicated that a J.P.C. assisted his mother with cleaning up a lot of clutter that had been built up over the years in the residence. Officer Kott's report indicates that he was unable to locate J.P.C.

A Supplemental Report by appellant on March 29, 2012, revealed that no information was developed in reference to J.P.C. stealing the items from the residence, and the case would now be closed. He indicated that if any new information was developed the case would be reopened at that time. Appellant admitted in the course of his interview that in hindsight he should have interviewed J.P.C.

Case No. 12-02415 (R-5)

This case involved an initial report of a burglary at the Wal-Mart store. It was investigated by Officer John Redden, III, Badge No. 102, on January 23, 2012. Appellant also processed the scene for potential fingerprints. The Loss Prevention Officer provided Officer Redden with a copy of surveillance video. Attached to the video was a photo of the suspect's vehicle. Appellant's Supplemental Report, dated January 31, 2012, indicates that he did in fact process the scene.

His report indicates that he recovered a set of eighteen-inch bolt cutters to be fingerprinted at a later date. The bolt cutters and video were taken by appellant but never put in evidence by him, nor was the existence of this evidence documented by appellant. Appellant said he would consider the video and bolt cutters evidence but

there was no documentation placing them in evidence and he has no idea where those items are. (R-3; 30:00.) He added that he did not know why the report did not show the evidence and that there was no reason for him not to put the video and bolt cutters in evidence. He was unable to get any prints from the bolt cutters. Appellant's report indicates that he was unable to identify any suspects and was waiting for a Wal-Mart's representative to provide him with a detailed list of stolen items. Supplemental Report B written by appellant indicates the case would be closed as of March 29, 2012, as no suspects had been identified and no new leads developed. No one from the Wal-Mart store ever provided a list to the appellant regarding the stolen items. Appellant made no other attempts to identify a suspect.

Case No. 12-05014 (R-6)

This case involved a burglary alleged to have occurred on February 18, 2012, at XXX Vine Road. Officer Joseph LaBonne, Badge No. 154, was the investigating officer and was unable to locate any fingerprints at the scene. Appellant indicated during the course of his interview that he did not recall the case at all. He further stated that, at that time, he was "kind of new" to the DB.

Appellant prepared a report on March 29, 2012. His report indicated that there was no information or suspects developed in the case. He did not check the neighborhood or speak to neighbors or the victims. Appellant did not go to the scene of the alleged burglary. Appellant stated that as a practice he did not always document when he processed a scene if it did not turn up any evidence or leads. (R-3; 37:05.) Appellant admitted he should have done more to solve this case.

Case No. 12-05949 (R-7)

This case was investigated by Officer Antonio Delfinado, Badge No. 127. This case involved a burglary at XXXX Louis Drive. Officer Delfinado's report indicates that

appellant processed the scene and the evidence report in this case verifies this and appellant placed fingerprint examination envelopes into evidence.

Appellant's Supplemental Report A indicates that he spoke to a neighbor about two suspicious looking males the neighbor had seen in the area. However, the neighbor could only provide a vague description of the suspects. Appellant's Supplemental Report B indicates that several stolen items were recovered in another matter, Case No. 12-07102, and that the alleged victim went to the station and reviewed a booklet of the stolen items recovered in Case No. 12-07102. The alleged victim was unable to identify any of the items as belonging to him. An arrest was made in connection with Case No. 12-07102 and appellant believed it was the same suspect who committed both burglaries. The alleged victim at that time was unable to identify any of the recovered items as belonging to him. Appellant said that he identified a suspect in this case but he never interviewed the suspect because the suspect was not willing to talk. He did not document this in any of his reports and conceded that he should have. The incident occurred on February 27, 2012, and appellant closed the case on April 11, 2012. Starcher testified that appellant should have talked to neighbors, checked the neighborhood for cameras, attempted to interview suspects and checked with pawn shops or second hand stores to locate the stolen property.

Case No. 12-06241 (R-8)

This case involved burglary and theft of approximately \$6,000. The incident occurred on March 1, 2012, and appellant closed the case on April 11, 2012. Appellant's report in this case states that he spoke with the victim and asked her to come in to identify suspect. He claimed during his IA interview that the victims would not identify suspects but he did not document this. (R-3; 48:25.) The victim in this case alleged the appellant never contacted her. Appellant stated that this is false (R-3; 49:10) but he did not document his efforts to contact the victim. He acknowledged during his IA that he should have documented that the victim refused to come in to the station. (R-3; 51:50.)

