



Aberdeen Township Police Department (ATPD) for 21 years, 18 years of which were served as a Police Officer. On November 26, 2014, at a few minutes after midnight, the appellant responded to a call for assistance from Raymond W. Campbell, Police Officer. The appellant was driving an unmarked police vehicle known as a "stealth car" that was not equipped with rooftop lights. The appellant believed Campbell was in trouble so he expedited his response to the emergency call. The appellant stated he had "tunnel vision" caused by recent events in the news against police officers and was motivated by a desire to reach Campbell. The appellant was originally proceeding to the call behind Charles Trucillo, Police Officer. He passed Trucillo on the left by crossing over double yellow lines to become the lead vehicle. The appellant's emergency lights were not activated, and it was unknown whether his sirens were activated. As the appellant approached the intersection at Railroad Plaza and Main Street, his light was red. The appellant applied his brakes but did not stop at the red light at the intersection. When the appellant entered the intersection against the traffic light, he did not immediately notice the other vehicle in the intersection that was travelling eastbound with the green light passing directly in front of him. When the appellant saw the other vehicle, he applied his brakes, but continued to proceed to the emergency call without stopping. The other vehicle continued to proceed eastbound without stopping. The intersection has a pronounced curvature or hump in the road. The appellant activated his emergency lights after he went through the intersection as he continued to proceed to the location of the emergency call. He traveled to the location at speeds that at different points reached 75 miles per hour, 79 miles per hour and 83 miles per hour while travelling on roads that were posted as 35 miles per hour. Upon arriving at the location of the call and after the suspect was in custody, the appellant noticed damage to the front bumper of his vehicle and notified Darryl Oliver, Police Sergeant, by radio that he had a minor accident. The appellant completed an Accident Report stating that he made contact with another vehicle while crossing an intersection. The damage to the vehicle cost ATPD \$1,068.05 to repair.

The ALJ upheld all but the charges of insubordination and inability to perform duties. With respect to the penalty, the ALJ noted that the appellant had received a four-day suspension and was reprimanded on five occasions. Based upon this disciplinary history, the ALJ determined that major discipline was warranted. After considering both progressive discipline and the possible impact upon the public caused by the unsafe and reckless operation of a motor vehicle in response to an emergency, the ALJ determined that a 10 working day suspension was an appropriate penalty.

In his exceptions, the appellant contends that the ALJ erred in finding that the appellant's emergency lights were not activated. He argues that the correct wording for this factual finding should have been that the appellant's emergency lights were not *fully* activated since the ALJ indicated as much elsewhere in her initial decision. As such, the appellant maintains that the ALJ should also have

found that the appellant activated *the full complement* of his emergency lights after he went through the intersection. In addition, the appellant contends that it was inconsistent for the ALJ to find that it was not determinative whether there was a collision but also find an accident and use that fact as determinative in sustaining the charge of conduct unbecoming a public employee. Further, he contends that the ALJ gave no weight to the charges she dismissed in upholding the 10 working day suspension. The appellant argues that even if the ALJ was correct in believing that his conduct warranted major discipline, the proper penalty was a six working day suspension.

In its reply to exceptions, the appointing authority maintains that all of the pertinent legal analysis and conclusions in the initial decision rest on the ALJ's determination that the appellant's emergency lights were "not *fully* activated" or "not *fully* engaged" (appointing authority's emphasis). Further, ATPD rules allow no consideration for partial activation. In addition, the appointing authority argues that the facts clearly demonstrated that the appellant collided with something unintentionally – the "literal definition" of an accident. The appointing authority also contends that notwithstanding the dismissal of certain of the charges, a penalty of a 10 working day suspension was appropriate in that those dismissals did not bear on the "central justification" for disciplinary action: the appellant's reckless and dangerous actions.

While the Commission agrees with the ALJ's determination of the charges, it disagrees with the recommendation to uphold the penalty of a 10 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 utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. Moreover, 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 this matter, the appellant was a long term employee whose disciplinary history included only minor discipline, much of which was remote in time. Further, the ALJ dismissed some of the charges. The foregoing circumstances justify a reduction of the original penalty. Nevertheless, the appellant's infraction was serious and still warrants major discipline.

Accordingly, the Commission finds a six working day suspension to be the appropriate penalty.

Since the penalty has been modified, the appellant is entitled to four days of 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 most of 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.

#### ORDER

The Commission finds that the appointing authority's action in imposing a 10 working day suspension was not justified under the circumstances and modifies that action to a six working day suspension. The Commission further orders that the appellant be granted four days of back pay, benefits and seniority. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned during this period. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

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

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27<sup>TH</sup> DAY OF MARCH, 2018

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 03222-16

AGENCY DKT. NO. 2016-2614

**IN THE MATTER OF  
FRANK MAISANO, TOWNSHIP OF  
ABERDEEN, DEPARTMENT OF  
PUBLIC SAFETY.**

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**Stuart J. Alterman, Esq.,** for appellant (Alterman & Associates, LLC, attorneys)

**Ramon E. Rivers, Esq.,** for respondent (Scarinci & Hollenbeck, LLC, attorneys)

Record Closed: September 29, 2017

Decided: October 31, 2017

BEFORE KATHLEEN M. CALEMMO, ALJ:

**STATEMENT OF THE CASE**

Appellant, Frank Maisano (Maisano), a Police Officer with the Aberdeen Township Police Department (ATPD), appeals a 10-day suspension he received as major discipline for operating his police vehicle in response to a call for assistance with reckless disregard for the safety of others and the subsequent Internal Affairs investigation surrounding same. ATPD sustained the following charges: incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1); insubordination, N.J.A.C. 4A:2-2.3(a)(2); inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3); conduct

unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12).<sup>1</sup> ATPD also determined that Maisano violated Aberdeen Township Police Department General Rules and Regulations as follows: 3:1.8 Obedience to Laws and Regulations; 3:4.5 Operation of Motor Vehicle; 3:4.7 Reporting Accidents; 3:4.1 Damaged – Inoperative Property or Equipment; and 3:13 Operation of Police Vehicle. Maisano denied the allegations as baseless, maintained he did nothing wrong, and submitted that he acted appropriately due to the emergent nature of the call for assistance.

