

The ALJ set forth in his initial decision that Deputy Chief of Police Dennis McFadden testified that an Officer asked to check if a suspect had any open warrants and Dispatch responded to the Officer that the suspect had an active warrant. Although the appellant did not notify Dispatch of his actions, the appellant proceeded to aid the Officer traveling, with sirens and lights activated, at 60 miles per hour. He also crossed an intersection at 40 miles per hour, which ultimately led him to drive over the sidewalk adjacent to the oncoming lane of traffic where he struck a decorative pole in front of a residence. He then drove back onto the street where he was struck by the vehicle he was trying to avoid which caused him to drive up on the sidewalk again where his vehicle stopped. McFadden stated that he disagreed with statements that were in the appellant's accident report. Specifically, the appellant stated that the suspect had several warrants while Dispatch only mentioned one. The appellant stated that he knew the suspect tended to be with relatives with criminal records and ran from the police. However, Dispatch did not provide this information. The appellant stated he responded to the incident because it was in his assigned zone, but he did not relay this to Dispatch. The appellant stated that he thought the other vehicles had heard his siren and had seen his lights as vehicles moved to the side of the road and, based on his training, experience, the conditions, and his observations, he felt that he could pass vehicles in what he felt was an "emergent" situation. Based on McFadden's viewing of the appellant's report and the video from the vehicle, he testified that it was his opinion that the other driver did not have enough time to observe the appellant and get out of his way. McFadden issued the Investigator's report, which found that the appellant's "excessive speed" caused the accident and stated that the appellant's actions violated department rules and regulations for operating motor vehicles and the use of lights and sirens for emergency calls. McFadden believed that the appellant's actions caused the incident as he did not consider this to be an emergency since the warrant was for a nonviolent suspect, there were three or four other Officers at the site, and the appellant did not advise Dispatch that he was going to the site.

The appellant testified that he heard the Officer's call to Dispatch and knew the suspect from prior experience, including arresting him three times. The appellant stated that he responded to the call with lights and sirens and was familiar with the area and streets where he would be traveling. He indicated that he reduced his speed at intersections and acted with caution and had responded to similar situations with lights and sirens. The appellant disagreed with McFadden's assessment that it was not an emergent matter because he knew the suspect had multiple warrants, was usually with others who also had warrants and was a "runner." He explained that he did not call Dispatch because he was responding to an occurrence in his zone. The appellant presented that when he realized what was happening, he tried to drive evasively to avoid an accident, but ended up driving on the sidewalk as the accident occurred.

The ALJ found both witnesses to be credible as McFadden's and the appellant's views were based on information that was known to them. However, the ALJ indicated that McFadden's experience and circumspect view carried more weight. Specifically, the ALJ found that the appellant traveled at an excessive rate of speed considering the circumstance and that it was his actions that caused the accident. Therefore, the ALJ concluded that Carteret met its burden of proof on all charges. The ALJ presented that the

appellant did not have any prior major disciplinary actions in his record and had previously received two minor disciplines that involved the operation of his police vehicle, which resulted in a loss of one holiday day each. Based on the two sustained disciplinary charges, both involving vehicles, and considering the facts of the case, the ALJ found that major disciplinary action was warranted. However, the ALJ modified Carteret's 45 working day suspension to a 30 day working suspension, as he found the reduced penalty met Carteret's goals for imposing a suspension, while still adhering to the concept of progressive discipline.

Upon its *de novo* review of the record, the Commission agrees with the ALJ regarding the charges. Clearly, the appellant's actions had the potential to be much more serious and tragic and warranted a finding of conduct unbecoming a public employee, misuse of public property and violation of Carteret's Police Department's rules and regulations. However, as discussed further below, the Commission does not adopt the ALJ's recommendation to modify the 45 working day suspension to a 30 working day suspension.

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In assessing the penalty in relation to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In the instant matter, the Commission notes that the appellant was a relatively long-term employee with only two minor disciplines, which each resulted in a loss of one holiday day. Therefore, in light of these circumstances, the Commission shall modify the appellant's 45 working day suspension to a 20 working day suspension. However, the Commission emphasizes, that it does not condone the appellant's misconduct since as stated above, the appellant's action could have led to more tragic results. Therefore, even though the penalty is reduced, the appellant's infractions were serious enough to warrant major discipline. Further, given the infractions, the Commission orders that the appellant undergo retraining regarding the appointing authority's rules and regulations concerning the operation of a motor vehicle, emergency calls and the use of lights and siren.