Appellant prepared a Supplemental Investigation Report (R-8; 12-06241) in which he claimed that on March 9, 2012, a large amount of stolen items were recovered in another case. The report indicated that he contacted the victim but she never came to the station. As of April 11, 2012, appellant had "not been able to contact her" and the case was closed. The report does not state that the victim refused to identify suspects (as he claimed during his IA interview) or that she refused to come in when he contacted her (as he claimed during his IA interview). Appellant stated in his report that he had no other leads and was closing the case but the Investigation Report issued by the initial responding officer identified J.L.'s ex-boyfriend by name as a possible suspect. Appellant made no mention of any efforts to locate or contact this individual. Appellant also stated in his report that he believed that the suspects from another case were involved in this burglary but he does not say why and he did not document who they were.

The victim in this case, J.L., testified before this tribunal that the value of the stolen items was significantly higher than what she initially told Officer Delfinado. Rather than the \$6,000 value she initially reported, she now believes the jewelry was worth \$45,000. She also said that \$300 in cash was missing, but she did not think to check for the cash when the house was burglarized. J.L. called for the investigating officer several times, but he was not available when she called. She denied that anyone from the police department ever called her.

Case No. 12-07074 (R-9)

This case involved burglary and theft of approximately \$10,000 worth of copper wire on March 9, 2012. Appellant remembered this case. There was no documentation that he checked the recycling facilities in the area but he contends that he did. Appellant identified suspects at the beginning of his investigation but there is no indication that he attempted to interview any suspects.

Starcher testified that appellant should have looked further into the other cases he referenced in his report. Starcher also testified that dates of contacts should always

be included in reports along with the method of contact. It was not clear who appellant interviewed during field interviews and that his report should have listed each person's name and address as well as the date and time of the interviews.

Appellant set up two MPD owned cameras near the entrance to the fence of the Verizon property which captured two white males and one white female walking toward the Verizon property. On April 25, 2012, appellant indicates that as of that date the subjects had not been identified but there is no evidence that he made any attempt to identify them.

Case No. 12-19675 (R-10)

This case involved aggravated assault, unlawful possession of weapons, and possession of a weapon for unlawful purpose. Appellant denied any recollection of this case and said he did not know the victim. (R-3; 101:40.) He did not remember doing a report for this incident and the only evidence he submitted was an interview on DVD. (R-3; 102:00.) The last page of the Evidence Report indicates FR2-FR4 was placed into the Evidence Locker by appellant. That Evidence Report indicates that there was an interview of the victim B.W. by appellant. He candidly admitted during the course of his IA interview that he did not remember why he had not actually prepared a supplemental report.

Case No. 12-20237 (R-11)

This case involved aggravated assault and unlawful possession of a weapon. The victim was shot multiple times. Appellant recalled this case but never identified a suspect although someone gave him the names of some suspects. (R-3; 1:08:00.) There is no written record of what additional steps were taken. Appellant stopped working on this case nine days after the incident with no evidence that the investigation continued.

Appellant did prepare a report, Supplement B. His report indicates that he took nine photographs of the area and copied them onto a CD-R and entered them into evidence. He goes on in his report to indicate the interviews that took place with the neighbors and indicates that on Monday, July 9, 2012, he spoke to D.S., the victim's brother, who told him he did not know who had shot his brother.

Case No. 12-20319 (R-12)

This case involved a burglary of \$11,900. worth of jewelry. Appellant remembered being assigned this case but did not document the efforts he made to solve this case.

Starcher testified that appellant had leads in Officer Bojaciuk's report that he could have pursued but that he never contacted, which included two persons of interest or persons to speak with as possible suspects. He added that appellant also could have spoken with neighbors and canvassed the neighborhood for video cameras. Appellant never documented whether he checked with pawn shops.

On cross-examination Starcher maintained that even though appellant arrested a person for receiving stolen property he should have tried to identify the person who actually conducted the burglary.

Case No. 12-23625 (R-13)

This case involved aggravated assault and domestic violence wherein the victim was a pregnant female. Appellant's report indicates that the unborn baby died. Agent Cuff's report confirms that there was no record that appellant attempted to contact the CCPO. Appellant claimed that the victim was uncooperative and closed the case.

Starcher testified that any time there is a death it must be reported to the CCPO. Appellant, according to Starcher, could have spoken to the suspect in an effort to investigate this case and even if the victims did not want police involvement appellant should have contacted the CCPO.

Case No. 12-28256 (R-14)

This case involved the theft of property from Verizon at XX Reese Road. There were nine other cases wherein appellant also investigated thefts from Verizon. On September 7, 2012, he responded to American Recycling where he observed several large rolls of cable. A representative from American Recycling provided appellant with two photos of J.A. from the weigh station from American Iron which showed the wiring being sold to them. He confirmed with Verizon that the property belonged to them and had a value of approximately \$300.00.

His report indicates that on October 7, 2012, he was able to locate and interview J.A. There was no indication in the reports if anyone was arrested for the underlying theft, although appellant charged J.A. with receiving stolen property and she identified by name the person who gave her the stolen property.