### **PROCEDURAL HISTORY**

On March 18, 2015, ATPD issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against Maisano. (R-20.) Following departmental hearings held on August 6, 2015 and November 23, 2015, ATPD issued a Final Notice of Disciplinary Action (FNDA) on January 21, 2016 sustaining the charges in the Preliminary Notice and suspending Maisano from employment for ten working days. (R-21.) Appellant appealed on January 28, 2016. The matter was transmitted by the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law (OAL) where it was filed on February 29, 2016 for hearing as a contested case. N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The hearings were held on May 9 and May 19, 2017. The record remained open to allow the parties to submit post-hearing submissions and a chronology of past discipline. The record closed on September 29, 2017.

### **FACTUAL DISCUSSIONS AND FINDINGS**

The following facts are not disputed. Just past midnight on November 26, 2014, Maisano, while on duty, responded to a call for assistance from Officer Raymond W. Campbell (Campbell). Maisano drove a black Dodge Charger, known as a “stealth car,” because it does not have roof lights or markings usually associated with traditional

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<sup>1</sup> The notices of disciplinary action reference N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause. Effective March 5, 2012, former (a)(11) was recodified as (a)(12).

police vehicles. Maisano reacted to the urgency in Campbell's voice heard over the radio and expedited his response to the call. While on route, Maisano made the decision to proceed through a red light at an intersection located at Main Street and Railroad Plaza in Matawan Borough. Maisano was travelling north and as he crossed the intersection, another vehicle, travelling east, passed directly in front of Maisano's car. This particular intersection has a hump or crown in the road. Maisano did not have his emergency lights activated when he crossed through the intersection. Upon arriving at the scene and after the suspect was in custody, Maisano examined his bumper and seeing damage, reported to his Sergeant that he had a minor accident.

### TESTIMONY

**Sergeant Darryl James Oliver** (Oliver) has been a police officer with ATPD for eighteen years and a sergeant for the past eleven of those years. He was Maisano's supervisor and the officer in charge on the night in question. Oliver was at headquarters when Campbell's call came over the radio asking for assistance. He responded to the call. After arriving at the scene, Oliver encountered Maisano who told him he was involved in a minor motor vehicle accident while on route. Maisano showed Oliver the damage to his vehicle located on the front bumper grill area on the driver's side. Oliver testified that standard operating procedures required him to write a memo describing Maisano's account of the accident to his superior, Captain Allan Geyer. In the memo, Oliver reported that Maisano while responding to Campbell's call for help was involved in a motor vehicle accident causing minor damage to his vehicle. (R-1.) ATPD maintains a mobile video recorder (MVR) system that was installed and operated in selected police vehicles. Maisano's Charger had an MVR that recorded the incident. (R-23.) Oliver testified that he reviewed the video in the early morning hours of November 26, 2016. The video was played at the hearing. As we watched the video, Oliver identified Maisano's vehicle as it was proceeding behind Officer Trucillo's vehicle. Both vehicles were responding to the call. Maisano then proceeded to pass Trucillo's vehicle on the left by crossing over the double lines in the roadway. From the video, and the rates of speed recorded, Oliver observed that Maisano applied his brakes as he approached the intersection, but did not come to a full stop at the red light. As Maisano entered the intersection going north, a civilian vehicle travelling east passed directly in



front of him. Oliver testified that Maisano struck the vehicle based on what he observed on the video and because Maisano told him that he was involved in an accident. Neither vehicle stopped. As depicted in the video, it was not until after Maisano cleared the intersection that the emergency light bar in his vehicle was activated. In response to direct questions, Oliver testified that the vehicle's siren was shown as a capital letter "S" and he explained the blinking "S" on the video as the siren going on and off. By reading the miles per hour shown on the video, Oliver testified that Maisano's vehicle was traveling at rates of speed between 50 and 56 mph as he approached the intersection.

Oliver testified that he told Maisano not to respond to Campbell's call for assistance. He stated that he issued an order over the radio for 6308, Maisano's vehicle number, to stay west-side. According to Oliver, it was his practice to keep one officer available to respond in the event of another emergency. Oliver recalled that Maisano was assigned to section four on the west side of Aberdeen; Campbell's emergency call for assistance was on the east side of Aberdeen. Oliver testified that he told Maisano to "stay west side" because all other additional units, including Oliver, were responding to back up Campbell. The audiotape recording of Campbell's call for assistance was played during the hearing. (R-24.) Oliver was not able to identify on the recording his order to stay west-side. The radio transmission was transcribed in part and other parts were transcribed as "rest unintelligible." (R-6.) Oliver's order to "stay west side" was not transcribed. Oliver acknowledged that he did not get a response from Maisano regarding his order. The only recorded communication between Oliver and Maisano was the report of a "minor 15." Oliver recognized the voice on the audio recording as Maisano's and explained that a "15" is code for a motor vehicle accident. The transcript of the radio transmission shows that Maisano advised Oliver of the minor accident at 12:15:53 a.m. (R-6.)