Since the penalty has been modified, the appellant is entitled to 25 days of mitigated back pay, benefits and seniority pursuant to *N.J.A.C. 4A:2-2.10*. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C. 4A:2-2.12(a)*, an award of counsel fees is

appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. Mar. 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In this case, the Commission agreed with the ALJ's determination sustaining the charges and only modified the penalty. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. In light of the Appellate Division's decision in *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved.

ORDER

The Civil Service Commission finds that the appointing authority's action of imposing a 45 working day suspension was not justified under the circumstances and modifies that action to a 20 working day suspension. Additionally, the Commission orders that the appellant undergo retraining regarding the appointing authority's rules and regulations concerning the operation of a motor vehicle, emergency calls and the use of lights and siren. The Commission further orders that the appellant be granted 25 days of back pay, benefits and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

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

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter should be pursued in the Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2018



Deirdré L. Webster Cobb
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. CSV 02360-17

AGENCY DKT. NO. 2016-3502

**IMO MATTHEW A. GOMM, BOROUGH
OF CARTERET POLICE DEPARTMENT.**

Leonard C. Schiro, Esq., for Matthew A. Gomm, appellant (Mets, Schiro & McGovern, LLC, attorneys)

Robert Bergen, Esq., Law Director, for Borough of Carteret, Police Department, respondent

Record Closed: November 3, 2017

Decided: December 22, 2017

BEFORE **CARL V. BUCK III, ALJ:**

STATEMENT OF THE CASE

Appellant Matthew A. Gomm (Gomm) appeals from a forty-five day suspension from his position as a Police Officer, imposed by his employer the Borough of Carteret (Carteret). The suspension resulted from charges of conduct unbecoming a public employee, misuse of public property, other sufficient cause and Borough of Carteret Police Department Rules and Regulations. Gomm denies these charges, maintaining that he did nothing wrong and submitted that he acted appropriately due to what he felt to be the emergent nature of a call by another officer.

PROCEDURAL HISTORY

On August 5, 2015, Carteret issued a Preliminary Notice of Disciplinary Action (PNDA) setting for the charges and specifications made against Gomm (R-1). This was served on Gomm on August 7, 2015. Following a disciplinary hearing held on October 7, 2015, Carteret, on March 9, 2016¹, issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the PNDA which notice was served on Gomm on March 4, 2016².

On March 24, 2016 Gomm requested a hearing, and on February 13, 2017 the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL) where it was filed on February 16, 2017. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on October 4, 2017. The record was held open for simultaneous written summations which were filed on October 27, 2017, and the record closed on November 3, 2017.

FACTUAL DISCUSSION

The following facts are not disputed. On July 20, 2015, shortly before 13:50 hours, Officer Justin Terebetski (Terebetski) issued a call for a warrant check on H.C.³. Terebetski had just observed H.C. getting into a taxi in the area of Holmes Street and Washington Avenue. Dispatch indicated that there was an active warrant on H.C.

Gomm was on duty and was driving a marked police vehicle. He was located on Marion Street and went to aid Terebetski. While on route, Gomm activated his lights and sirens. He proceeded through a number of intersections at a speed in excess of the posted speed limit. While driving on Washington Avenue, Gomm observed vehicles on Washington Avenue in front of him. As Gomm attempted to pass them, using the

¹ The date typed into the form

² The handwritten date on the form.

³ Abbreviations will be used in lieu of the names of suspects mention during testimony.

oncoming lane, one of the vehicles turned left and moved across the double yellow line dividing the lanes. Gomm attempted to stop and in that attempt, drove over the sidewalk adjacent to the oncoming lane of traffic. He struck a decorative pole in front of a residence on Washington Avenue. Gomm then drove back onto Washington Avenue and was struck by the vehicle he was trying to avoid, causing Gomm to drive up on the sidewalk again where his vehicle stopped.