Case No. 13-00859 (R-15)

This case commenced on January 9, 2013, when Officer Michael Phillips, Badge No. 147, was dispatched to XXX Lance Court for a reported burglary in progress. Officer Phillips' report indicates that the homeowner was not able to provide neither any description of the accused nor any additional information about the van she saw outside the residence. His report indicates that Detectives Rivera, Guy and Miller arrived at the scene as per Sergeant Duffield's request. The homeowner advised the detectives that she was missing \$400 in United States currency from her pocketbook. Appellant said that he did not remember this case being assigned to him so he did not prepare any reports. He did remember going out to meet with the victims. Agent Cuff's spreadsheet confirmed that this case was assigned to appellant and that victim said that he attempted to contact appellant but that he never heard from him. Appellant placed in evidence e-mails exchanged between him and the victim. (P-1.) In one response, appellant writes "We are still working on several burglaries (including yours) in which a group of people were involved with. It will take some time to decipher if your house was

included in the burglaries committed [sic] by these individuals. We will contact you once we have more information."

Case No. 13-00889 (R-16)

This case was investigated by Officer Douglas Wilson, Badge No. 135, on January 9, 2013, regarding shots being fired. An individual was shot in the foot. Officer Wilson indicates that Officer Mooney was dispatched to the Regional Medical Center (RMC) to speak to the alleged victim. Officer Mooney's report, Supplement A, indicates that she did go to RMC to speak to the victim. The victim stated the accused was a black male wearing all dark clothing. He was tall and thin. He stated that he really did not get a good look at the accused.

Appellant prepared Supplement D. In addition to receiving five photographs of the victim's right foot, which were placed into evidence, appellant also went to Cooper Hospital to obtain a recorded statement from the victim. Appellant's report indicates that the victim spoke of other subjects involved in the incident. He identifies the subject as S1 and S2. S2 is identified in the report as being the subject who shot the victim. No leads regarding the suspects were provided to appellant.

Appellant remembered going to the scene and that there were several people with whom he should have spoken but did not. (R-3; 1:42:50.) He did not document any of these facts for the benefit of anyone else who might work on the case. Oddly, he admitted that he closed out the case about a month after it was opened but that he did not know why he did. (R-3; 1:43:55.)

Starcher testified that five reports were filed in this case, with numerous names mentioned in multiple reports who appellant could have tried to interview. He also could have checked with neighbors and canvass the neighborhood for cameras. He added that there was no investigation of this case after February 19, 2013, even though the incident occurred on January 9, 2013, slightly more than a month earlier.

(Case No. 13-03501 (R-17))

This case involved burglary, criminal trespass, and criminal mischief, with guns and money taken, and possibly a TV. Appellant did not recall anything about this case but he closed the case on May 21, 2013, slightly more than three months after the incident. He has no idea why the case was closed but no leads were developed.

Case No. 13-04887 (R-18)

This case involved an aggravated assault, possession of weapons for unlawful purpose, and unlawful possession of weapons that occurred on February 16, 2013, with a gunshot having entered an assisted living facility and lodged in a wall. Three police officers, in addition to appellant, prepared reports containing their initial efforts to gather information and solve this case. Appellant issued a report stating that he had not "developed any leads on this case" but did not document any efforts he made to identify leads and closing the case on May 21, 2013. Appellant did not recall working on this case during his IA interview.

Case No. 13-06797 (R-19)

This case involved robbery, aggravated assault, and theft. The victim in this case was transported to RMC with several broken bones in his face. Appellant prepared a Supplemental Report in this case but did not remember preparing it in his IA. He specifically remembered going to the victim's house to speak with the victim at his home on March 7, 2013, to ask him to look at a photo array however the victim was still in the hospital at that time, having been transferred from a local hospital to Cooper University Hospital Medical Center and was not released until four days later on March 11, 2013. Appellant's report indicates that as of June 24, 2013, when he closed the case as he had not heard from the victim even though he "made several attempts to contact him with negative results."

Case No. 13-07684 (R-20)

This case involved robbery, aggravated assault, and shots fired. Appellant recalled this case and indicated that he tried to contact one witness but he had moved to Philadelphia. He claimed he spoke with witnesses but did not document any attempts to solve the case. Page 3 of Officer Scott's report states that a surveillance video was turned over to appellant but there was no evidence log or chain of custody submitted by appellant indicating that the video was placed in evidence. Appellant indicated that there were no leads however Starcher testified that there was evidence that appellant should have reviewed. Appellant closed the case on June 24, 2013, stating that he had not developed any leads. This was the same week that the detectives were told to close inactive cases so that an accurate account could be determined regarding the assignment of cases.