As depicted on the video, Oliver and Maisano were examining Maisano's vehicle for damage at 12:25 a.m. at the location of the call. Because of the damage, Maisano and Oliver were required to fill out an Accident/Injury Report. Part one of the form was completed by Maisano and part two was completed by Oliver. (R-3.) Maisano wrote on the form that he was "responding to an officer in distress call, and upon crossing an intersection, made contact with another vehicle." Id. Oliver wrote that the accident was

not immediately reported, but that Maisano reported it "after handling a police call shortly after accident." Id. He also wrote that he felt that accidents such as this could be avoided by "driving safely" and following "Dept./AG Guidelines." Id.

Oliver prepared a second memorandum at the request of Captain Geyer for a recommendation of whether disciplinary action should be taken against Maisano. (R-2.) In Oliver's opinion, there were too many things that Maisano could have done differently to avoid or prevent the incident. Therefore, he recommended disciplinary action based on the following conduct: Maisano's decision to pass Trucillo's vehicle into an oncoming traffic lane at a high rate of speed; failure to stop before entering the intersection; failure to activate emergency lights; crossing an intersection against the traffic light and striking a vehicle proceeding with the green light; and failure to follow proper protocol after an accident.

**Captain Alan Geyer** (Geyer) has been a Captain for three years and employed by ATPD for thirty years. He is the operations commander which includes scheduling, equipment, training, and internal investigation work. He also works in a supervisory capacity to the Sergeants, Officers, and Patrol Division. During his thirty-year tenure, he worked as a traffic officer and accident investigator. He described that ATPD operates on a chain of command, consisting of the Chief, Deputy Chief, two Captains, and six Sergeants. The incident with Maisano occurred just after midnight on November 26, 2014 when Geyer was not on duty. Oliver was Maisano's supervisor. The first memo drafted by Oliver was a brief synopsis of the incident to inform Geyer of the accident involving Maisano's vehicle. (R-1.) After reviewing the memo, Geyer asked Oliver for a recommendation regarding disciplinary action. Geyer testified that this is a typical request to make of the Sergeant on duty and in charge. Geyer received and reviewed Oliver's recommendation regarding discipline. (R-2.) He also reviewed the MVR from Maisano's vehicle. (R-23.) After reviewing the video, Geyer drafted a memo and sent it to his superior, Deputy Chief Derechailo, with his recommendation regarding discipline. (R-5.) Geyer provided four reasons justifying disciplinary action: 1) lights and siren not activated until after the crash; 2) failure to have ICOP mic on; 3) failure to immediately advise supervisor of the accident; and 4) failure to stop at red light at the intersection where crash occurred.

The video was played for Geyer's analysis at the hearing. Geyer testified that he was very familiar, as part of his normal duties, with the ICOP i VAULT MMS viewer which is the software used to download the video from the officer's patrol vehicle. Maisano's vehicle is identified as 6308. Geyer explained that the software was designed to show when the lights, siren, or brakes are engaged. The video recording is triggered, or automatically activated, in any one of three instances: when the vehicle's emergency lights are activated; when the vehicle reaches a speed of seventy-five miles per hour; or in the event the vehicle is involved in a crash. (R-15.) Once activated, either manually or automatically, the last sixty seconds of video recording, prior to activation, will be captured. Id. There is no audio recording during this look back minute prior to activation. This recording allows the viewer to see what was happening in the minute before the MVR was engaged. Geyer testified to what he saw on the video as it was played at the hearing. He explained that the blinking "S" on the video is not related to the siren because ATPD disengaged that feature prior to this incident. ATPD did not want the siren to be a triggering event for the MVR because of the frequency and routine uses of sirens by patrol officers during their shifts. Geyer stated that based on his experience in viewing the tapes the blinking "S" on the video would indicate braking not siren. Geyer identified Maisano's vehicle on the video as it passed Trucillo's Durango on the left side into the oncoming traffic lane. As the video recorded Maisano's vehicle traveling through the intersection, Geyer pointed out that Maisano's emergency lights did not come on until he was through the intersection. The MVR in Trucillo's vehicle was not working, so no video of the event was captured from that car. (R-13.)

Geyer was also involved in the Internal Affairs (IA) investigation, giving assistance to the Deputy Chief. He personally inspected the vehicle and viewed the damage to the front of the bumper that he describes as a scrape with an opening. He did not take any photographs of the vehicle. The cost of repairs to vehicle 6308 was \$1,068.05. (R-8 and R-22.) When asked on direct whether Maisano's conduct violated ATPD rules and regulations, Geyer stated that Maisano was required to stop at the red light before entering the intersection, and if Maisano believed that he was involved in an accident with another vehicle he was required to stop and immediately notify his supervisor. He also stated that Maisano's speed traveling through the Township was

excessive. From the MVR in Maisano's car, Geyer testified that Maisano's top speeds were recorded as 75, 79 and 83 miles per hour as he travelled to the call. On cross-examination, Geyer testified that the vehicle driven by Maisano was called a "stealth vehicle" that is not equipped with lights on the roof. Auxiliary lights do not activate the camera. Geyer testified that after Maisano crossed the intersection, the front windshield lights were activated, which triggered the recording. Geyer concluded that Maisano turned on the lights at that time based upon the activation of the video recording. There was no other triggering event. Geyer felt that any impact between Maisano's vehicle and the civilian vehicle in the intersection would have been too minor to trigger the camera. Geyer was familiar with the intersection of Main and High Street in Matawan Borough and acknowledged that there was a large depression in the road way. However, based on his experience, he did not think that the damage to the front bumper was caused by the roadway.