Information on the accident was detailed in a police report prepared by Sgt. Frank Ciarkowski (Ciarkowski) (R-3) and in an arrest report regarding the other driver (P-1). Information on the accident was also provided through the video recording taken in the police vehicle (R-2).

TESTIMONY

For Respondent

Dennis McFadden, Deputy Chief of Police detailed his training, experience and background in approximately thirty-four years in law enforcement. On the date of the incident he was the Deputy Chief of Police for Carteret Borough in charge of the patrol division.

McFadden provided background information regarding the date of the incident and stated that the initial call was for a warrant check for credit card fraud against H.C. Officer Terebetski had observed H.C. getting into a taxi proceeding on Washington Street. Terebetski asked for a check to see if H.C. had any open warrants. Dispatch responded to Terebetski that H.C. had an active warrant.

Gomm proceeded to aid Terebetski, although Gomm had not notified dispatch of his action. McFadden stated that Gomm traveled 60 mph on Cypress Street and crossed an intersection at Cypress at 40 mph. The estimate of speed was taken from the video recording within the vehicle. Terebetski reported that he had stopped the taxi at Roosevelt and Grant Avenue, approximately a quarter mile from Gomm's location.

As Gomm was proceeding to assist Terebetski, Officer Paul Stentella stated that he (Stentella) would be with him (Terebetski).

While Gomm was travelling on Washington Avenue, with sirens and lights activated, the accident occurred. McFadden testified that he reviewed the accident report and the video from the police vehicle and requested that Gomm provide a statement regarding the incident, which Gomm did provide (R-6).

Gomm's report contained information on his actions, but also contained several statements that McFadden did not agree with. Specifically, Gomm stated that H.C. had several warrants outstanding; however, dispatch only mentioned one. Gomm stated that Terebetski did not state if H.C. was alone or with accomplices, as Gomm has never seen H.C. alone – he was usually with relatives with criminal records. However, this information was not detailed by dispatch. Gomm stated he knew H.C. tended to run from the police; however, this information was not detailed by dispatch. Gomm stated he felt it was his duty to respond as the area where the incident was occurring was in Gomm's assigned zone of the day; however, this information was not relayed to dispatch.

According to McFadden, Gomm's report stated that at the time he (Gomm) decided to respond, he activated his overhead lights and sirens. As he approached each intersection he scanned the area for pedestrians and vehicles. As he turned on to Washington Avenue he heard Stentella stating that he (Stentella) was out with them – which Gomm took to mean that there were possibly several individuals. As he approached the intersection of Washington Avenue at Randolph Avenue he observed three vehicles ahead of him. Gomm thought the vehicles had heard his siren and seen his lights as they moved to the right side of the roadway. He stated that based on his training and experience, the conditions and the observation of the vehicles he could pass the vehicles and continue to what he felt was an "emergent" situation.

Gomm's report detailed the accident, his subsequent notification to his headquarters to dispatch EMS and advised that he was trapped in his vehicle. He was

ultimately able to extricate himself and met responding vehicles. He stated that at that point he advised the responders that he had back, neck and shoulder pain but that EMS should attend to others on the scene first.

His statement further detailed statements of on-site witnesses and states that he conducted himself in a professional manner and that the cause of the accident was due to the other driver. He further stated that the other driver did not have a valid driver's license.

After reviewing the accident report, Gomm's statement, and the video from the vehicle, it was McFadden's opinion was that the other driver did not have enough time to observe Gomm and get out of Gomm's way. McFadden issued a report to Police Chief John Pieczyski detailing the investigation and found that Gomm's "excessive speed" caused the accident (P-4).

McFadden stated that he considered this to be a warrant arrest for a nonviolent crime, that there were already 3 or 4 officers at the site, Gomm did not advise dispatch that he was going to the site and as such, Gomm's actions caused the accident.

McFadden also stated that Carteret's Rules and Regulations 11:63 Operation of Motor Vehicles and 11:64 Emergency Calls and Use of Red Light and Siren were violated. These rules detail the appropriate use of vehicles and the use of lights and sirens.

For Appellant

Patrolman Matthew Gomm testified on his own behalf. Gomm stated that he has been a Patrolman since 2008. He detailed driver training he received at Rutgers University and at the Police Academy.