Case No. 13-20755 (R-21)

Officer Michael Parsons, Badge No. 158, reports that on Sunday, June 30, 2013, he was dispatched to Oak View Apartments, Apt. XXX for the report of a gunshot victim. He indicates that one of the victims, E.Y., was very irate and being uncooperative. Officer Parsons's interview of several other persons in the area revealed no relevant or helpful information. Appellant's report, Supplement D, indicates that he made several attempts to contact E.Y. with negative results. He lists the telephone number that he called and indicates there was no answering machine. The other victim had given false contact information to the police and could not be located. Appellant reported that he "was advised the address for him [victim, D.C.] has been vacant for several months" but he did not state who advised him of this or if he attempted to confirm that the address was false. That report was prepared on July 15, 2013, and the case was closed by appellant on September 11, 2013. Appellant did not interview anyone on this case, including any neighbors.

Case #13-23873 (R-22)

This case involved burglary and theft which occurred on July 24, 2013. Appellant did not recall this case. According to his report he did not speak to the victim.

The report indicates that he checked receipts at We Buy Gold and M & M Jewelry for the missing items. The Investigation Report identifies the missing jewelry as gold hoop earrings and a gold necklace.

According to Officer Cuff's spreadsheet (R-2), the victim said she never spoke with a detective and she could not understand how he could have checked with a pawn shop because she never provided a description of her jewelry. The case was closed by appellant on October 14, 2013.

Special Agent Ronald Cuff from the CCPO also testified. He spent a year investigating all of the cases handled by the MPD DB during the 2012-2013 time period. He reviewed several hundred cases. As a result of his investigation, he sustained charges against every detective in the DB. He found that there were no written rules, regulations, or SOPs regarding case assignment and management. He also identified problems with LawSoft and that detectives did not always know when a case was assigned to them.

FINDINGS OF FACT

In order to resolve the inconsistencies in the witness testimony, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having considered the testimonial and documentary evidence offered by the parties, I deem that the testimony offered by all of the witnesses to be credible. Although J.L. changed the amount of what was stolen from her residence from \$6,000 to \$45,000, I do not deem that this makes her testimony less credible. She did not make an insurance

claim for reasons that are her own so there would be no reason for her to be untruthful. Therefore, I **FIND** as **FACT** that appellant did not speak to her as he reported in his report. (R-8.) Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** the following for the individual investigations:

Case No. 12-01302 (R-4)

Appellant processed the scene but did not document fingerprinting.
Appellant did not speak to suspects, neighbors or check for cameras in the area.

Case No. 12-02415 (R-5)

Appellant reviewed surveillance video and dusted bolt cutters but did not log either the video or the bolt cutters into evidence.
Appellant does not know why he did not log the items into evidence.
Appellant made no other attempt to identify a suspect.

Case No. 12-05014 (R-6)

Appellant does not recall this case; he did not check the neighborhood, go to the scene or speak to victims.
The incident occurred on February 18, 2012, and closed on March 29, 2012, because appellant did not have any leads.

Case No. 12-05949 (R-7)

A suspect was identified but appellant did not document any attempts to speak to the suspect.

Case No. 12-06241(R-8)

Appellant did not report how he attempted to contact the victim.
Appellant suspected a suspect in another case to be involved with this robbery but did not speak to that individual.
The incident occurred on March 1, 2012, and was closed by appellant on April 11, 2012.

Case No. 12-07074 (R-9)

There is no documentation that appellant went to recycling centers in the area to look for the copper wire stolen from Verizon.

Appellant took no further steps to solve this case after April 25, 2012.

The theft occurred on April 9, 2012.

Case No. 12-19675 (R-10)

Appellant does not recall the case, does not know the victim and does not remember preparing a report.

Appellant did not document steps taken to follow up with a suspect identified by the victim.

Case No. 12-20237(R-11)

A man was shot in the back and names of suspects were given.

Appellant does not recall any attempt to follow up or locate the suspects.

Case No. 12-20319 (R-12)

Jewelry was stolen from a residence, appellant arrested a woman that sold the stolen jewelry but did not attempt to identify a suspect that the arrested woman claimed gave her the stolen merchandise.

Case No. 12-23625(R-13)

Incident involving fetal demise occurred on July 29, 2012, and was closed by appellant on August 17, 2012.

Appellant did not document any attempt to contact CCPO.

Case No. 12-28256 (R-14)

Communication cables were stolen from Verizon; a suspect was identified but appellant made no attempt to locate the suspect and did not follow up with the victim.

The suspect was linked to nine other cases.

Case No. 13-00859 (R-15)

Appellant does not recall this case although it was assigned to him and he did report to the scene.

Appellant did not generate a report and did not document any work performed on the case.