**Deputy Chief Richard Derechailo** (Derechailo) has been the Deputy Chief for the past eleven years and employed by ATPD for thirty-two years. It was his job to investigate complaints of officer wrongdoing as part of his overall responsibility for internal affairs investigations. On November 26, 2014, Derechailo reviewed the memo from Geyer (R-5) and initiated an internal affairs file. The next day, after reviewing the MVR from Maisano's vehicle with Geyer, he determined that further investigation, including an interview with Maisano was warranted. Consequently, he sent an Internal Affairs Complaint Notification to Maisano for an interview. (R-7.) Maisano was interviewed with his attorney present. A narrative of the interview was prepared by Derechailo. (R-10.) As set forth in the narrative, Maisano stated that although he slowed down prior to entering the intersection, he did not see the other vehicle. He was not sure at the time if he hit the other vehicle or if it was the unevenness in the road that he felt. He realized that he had hit the car when he saw the damage to his own vehicle after he arrived at the scene of Campbell's call. When questioned about his lights and siren, he stated that he was trying to locate the buttons while he was driving, but was unable to do so until he passed through the intersection. Maisano explained that he had tunnel vision when responding to the call and was concerned about Campbell's safety because of recent protests against police officers, such as the event in Ferguson, Missouri.

Derechailo physically reviewed the intersection at Railroad Plaza and Main Street where the accident allegedly occurred. He testified that the intersection is controlled by a traffic light and there is a crown in the road as you cross over Railroad Plaza onto High Street. This is a busy intersection due to its proximity to the train station and well known to Derechailo because he travels it each day to work. He also noted that the speed limit on the streets where Maisano traveled that night were posted at 35 mph but at different times the MVR showed Maisano's speed as 75 miles an hour, 79 miles an hour, and 83 miles an hour. Derechailo authored a report which was a compilation of his findings after reviewing the following: Geyer memo; MVR; the transcription of the dispatch communication recordings; the Matawan police report; and Maisano's interview narrative. (R-9.) His findings were as follows:

Ptl. Maisano did not activate his emergency lights or siren until after he struck a car crossing the intersection of Main St. and Railroad Plaza;

Ptl. Maisano did not use due caution when entering the intersection of Main St. and Railroad Plaza, causing him to crash with another vehicle;

Ptl. Maisano did not remain at the scene of the accident but instead continued on to the assist call;

Ptl. Maisano did not immediately report the accident but instead waited until he arrived at the assist call;

Ptl. Maisano operated his patrol vehicle at excessive speeds en route to the assist call;

MVA<sup>2</sup> resulted in excess of \$1,000 damage to the patrol vehicle;

In total, Ptl. Maisano's operation of the patrol vehicle created a substantial risk to himself and the public of serious injury.

Despite the recognition by Derechailo that Maisano was responding to a call for assistance from another officer, he believed that the findings of the investigation warranted disciplinary action in the form of a suspension. At the conclusion of the internal affairs investigation, Derechailo submitted a memo to Chief Powers wherein he stated that when an officer is responding to a call for assistance, regardless of its seriousness, he is not relieved of the responsibility to safely operate his vehicle. (R-12.)

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<sup>2</sup> MVA refers to motor vehicle accident.

Derechailo testified that it was Maisano's overall operation of his vehicle in an unsafe manner that was the primary concern, not whether the accident occurred.

**Chief of Police John T. Powers** (Powers) has held the position of Chief for the past eleven years and has been employed by the ATPD for the past thirty-five years. He is responsible for the daily operations of the police department, budget matters, and maintaining good order and discipline within the department. He expressed his familiarity with the Rules and Regulations of the ATPD and identified Regulation 3:4 and its subparts as pertaining to officers' responsibility for the proper care of equipment and controlling the operation of motor vehicles. (R-14.) In summary, he stated that officers are required to set an example by safe operation of their vehicles and observe all motor vehicle laws. Powers discussed the procedures and guidelines for the use of the MVR set forth in General Order Number 2009-002. (R-15.) The Order requires that all emergency responses should be both audibly and visually recorded. Powell signed the Order on June 1, 2009; it was in force and effect on November 26, 2014. Powers signed the Preliminary Notice of Disciplinary Action on March 18, 2015 after receiving the final report on the internal investigation with its findings of violations of rules and regulations pertaining to the safe operation of motor vehicles. (R-20.) Powers also executed the Final Notice of Disciplinary Action on January 21, 2016. (R-21.) Powers testified that the actual costs for the damage to the subject vehicle were \$1,068.05. (R-22.) In his capacity as Chief of Police, Powers testified that progressive discipline was warranted in this situation for violations of the township rules and regulations, the general order, and the state statute. On cross-examination, Powers testified that all internal affairs investigations are done in accordance with Internal Affairs Policy & Procedures implemented pursuant to N.J.S.A. 40A:14-181. (P-3.)

**Officer Raymond W. Campbell** (Campbell), patrolman at ATPD assigned to the Traffic Safety Division, has been employed by ATPD for eleven years. On the night in question, Campbell called for assistance because a suspect was resisting arrest. Campbell testified that he needed assistance from other officers to secure the suspect. He testified that while he was fighting with the suspect, Maisano and another officer arrived simultaneously to help him subdue and handcuff the suspect. Campbell testified that Maisano helped him place the suspect in custody.