He stated he heard the call from Terebetski and knew H.C. from prior experience. Gomm stated he had arrested H.C. on 3 occasions. He responded to the

call with lights and sirens and was familiar with the area and the streets he would be traveling. He reduced his speed at intersections and acted with caution. He stated that he had responded to similar situations with lights and sirens.

He disagreed with McFadden's testimony as Gomm thought this was an emergent matter. Gomm stated that he knew H.C. had multiple warrants, was usually with others (who had warrants also) and was a "runner". He did not call in to dispatch that he was responding because the occurrence was in his zone. He said when he realized what was happening, as the accident unfolded, he tried to drive evasively to avoid an accident, but drove up on the sidewalk and the accident occurred.

FINDINGS OF FACT

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself" in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521-522. See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Although both witnesses were credible, McFadden has had thirty-four years of experience in law enforcement and his testimony shows that he perceived the situation as would a supervisor. His view of the situation dealt with it as it was, from the

information that was known. Gomm's perspective took into consideration information that he said was known to him. This information, however, was not necessarily known to others in charge. Gomm did not relay this information to his dispatch or supervisors and thereby created a situation which led to the subject accident. On balance, McFadden's experience and circumspect view carried more weight.

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following:

On July 20, 2015 Officer Terebetski observed H.C. getting into a taxi proceeding on Washington Street. Terebetski asked for a check to see if H.C. had any open warrants. Dispatch responded to Terebetski that H.C. had an active warrant.

Officer Gomm was at another location and decided to proceed to aid Terebetski. Gomm did not notify dispatch of his action. Gomm traveled at approximately 60 mph on Cypress Street and crossed an intersection at Cypress at approximately 40 mph. As Gomm was proceeding to assist Terebetski, Gomm heard Officer Paul Stentella stated that he (Stentella) would be with him (Terebetski).

Gomm had his siren and lights activated during the majority of the time while he was proceeding to aid Terebetski. While Gomm was proceeding on Washington Avenue, the accident as detailed herein occurred.

Deputy Chief McFadden reviewed the accident report, reviewed the video from the police vehicle and reviewed Gomm's statement. McFadden's review led to his position that the accident occurred due to Gomm's speed and the inability of the other driver to get out of Gomm's way.

Terebetski's initial call related to a warrant stop. Gomm traveled at an excessive rate of speed considering the circumstances. Gomm's actions were the proximate cause of the accident occurring at approximately 13:50 on July 20, 2015.

LEGAL ANALYSIS AND CONCLUSION

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).

In this matter, Carteret has sustained charges of: Conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); Misuse of public property, including motor vehicles in violation of N.J.A.C. 4A:2-2.3(a)(8); Other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11); Borough of Carteret Police Department Rules and Regulations Sec. 11-63; Operation of Motor Vehicles; and Borough of Carteret Police Department Rules and Regulations Sec. 11-64; Emergency Calls and Use of Red Light and Siren.

Gomm was charged with "conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or 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)). The New Jersey Supreme Court, in In re Phillips, 117 N.J. 567, 576-77 (1980), recognized that the obligation to act in a responsible manner is especially compelling in a case involving a law enforcement official:

[A] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public, particularly in a small community (quoting Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966)).

Gomm testified that he wanted to assist Terebetski as he had knowledge of H.C., H.C.’s accomplices, and outstanding warrants on H.C. McFadden stated that, as this was a warrant arrest, and did not constitute an emergency, Gomm’s excessive speed unnecessarily caused of the accident. Further, McFadden stated that the speed at which Gomm was traveling would only be justified in a situation where life and property are at risk - and that lights and sirens should be used with utmost caution.

Gomm’s response to Terebetski’s call had the potential to be much more serious and tragic as he traversed both local and County roads and intersections at a high rate of speed. Gomm’s desire to assist Terebetski caused him to disregard appropriate safety rules and proper protocols, considering this was not an emergent situation. Accordingly, I **CONCLUDE** that Carteret proved by a preponderance of the credible evidence that Gomm violated N.J.A.C. 4A:2-2.3(a)(6).

Regarding the charge of Misuse of Public Property, N.J.A.C. 4A:2-2.3(a)(8). The misuse is tied to operation of his police vehicle in a manner not within appropriate safety protocols. Flowing through the charge of Conduct Unbecoming, the petitioner

utilized his vehicle in a manner which jeopardized the public, public property, government property and himself. Accordingly, I **CONCLUDE** that Carteret proved by a preponderance of the credible evidence that Gomm violated N.J.A.C. 4A:2-2.3(a)(8).