Case No. 13-00889 (R-16)

The Incident involving a shooting occurred on January 9, 2013, and was closed by appellant on February 19, 2013.

Appellant made no attempt to interview neighbors, or identify two suspects and made no follow up with the victim.

Case No. 13-03501(R-17)

The incident occurred on February 3, 2013, and closed by appellant on May 21, 2013, because no leads were discovered.

Appellant does not recall this case.

A knife was recovered but it was not examined for fingerprints.

Appellant did not follow up with this investigation or make any efforts to solve the case.

Case No. 13-04887 (R-18)

The incident occurred on February 16, 2013, and closed by appellant on May 21, 2013, because no leads were discovered.

No leads were developed and appellant did not follow up with this investigation or make any efforts to solve the case.

Case No. 13-06796 (R-19)

The incident occurred on March 6, 2013, and closed by appellant on June 24, 2013.

Appellant falsely reported that he contacted the victim at his residence on March 7, 2013, but the victim was not released from the hospital until March 11, 2013. A cell phone was recovered and placed in evidence but was not investigated. Appellant did not attempt to contact a suspect or a witness that were identified. Appellant did not follow up with this investigation or make any efforts to solve the case.

Case No. 13-07684 (R-20)

An individual was shot at a gas station during a robbery on March 14, 2013. Appellant closed the case on June 24, 2013, with no indication he made any attempt to solve the case. Appellant did not interview witnesses or return call of involved parties that attempted to contact him. Appellant closed the case asserting that he was unable to develop any leads.

Case No. 13-20755 (R-21)

The incident occurred on June 30, 2013, and closed by appellant on September 11, 2013. Appellant made several attempts to contact one victim of a shooting but made no attempts to obtain correct information of the other victim. Items placed into evidence were not investigated and there was no activity between appellant's initial report and his next report closing the case.

Case No. 13-23873 (R-22)

The incident occurred on July 25, 2013, and closed by appellant on October 14, 2013. Stolen Jewelry was vaguely described as hoop earrings and a gold necklace. Appellant's report indicates that he checked the receipts of two pawn stores for the stolen items but does not provide detail as to when, if he spoke to anyone or if what was inspected. Appellant did not follow up with the victim.

LEGAL ANALYSIS AND CONCLUSION

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

The City issued and served appellant with a PNDA charging him with the following:

Title 4A

4A:2-2.3(a)1	Incompetency, Inefficiency, or failure to perform duties
4A:2-2.3(a)6	Conduct unbecoming a public employee
4A:2-2.3(a)7	Neglect of Duty
4A:2-2.3(a)12	Other Sufficient Cause

Rules & Regs

3.3.2	Oath of Office
3.3.6	High Ethical Standards
4.1.1	Performance of Duty
4.1.3	Obedience to Law & Rules
4.1.8	Compromising Criminal Cases

General Orders

- 2-99 III A1(a) General Conduct
- 2-99 III A2(a) Conduct Unbecoming an Officer
- 2-99 III A3(c) Accountability, Responsibility and Discipline

The FNDA listed nineteen cases assigned to appellant in which the above charges were sustained. (R-4 through R-22)

Of the nineteen cases to which the above charges applied, four of those cases also were identified in the FNDA as sustained charges of Inaccurate/False Reports and/or Untruthfulness. (R-8; R-19; R-20; R-22)

Rules & Regs

- 4.3.3 Inaccurate/False Report
- 4.12.6 Truthfulness

REPORTS. No employee shall knowingly falsify any official report or enter or cause to be entered any inaccurate, false or improper information on records of the department

TRUTHFULNESS. Employees are required to be truthful at all times whether under oath or not.

Finally, the FNDA identified one charge to which General Order 4-78, Evidence, applied. (R-5)

Appellant argues that the FDNA alleges that at various times during the years 2012 and 2013 appellant failed to adequately perform his duties as a police officer. The specification contained in J-1 alleges that:

On various dates throughout the year 2012 and 2013, Officer Felix Rivera was found to have wrongly and improperly closed out investigations assigned to him and also found to have improperly handled investigations, which are identified below, by neglecting to follow up on these crimes in order to

solve same. Det. Rivera failed to conduct appropriate investigations on numerous cases and prepared inadequate reports on the following cases identified below. Furthermore, Officer Felix Rivera was untruthful and filed inaccurate, false or improper information on records of the department in the cases identified below. Furthermore, Det. Rivera failed to gather, or ignored evidence in gathered in the criminal cases identified below.

The second page of J-1 merely sets forth case numbers and the general sections of Title 4A, The Rules and Regulations of the City and the General Orders of the City. Appellant asserts that there are no factual allegations contained on the attachment setting forth with specificity what he is alleged to have done improperly.