**Detective Charles Trucillo** (Trucillo) is presently employed with the Monmouth County Prosecutor's Office as a Detective; however, in November 2014 he was employed by the ATPD as a patrolman. On November 25, 2014, Trucillo was working the peak shift from 4:30 p.m. until 2:30 a.m. with Maisano. Trucillo stated that he was assigned to patrol the east side of the township. When Campbell's radio call came in, Trucillo was at headquarters with Officer McDowell because they were processing a case. He recalled that Oliver and Maisano were also at headquarters. Trucillo responded to the call. He was assigned to drive a Dodge Durango SUV that had a full display of emergency lights including rooftop. Trucillo activated his emergency lights and sirens. He exited the parking lot before Maisano, who exited right behind him. He expressed his concern about being the lead vehicle because the Durango did not handle as well as Maisano's Charger and he was less familiar with the roads in Aberdeen. Therefore, he pulled over to the right and allowed Maisano to take the lead. Trucillo recalled that Maisano's rear lights were activated. As the two police vehicles approached the intersection at Railroad Plaza and Main Street, Trucillo was approximately a car length behind Maisano. Trucillo testified that Maisano slowed down prior to entering the intersection and he saw sparks from Maisano's car as it made impact with the road at the dip in the roadway. He also recalled a black vehicle swerve as it passed Maisano's vehicle in the intersection. Trucillo stated that he looked to make sure everything was okay, but the black car was already gone. The recording equipment in Trucillo's vehicle was not working. Trucillo was aware of the malfunction prior to the start of his shift.

**Frank Maisano** (Maisano) has been a police officer for eighteen years but employed by ATPD for twenty-one years. On the night in question, Maisano was driving a black stealth Dodge Charger. He testified that he was familiar with the vehicle because it had been assigned to him since it entered the fleet. He knew how to turn the lights on and off and how to activate the three different siren sounds. He was working the peak shift, 4:30 p.m. to 2:30 a.m., assigned to section 3 where headquarters is located. When Campbell's call came over the radio, Maisano was at headquarters to use the restroom. Initially, Maisano considered it a routine call; Campbell just alerting dispatch of his location and activity. Maisano used his radio to copy Campbell that he was on his way as he exited the building. At the time Campbell's call came through

dispatch, Maisano recalled that Sergeant Oliver and Officers Trucillo and McDowell were at headquarters. Trucillo and McDowell were dealing with an evidence issue from another call. Maisano recalled that the section assignments at the time of the call were as follows: McDowell one, Trucillo two, Maisano three, and Walsh four. Even though Trucillo and McDowell were assigned to the sections closest to the call, Maisano explained that he was next in line because McDowell and Trucillo were busy. Maisano heard a second transmission from Campbell requesting assistance and asking for more officers. This time Maisano heard urgency in Campbell's voice. Recognizing that Campbell was in trouble, he expedited his response. He stated that he ran to his vehicle and believed he engaged his light bar which moves from left to right and activated his sirens as he pulled out of the parking lot. Trucillo also responded and exited the parking lot in front of Maisano. Maisano heard more radio communications from Campbell so he radioed Trucillo to let him pass. Trucillo agreed and pulled to the right. Maisano made the decision to pass Trucillo by crossing the double yellow lines of the roadway because the light at the intersection ahead of him was red. He began to slow down as he got closer to the intersection to see if it was clear. As he entered the intersection against the red light, it appeared clear but he caught site of a vehicle coming from his left. He quickly applied his brakes and the vehicle went past him, never stopping. He claimed there was nothing from that near miss encounter that led him to believe that he had hit the other vehicle and damaged his own.

Maisano explained that the intersection had a very pronounced curvature that he described as a roller coaster because of the series of inclines. It was not until he was through the intersection that he realized his front lights were not engaged. He claimed that when he was driving behind Trucillo, he could not tell whether his lights were on because of the lights coming from Trucillo's vehicle. It was not until he became the lead vehicle that he realized his lights were not activated. As soon as he realized the lights were not on, he activated them and continued to the call. Maisano stated that when he arrived at the scene it was chaotic. He assisted Campbell in restraining the suspect. After the situation was diffused, Maisano noticed the damage to his vehicle and immediately notified his sergeant by radio. (R-6.) Maisano waited until Oliver arrived. They viewed the damage together. Maisano's counsel asked him to draw a picture of the damage to his bumper. (P-4.) Maisano drew a picture of the front bumper with a



small hole and a line scratch above the driver's side headlight. At some point, Maisano drove back to the intersection to see if he could learn anything about the accident or the other vehicle but there was nothing. He contacted Matawan Police Department and learned that no accidents had been reported. Prior to the end of his shift, Maisano completed a standard accident form. (R-3.) In response to the question asking for information about the accident Maisano wrote that he was responding to an officer in distress call and "upon crossing an intersection made contact with another vehicle." Id. He stated that the form was completed in haste when he was in an excited state due to the seriousness of the recent distress call. He only had a brief conversation with Oliver and had not viewed the video. In retrospect, Maisano believed that he made a premature assumption before considering all the factors. The next day, after viewing the video and examining the intersection from an investigatory perspective, he deduced that the damage was done from his impact with the curvature of the road, not from hitting another vehicle. Maisano maintained that his siren was on when he entered the intersection and the emergency flashing lights from Trucillo's vehicle were clearly visible, yet the other vehicle failed to yield and never stopped. Being familiar with this intersection, he knew he had to apply his brakes as he went over the crown. In the process of braking, he noticed the other car so he quickly applied his brakes and felt only a quick jerk but nothing indicating that he hit another vehicle. He was interviewed by Captain Geyer and Deputy Chief Derechailo about the incident in the presence of counsel.