Gomm has also been charged with violating N.J.A.C. 4A:2-2.3(a) (12), "Other sufficient cause." Specifically, Gomm is charged with the following violations of the Borough of Carteret Police Department Rules and Regulations: Sec. 11-63; Operation of Motor Vehicles; and Borough of Carteret Police Department Rules and Regulations Sec. 11-64; Emergency Calls and Use of Red Light and Siren. Consideration of such violation(s) will be addressed in concert with the current analysis. Gomm was under the presumption that he was assisting to apprehend a known felon, but created a dangerous situation in his ill-fated attempt to assist Terebetski. However, he was taking into consideration information not relayed by dispatch and did not report his actions or progress to dispatch. He made presumptions regarding the observations and actions of other officers which could have been clarified and resolved if he had contacted dispatch. His actions using his police vehicle, his lights and his sirens in an unsafe and inappropriate manner, considering the circumstances, were unjustified and unsafe. Accordingly, I **CONCLUDE** that Carteret has met its burden in demonstrating a violation of Borough of Carteret Police Department Rules and Regulations Sec. 11-63; Operation of Motor Vehicles; and Borough of Carteret Police Department Rules and Regulations Sec. 11-64; Emergency Calls and Use of Red Light and Siren. Accordingly, I **CONCLUDE** that, after consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a) (12) (Other Sufficient Cause) as limited to the specific rules and regulations enumerated in the FNDA, that Carteret has met its burden of proof in demonstration of the charge of Other Sufficient Cause.

PENALTY

A civil service employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident

complained of and/or the employee's past record, major discipline may include removal. West New York v. Bock, 38 N.J. 500, 522-24 (1962). Once a determination is made that an employee has violated a statute, rule, regulation, etc., concerning his/her employment, the concept of progressive discipline must be considered. Bock, supra, 38 N.J. 500.

In the present case, Gomm has not received any major disciplinary actions during his career with Carteret. He received two minor disciplines resulting in a loss of 1 holiday day each. Both disciplinary actions involved operation of his police vehicle. As to the penalty of a forty-five day suspension, the issue is whether it is too harsh under the circumstances. I must consider whether the spirit of progressive discipline is upheld by Gomm's forty-five day suspension. Progressive discipline is intended to give the employee notice and an opportunity to correct the improper behavior. Based upon Gomm's two sustained disciplinary charges, both involving vehicles, and in light of the facts of the incident, a major disciplinary action is warranted. After having considered all the evidence in this matter and the possible impact upon the public caused by unsafe and reckless operation of a motor vehicle in response to a warrant call, and after having given due consideration to progressive discipline, I **CONCLUDE** that a thirty-day suspension meets the goals that Carteret set forth in arguing for imposing a forty-five day suspension, while still adhering to the concept of progressive discipline.

DECISION AND ORDER

I hereby **ORDER** that the charges in the Final Notice of Disciplinary Action against Matthew A. Gomm be **AFFIRMED**. However, I **ORDER** the penalty modified from forty-five days to thirty days.

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

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

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

12/22/2017

DATE



CARL V. BUCK III, ALJ

Date Received at Agency:

12/22/17

Date Mailed to Parties:

12/22/17

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LIST OF EXHIBITS

For appellant:

P-1 Carteret Police Adult Arrest Report, dated July 7, 2015

For respondent:

- R-1 Preliminary Notice of Disciplinary Action, dated August 5, 2015
- R-2 DVD
- R-3 New Jersey Police Crash Investigation Report, dated July 20, 2015
- R-4 Administrative Submission, dated July 28, 2015
- R-5 Final Notice of Disciplinary Action, dated March 9, 2016
- R-6 Letter, dated July 26, 2015
- R-7 List of Duties
- R-8 Notice of Minor Disciplinary Action, dated May 24, 2012
- R-9 Final Notice off minor Disciplinary Action, dated July 2, 2014

LIST OF WITNESSES

For appellant:

Dennis McFadden

For respondent:

Matthew A. Gomm