In In the Matter of Benjamin Ortega, CSC Docket No. 2012-3621, OAL Docket No. CSR 8216-12 (2013), it was held that even though the specifications in that case consisted of a vague multipage narrative, the charges would be upheld in light of the evidence presented by the appointing authority at the hearing, which made evident what the actual allegations were. Appellant was provided with multiple opportunities during his IA interview to explain his actions in each of the nineteen cases. The appointing authority further made it evident at the hearing beginning December 2, 2015, before Hearing Officer, Robert Verry, what the specific allegations were. Finally, I **CONCLUDE** that the appointing authority, through testimony and evidence presented during this hearing has adequately specified the actions for which he is being charged for each of the nineteen cases outlined in the FNDA.

Under N.J.A.C. 4A:2-2.3(a) (1), an employee may be subjected to major discipline for “incompetency, inefficiency, or failure to perform duties.” Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency’s judgment. See, In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old’s face was terminated, despite lack of any prior discipline).

“There is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (Note: Gaines

had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

“In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change.” Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a County treasurer who could not balance the books, after the auditors tried three times to show him how.)

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that “[t]he [MSB's] application of progressive discipline in this context is misplaced and contrary to the public interest.” The court determined that Klusaritz's prior record is “of no moment” because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

There is no definition in the administrative code of the term “inefficiency,” and therefore, it has been left to interpretation.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

The fundamental concept that one should be able to perform the duties of the position is stated in Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), which happens to be a probationary period case involving a nurse:

Manifestly, the purpose of the probationary period is to further test a probationer's qualifications. Neither the Legislature nor the Commission has given the courts any guidance in determining the extent of assistance or orientation which a probationer must

receive. Undoubtedly her duties must be explained to her and she must be given reasonable opportunity to perform the duties expected of her. But this does not mean she is entitled to on-the-job training in the manner of performing her duties. This is what she must be qualified for—the proper performance of her duties as outlined by the appointing authority.

In the present matter, the record reflects that appellant failed to perform several of his duties, specifically involving how to properly conduct an investigation as a detective. He clearly demonstrated an absence of judgment in a sensitive position requiring public trust in the agency's judgment. In several of the cases analyzed above, appellant admits that he should have done a better job and only provides lack of experience or heavy case load as a rationale. Accordingly, I **CONCLUDE** that the charges of a violation of N.J.A.C. 4A:2-2.3(a) (1) (incompetence, inefficiency, failure to perform duties) must be and is hereby **SUSTAINED** for each of the nineteen cases in question.

Respondent also sustained charges against appellant for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a) (6). To the extent that appellant is charged with violation of Rules and Regulations 3.3.6, which addresses High Ethical Standards, consideration of such violation will be addressed in concert with the current analysis.

“Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that “adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services.” Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, supra, 152 N.J. at 555 [quoting In re Zeber, 156 A.2d 821, 825 (1959)]. Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)]. Suspension or

removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

In the present matter, the record reflects that appellant failed to perform duties required of him in his handling of each of the nineteen cases. In many of these cases, appellant wrote reports without making any effort to investigate those cases or in which he wrote a line "I could not identify any leads" or similar words which gave the false impression that he actually investigated those cases. Appellant understood how to perform his job responsibilities as he acknowledged at the outset of his IA interview when he described the duties and responsibilities of a detective and personally failed to perform those job responsibilities. Accordingly, I **CONCLUDE** that the appointing authority has proven, by a preponderance of credible evidence, that the charge of N.J.A.C. 4A:2-2.3(a) 6 (conduct unbecoming a public employee), and Rules and Regulations 3.3.6, should be and are hereby **SUSTAINED**. I further **CONCLUDE** that appellant violated Rules and Regulations 4.1.8. by failing to properly investigate these criminal cases appellant interfered with the proper administration of criminal justice and potentially left criminals on the street to commit additional crimes.

Appellant has also been charged with Rules and Regulations 4.3.3, Inaccurate/False Report and 4.12.6 Truthfulness for the following four cases 12-06241 (R-8), 13-06797 (R-19), 13-07684 (R-20) and 13-23873 (R-22). Those Rules and Regulations state:

REPORTS. No employee shall knowingly falsify any official report or enter or cause to be entered any inaccurate, false or improper information on records of the department

TRUTHFULNESS. Employees are required to be truthful at all times whether under oath or not.

In one case, appellant states that he spoke with the victim about coming into the station to review evidence but the victim denied this in her testimony before this tribunal. (R-8.) In another case, he claimed to have interviewed a victim at his house the day after he was severely injured but the victim was still in the hospital at the time.