**John Reed** (Reed), licensed private detective, testified as appellant's expert witness. He supplied his Curriculum Vitae (P-1) and a report (P-2.) Reed testified that he was providing an analysis of whether Maisano's vehicle had lights and sirens activated when approaching the intersection; whether a collision occurred in the intersection; and the rates of speed of Maisano's vehicle as it went through the intersection. Reed testified that when Maisano's vehicle entered the intersection, there were lights on, but not all the lights on the stealth vehicle were fully activated. He concluded that the siren was on from his observation that the "S" was activated on the MVR from Maisano's vehicle. He was not able to definitively conclude whether an accident occurred in the intersection or if it was a near miss. Reed stated that he watched the video footage from the MVR numerous times using special slow motion

special enhancement software, but still could not tell if the cars hit. Reed also used the enhanced software to view the MVR to determine Maisano's rate of speed as he traveled through the intersection. According to Reed, there was a delay in the speed as indicated on the video with the actual speed captured on video that he determined was a 1.18 seconds delay. Using his calculations and watching the MVR with the enhanced slow-motion software, he determined that Maisano was traveling at a speed from 26 to 20 mph through the intersection, but acknowledged that he did not come to a complete stop.

### FINDINGS OF FACT

Private Detective Reed was offered as an expert by appellant. Under N.J.R.E. 702, expert testimony is admissible if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." Reed based his findings upon his review of the MVR over one hundred times and his use of enhanced slow-motion software. His opinions do little to assist me in determining a fact in issue. Maisano admitted that he was unaware that his lights were not fully activated until after he went through the intersection. Accordingly, Reed's opinion that the lights were not fully activated is not disputed. Reed determined that the siren was engaged based on his review of the DMR with the aid of enhanced software; however, Reed was not aware that the siren function was disengaged from the MVR prior to this incident. In addition, the MVR's depiction of the vehicle while it was at the intersection was within the one minute look-back so there was no audio recording of the siren. Geyer testified that the blinking "S" was indicative of braking not siren. Therefore, Reed's opinion that the siren was activated has no support from the materials that he reviewed. Reed could not decisively determine whether Maisano hit the other vehicle in the intersection or whether it was a very close near miss. The issue to be determined is unsafe operation of a vehicle which puts the officer and the public at risk. Whether Maisano hit the other car or narrowly missed hitting the other car is not determinative. Finally, Reed's opinion about the speed of the vehicle as it went through the intersection does not contradict the fact that the vehicle did not come to a complete stop at the red light, the charged violation. Therefore, I **FIND** that scientific, technical or other specialized knowledge was not

needed for me to understand the evidence or determine a fact issue. Reed's testimony and report is given no weight.

In reviewing the record, and after having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

1. On November 26, 2014, at a few minutes after midnight, Maisano responded to a call for assistance from Campbell.
2. Maisano was driving an unmarked police vehicle known as a "stealth car" that was not equipped with rooftop lights.
3. Maisano believed Campbell was in trouble so he expedited his response to the emergency call. Maisano stated he had tunnel vision caused by recent events in the news against police officers and was motivated by a desire to reach Campbell.
4. Maisano was originally proceeding to the call behind Trucillo. He passed Trucillo on the left by crossing over double yellow lines to become the lead vehicle.
5. Maisano's emergency lights were not activated.
6. It is unknown whether Maisano's sirens were activated.
7. As Maisano approached the intersection at Railroad Plaza and Main Street, his light was red.
8. Maisano applied his brakes but did not stop at the red light at the intersection.

9. When Maisano entered the intersection against the traffic light, he did not immediately notice the other vehicle in the intersection that was travelling eastbound with the green light passing directly in front of him.
10. When Maisano saw the other vehicle, he applied his brakes, but continued to proceed to the emergency call without stopping. The other vehicle continued to proceed eastbound without stopping.
11. The intersection at Railroad Plaza and Main Street has a pronounced curvature or hump in the road.
12. Maisano activated his emergency lights after he went through the intersection as he continued to proceed to the location of the emergency call.
13. Maisano traveled to the location at speeds that at different points reached 75, miles an hour, 79 miles an hour, and 83 miles an hour while travelling on roads that were posted as 35 miles an hour.
14. Upon arriving at the location of the call and after the suspect was in custody, Maisano noticed damage to the front bumper of his vehicle and notified Sergeant Oliver by radio that he had a minor accident.
15. Maisano completed an Accident Report stating that he made contact with another vehicle while crossing an intersection.
16. The damage to the vehicle cost ATPD \$1,068.05 to repair.

#### LEGAL DISCUSSION

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline,

depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20, and N.J.A.C. 4A:2-2.2.

The Appointing Authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co, 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

In the present case, Maisano was charged with incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1); insubordination, N.J.A.C. 4A:2-2.3(a)(2); inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3); conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). Maisano was also charged with the following violations of Aberdeen Township Police Department General Rules and Regulations: 3:1.8 Obedience to Laws and Regulations; 3:4.5 Operation of Motor Vehicle; 3:4.7 Reporting Accidents; 3:4.1 Damaged – Inoperative Property or Equipment; and 3:13 Operation of Police Vehicle. Although the same specifications support each of the charges and they are not compartmentalized, I will discuss each charge in turn.