(R-19; R-19A.) In a third case, he asserted that he attempted to develop leads in a case when in fact he did not follow leads provided by other investigating officers. (R-20.) In the fourth case, appellant issued a two (2) line report in which he claimed he did not develop any leads and closed a case. (R-22.) Appellant only provided a generic description of the incident and his report does not state if he met with the victim. Without documentation to the contrary appellant's lack of specificity in his report leads a reader to presume that he did not attempt to develop any leads. Furthermore, appellant's untruthfulness and false report create issues whereby he cannot testify in any criminal court without a prosecutorial disclosure of his "Brady Issue," thereby, reducing his ability to serve as a police officer. This clearly constitutes behavior which could adversely affect the morale of the facility and undermine public respect in the services provided.

Respondent also sustained charges against appellant for neglect of duty, N.J.A.C. 4A:2-2.3(a)(7) for each of the nineteen cases. To the extent that appellant is charged with violation of Rules and Regulations 4.1.1, which addresses Performance of Duty, consideration of such violation will be addressed in concert with the current analysis. "Neglect of duty" has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the present matter, the record reflects that appellant failed to follow leads, did not interview witnesses, victims or suspects and failed to complete his investigation before closing cases. I **CONCLUDE** that this action constituted omissions of required duties, and

therefore, I **CONCLUDE** that the appointing authority has proven, by a preponderance of credible evidence, that the charge of N.J.A.C. 4A:2-2.3(a)(7) - Neglect of Duty, Rules and Regulations 4.1.1 should be and is hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause. Specifically, appellant is charged with violations of MPD Rules & Regulations 3.3.2 Oath of Office; 3.3.6 High Ethical Standards; 4.1.1 Performance of Duty; 4.1.3 Obedience to Law & Rules; 4.1.8 Compromising Criminal Cases; MPD General Orders III A1(a) General Conduct; III A2(a) Conduct Unbecoming; and III A3(c) Accountability, Responsibility and Discipline. I **CONCLUDE** that the consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a)(11) - Other Sufficient Cause have been addressed and **SUSTAINED** within the discussion of violations of N.J.A.C. 4A:2-2.3(a)(1),(6) and (7).

Accordingly, I further **CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause must be and is hereby **SUSTAINED**.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty-years ago, our Supreme Court first recognized the concept of progressive discipline, under which “past misconduct can be a factor in the determination of the appropriate penalty for present misconduct.” In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that “consideration of past record is inherently relevant” in a disciplinary proceeding, and held that an employee’s “past record” includes “an employee’s reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee.” Bock, supra, 38 N.J. 523-24.

As the Supreme Court explained in In re Herrmann, supra, 192 N.J. at 30, “[s]ince Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct.” According to the Court:

. . . First, principles of progressive discipline can support the imposition of a more severe penalty for a public employee who engages in habitual misconduct . . .

The second use to which the principle of progressive discipline has been put is to mitigate the penalty for a current offense . . . for an employee who has a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions . . .

. . . [T]hat is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration 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.

[In re Herrmann, supra, 192 N.J. at 30-33 (citations omitted).]

In the case of In re Carter, 191 N.J. 474 (2007), the Court decided that the principle of progressive discipline did not apply to the sanction of a police officer for sleeping on duty and, notwithstanding his unblemished record, it reversed the lower court and reinstated a removal imposed by the Board. The Court noted the factor of public-safety concerns in matters involving the discipline of correction officers and police officers, who must uphold the law and “present an image of personal integrity and dependability in order to have the respect of the public.” In re Carter, supra, 191 N.J. at 486 (citation omitted).

In the matter of In re Stallworth, 208 N.J. 182 (2011), a Camden County pump-station operator was charged with falsifying records and abusing work hours, and the ALJ imposed removal. The Civil Service Commission (Commission) modified the penalty to a four-month suspension and the appellate court reversed. The Court re-examined the principle of progressive discipline. Acknowledging that progressive discipline has been

bypassed where the conduct is sufficiently egregious, the Court noted that “there must be fairness and generally proportionate discipline imposed for similar offenses.” In re Stallworth, supra, 208 N.J. at 193. Finding that the totality of an employee’s work history, with emphasis on the “reasonably recent past,” should be considered to assure proper progressive discipline, the Court modified and affirmed (as modified) the lower court and remanded the matter to the Commission for reconsideration.

A penalty in this case is unavoidable. The case law setting sworn law enforcement officers apart from other public servants as “special” is consistent. The standard guiding their behavior and informing their discipline is strict:

A police officer is a special kind of public employee. His primary duty is to enforce and uphold the law . . . He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have respect of the public.

[Twp. of Moorestown v. Armstrong, 898 N.J. Super. 560, 566, 215 A.2d 775 (App. Div. 1965), certif. denied, 47 N.J. 80, 219 A.2d 417 (1966); See also In re Phillips, 117 N.J. 567, 577 (1990)]

In the case of In re Carter, 191 N.J. 474, 485-486 (2007), affirming removal of a police officer who slept while on duty, the Court held:

In matters involving discipline of police and corrections officers, public safety concerns may also bear upon the propriety of the dismissal sanction. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980) (affirming appellate reversal of Board decision to reduce penalty from dismissal to suspension for prison guard who falsified report because of Board’s failure to consider seriousness of charge); In re Hall, 335 N.J. Super. 45, 51, 760 A.2d 1148 (App. Div. 200) (reversing Board’s decision to reduce penalty imposed on police officer for attempted theft from dismissal to suspension), certif. denied, 167 N.J. 629, 772 A.2d 931 (2001); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06, 633 A.2d 577 (App. Div. 1993) (holding that it was arbitrary, capricious, or unreasonable to reduce penalty from removal

to six months suspension for prison guard who gambled with inmates for cigarettes), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

To determine whether a lesser penalty than the respondent's termination of appellant is appropriate, the concept of progressive discipline is generally examined. Our courts uniformly have upheld the concept in a long line of cases, beginning with West New York v. Bock, 38 N.J. 500, 523 (1962): (an employee's past record of both discipline and commendations can be considered). See also In re Hermann, 192 N.J. 19, 21 (2007). However, the judiciary also agrees that progressive punishment can be waived when the offense involved is sufficiently egregious. In re Stallworth, 208 N.J. 182, 196-197 (2011). However, the Court in Hermann also declared that progressive discipline can be used to mitigate the penalty where there is a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions. In re Hermann, 192 N.J. supra, at 32-33.

The appellant's disciplinary record is in not in evidence however I am satisfied that appellant's conduct in this case was egregious such that progressive discipline need not be considered. The public who is served, and other employees, deserve to be able to expect that in such situations the officer's investigation will be guided by concerns for safety and order above all else. To expect otherwise is to invite disorder and confusion in responding to such instances, possibly leading to worse, more dangerous situations, and serves to undermine the confidence the public places in the correctional system. It cannot be tolerated. Accordingly, I **CONCLUDE** that the respondent's action in removing the appellant from his position was justified.

DECISION AND ORDER

The respondent has proven by a preponderance of credible evidence the charges against appellant with violations of N.J.A.C. 4A:2-2.3(a)1—Incompetency, Inefficiency, or Failure 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; N.J.A.C. 4A:2-2.3(a)12— Other Sufficient Cause; Millville Police Department (MPD) Rules & Regulations 3.3.2 Oath of

Office; 3.3.6 High Ethical Standards; 4.1.1 Performance of Duty; 4.1.3 Obedience to Law & Rules; 4.1.8 Compromising Criminal Cases; MPD General Orders III A1(a) General Conduct; III A2(a) Conduct Unbecoming; and III A3(c) Accountability, Responsibility and Discipline, and I **ORDER** that these charges be and are hereby **SUSTAINED**. Furthermore, I **ORDER** that the penalty of removal is hereby **AFFIRMED**.

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.

May 26, 2017

DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency:

May 26, 2017.

Date Mailed to Parties:

May 26, 2017

JSK/dm

APPENDIX

WITNESSES

For appellant:

None

For respondent:

Brian Starcher

J.L.

Ronald Cuff

EXHIBITS

Joint Exhibits

- J-1 Final Notice of Disciplinary Action 31C, dated May 21, 2016
- J-2 Millville Police Department Rules and Regulations
- J-3 Millville Police Department Standards of Conduct

For appellant:

- P-1 Email relating to Case Number 13-00859 (R-15)
- P-2 Email, dated January 15, 2016

For respondent:

- R-1 Internal Affairs Policy and Procedures
- R-2 Cuff Spreadsheet
- R-3 Rivera audio taped Internal Affairs interview with Starcher

- R-4 Police Report for Case Number 12-01302
- R-5 Police Report for Case Number 12-02415
- R-6 Police Report for Case Number 12-05014
- R-7 Police Report for Case Number 12-05949
- R-8 Police Report for Case Number 12-06241
- R-9 Police Report for Case Number 12-07074
- R-10 Police Report for Case Number 12-19675
- R-11 Police Report for Case Number 12-20237
- R-12 Police Report for Case Number 12-20319
- R-13 Police Report for Case Number 12-23625
- R-14 Police Report for Case Number 12-28256
- R-15 Police Report for Case Number 13-00859
- R-16 Police Report for Case Number 13-00889
- R-17 Police Report for Case Number 13-03501
- R-18 Police Report for Case Number 13-4887
- R-19 Police Report for Case Number 13-06797
- R-19a Victim Medical Records relating to Case Number 13-06797
- R-20 Police Report for Case Number 13-07684
- R-21 Police Report for Case Number 13-20755
- R-22 Police Report for Case Number 13-23873