Regarding the charge of violating N.J.S.A. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties. There is no definition in the New Jersey Administrative Code for incompetency, inefficiency or failure to perform duties. However, case law has determined incompetence is a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomayer v. Plainfield Police Dep't, CSV 9921-98, Initial Decision (December 6, 1999), adopted, Merit Sys. Bd. (January 24, 2000), <http://njlaw.rutgers.edu/collections/oal/final/> (citing Steinel v. City of Jersey City, 7

N.J.A.R. 91 (1983); Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980)). N.J.S.A. 4A:2-2.3(a)(1) is written in the disjunctive; therefore, a finding that Maisano failed to perform his duties would be enough to sustain the charge. As specifically prescribed, it was Maisano's duty to observe and obey all laws and ordinances, all rules and regulations, and orders of the department. Rule 3:1.8. (R-14.) Rule 3:13.5 states that "[a]n officer shall stop his vehicle before entering an intersection regulated by a red traffic light or a stop sign and may proceed only when the safety of the public is insured." Id. Maisano testified that because the light was red, he applied his brakes as he entered the intersection, slowing, but not stopping the vehicle. The video recording also shows that Maisano did not come to a complete stop at the red light at the intersection. It is also well documented that there was another vehicle in the intersection with the right of way that Maisano did not initially see. In responding to an emergency, Maisano was required to not only have his red lights and siren activated, but to exercise extreme caution. Maisano testified that he had "tunnel vision" in his desire to reach Campbell. Regardless of the exigency of the call, rules of safety still apply. Rule 3:13.1 requires that "officers must exercise extreme caution to protect the safety of all persons and property upon the roadway." Maisano testified that he recognized the urgency of the call before he got to his vehicle; therefore, he was responsible for activating his emergency lights and siren before exiting the parking lot at headquarters. The facts show that the emergency lights were not immediately activated. It remains inconclusive whether the siren was activated because there was no sound for the first minute of the recording and the siren does not activate the MVR. Maisano's argument that he had "tunnel vision" and was motivated by his concern for Campbell's safety does not excuse his failure to exercise "extreme caution" by making sure his emergency lights were fully engaged and by stopping at the red light at the intersection to insure it was clear before proceeding. Therefore, I **CONCLUDE** that ATPD has proven by a preponderance of the credible evidence that Maisano violated Rules 3.1.8, 3:4.5, and 3:13 in his operation of his motor vehicle, and therefore, proved the charge of failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1).

Maisano was also charged with violating N.J.A.C. 4A:2-2.3(a)(2), insubordination. Insubordination can be defined as intentional disobedience or refusal to accept reasonable orders, assaulting or resisting authority, disrespect or use of insulting or

abusive language to a supervisor. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971). Oliver testified that he told Maisano not to respond to the call for assistance from Campbell because Maisano was assigned to patrol the section of Aberdeen furthest away from the location. Oliver's ability to recall where each officer was assigned was not as detailed as Maisano's testimony. In addition, Oliver stated that he gave the order over the radio, but there is nothing on the audio recording or the transcribed tape to substantiate that claim. Oliver acknowledged that Maisano never responded to his order; therefore, there is nothing in the record to suggest that Maisano heard it. Oliver did not include his order in either of his written summaries of the events drafted immediately after the incident. 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). I do not question Sergeant Oliver's credibility, but his testimony about ordering Maisano not to respond to the call is inconsistent with other testimony and overborne by the documentary evidence. Accordingly, I **CONCLUDE** that the ATPD has not met its burden in demonstrating support to sustain a charge of insubordination. The charge of violation of N.J.A.C. 4A:2-2.3(a)(2) is hereby **DISMISSED**.

Maisano was charged with "inability to perform duties," N.J.A.C. 4A:2-2.3(a)(3). The charge appearing on the PNDA and the FNDA (R-20 and R-21) is operation of a motor vehicle with reckless disregard for the safety of others. "Inability to perform duties" is a non-disciplinary type of charge under N.J.A.C. 4A:2-2.3(a)(3), where the employer seeks to prove that an employee should be demoted or removed due to his physical, intellectual, or psychological inability to perform his duties. Rivera v. Hudson County Department of Corrections, CSR 06456-16, Initial Decision (October 24, 2016); Newark v. Bellezza, 159 N.J. Super. 123, 128 (App. Div. 1978). I **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)(3) does not apply to the facts of the present case.

Maisano 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 which

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)).

Maisano testified that he had "tunnel vision" in his desire to assist Campbell. Deputy Chief Derechailo recognized that Maisano's response to the call for assistance is a mitigating factor; however, Derechailo determined that it did not relieve Maisano from his duty to safely operate his motor vehicle with due regard for his own safety and the safety of others. (R-12.) Maisano testified that when he viewed the damage to his vehicle at the scene, he initially believed he hit the other vehicle in the intersection. He told his Sergeant that he had a minor accident and he completed an accident form stating that he made contact with another vehicle in the intersection. The admissions by Maisano that he had an accident on the way to the call show that he disregarded safety



rules and department regulations regarding accidents. Rather than stopping and immediately reporting the accident as required, he was undeterred in his determination to reach Campbell. Even prior to recklessly proceeding into the intersection, Maisano did not take the time to make sure that his emergency lights were fully engaged. He entered a busy intersection without emergency lights against the traffic light with a known curvature and was so preoccupied that he either hit another vehicle or barely missed it. As stated by Derechailo, the primary concern was not the accident itself, but the reckless driving. The incident at the intersection had the potential to be much more serious and tragic. Maisano's "tunnel vision" clouded his judgment and caused him to disregard safety rules and proper procedure for responding to an emergency call. Accordingly, I **CONCLUDE** that Maisano's conduct rose to the level of conduct unbecoming a public employee, and that ATPD has met its burden of proof on this issue.

Maisano was also charged with neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7). There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "negligent" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

Even in an emergency, Maisano was bound to proceed through the intersection with care. He failed to stop at the red light and obviously misjudged that the intersection was clear. His actions damaged his police vehicle and had the potential to have led to tragedy for the occupants of the other vehicle and for himself. Maisano was duty bound to obey the rules and regulations of ATPD. He failed to obey those regulations by failing to stop at the red light, by not activating his emergency lights, and by not operating his vehicle with "extreme caution to protect the safety of all persons and property upon the roadway." Therefore, I **CONCLUDE** that ATPD has met its burden of

proving by a preponderance of the credible evidence that Maisano's conduct constituted neglect of duty.

Maisano has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Specifically, Maisano is charged with the following violations of the ATPD General Rules and Regulations: Obedience to Laws and Regulations (3:1.8); Operation of Motor Vehicle (3:4.5); Reporting Accidents (3:4.7); Damaged – Inoperative Property or Equipment (3:4.1); and Operation of Police Vehicle (3:13). Maisano responded to an emergency without activating his emergency lights in violation of R. 3:13.1. He failed to stop at a red light at an intersection in violation of R. 3:13.5. He entered the intersection without due care for a vehicle that entered the intersection before him with the right of way in violation of R. 3:13.1 and R. 3:13.4. Maisano examined his vehicle after Campbell's emergency had been subsided. He deduced that he must have hit the other car in the intersection because of the damage to his vehicle. After examining his vehicle, he radioed his Sergeant. Proper procedure required Maisano to report the accident when it occurred. His decision to wait is a violation of R. 3:4.7. Maisano's violation of R. 3:4.1 is not as clear. The rule specifically refers to filling out forms for damage. Maisano completed the form as soon as it was practical. Therefore, I **CONCLUDE** that the violation R. 3:4.1 is **DISMISSED**. I **CONCLUDE** that ATPD has met its burden in demonstrating a violation of Aberdeen Township Police Department General Rules and Regulations 3:1.8, 3:4.5, 3:4.7, and 3:13. 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 with the exception of R. 3:4.1 that is dismissed, the charge of Other Sufficient Cause is hereby **SUSTAINED**.

#### 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, Maisano has not received any major disciplinary actions during the course of his career with ATPD. He received a minor discipline resulting in a four-day suspension. There was a preliminary notice submitted as part of the disciplinary history that I did not consider as there was no indication of whether it became final. Maisano's history shows that he was reprimanded on five occasions. As to the penalty of a ten-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 Maisano's ten-day suspension. Progressive discipline is intended to give the employee notice and an opportunity to correct the improper behavior. Based upon Maisano's multiple sustained disciplinary charges, a major disciplinary action is warranted. After having considered all the proofs offered in this matter and the possible impact upon the public caused by unsafe and reckless operation of a motor vehicle in response to an emergency, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that Maisano's violations are significant to warrant a penalty of a 10-day suspension. Therefore, I **CONCLUDE** that the imposition of a 10-day suspension was an appropriate penalty.

### ORDER

I **CONCLUDE** that ATPD has sustained its burden of proof as to the charges of violating 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; N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty; and N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, that includes ATPD Rules and Regulations 3:1.8, Obedience to Laws and Regulations; 3:4.5, Operation of Motor Vehicle; 3:4.7, Reporting Accidents; and 3:13, Operation of Police Vehicle.

Accordingly, I **ORDER** that the action of ATPD in suspending Maisano for ten days is **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. 52:14B-10.

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

October 31, 2017  
DATE

*Kathleen M. Calememo*  
**KATHLEEN M. CALEMMO, ALJ**

Date Received at Agency:

November 1, 2017

Date Mailed to Parties:

November 1, 2017

cmo

**APPENDIX**  
**WITNESSES**

**For Appellant:**

Officer Raymond W. Campbell  
Officer Charles Trucillo  
Officer Frank Maisano  
John A. Reed

**For Respondent:**

Sergeant Darryl Oliver  
Captain Alan Geyer  
Deputy Chief Richard Derechailo  
Chief John T. Powers

**EXHIBITS**

**For Appellant:**

P-1 John Reed Curriculum Vitae  
P-2 John Reed Investigation Report  
P-3 July 2014 revised Attorney General's Guidelines  
P-4 Officer Maisano's sketch of damage to vehicle

**For Respondent:**

R-1 Oliver Memo to Geyer on the Accident  
R-2 Oliver Memo to Geyer on Discipline  
R-3 Accident/Injury Report  
R-4 Not in evidence  
R-5 Geyer Memo to Derechailo

- R-6 Transcription of the Audio Recording
- R-7 IA Complaint Notification
- R-8 Estimate of damage
- R-9 IA Report
- R-10 Interview summary
- R-11 Not in evidence
- R-12 Derechailo Memo to Powers
- R-13 Trucillo's Daily Worksheet Log
- R-14 ATPD rules and regulations
- R-15 General Order
- R-16 Not in evidence
- R-17 Not in evidence
- R-18 Not in evidence
- R-19 Not in evidence
- R-20 PNDA
- R-21 FNDA
- R-22 Vehicle repair receipt
- R-23 Video
- R-24 Audio of radio transmissions
- R-25 Letter dated September 29, 2017 with disciplinary history