In the Matter of Michael Jasiecki
CSC Docket No. 2003-983
(Civil Service Commission, decided July 30, 2008)

The appeal of Michael Jasiecki, a Police Officer with Parsippany-Troy Hills, of his removal effective August 13, 2002, on charges, was heard by Administrative Law Judge Margaret M. Monaco (ALJ), who rendered her initial decision on February 11, 2008. Exceptions were filed on behalf of the appellant and cross exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on July 30, 2008, accepted and adopted the Findings of Fact and Conclusions as contained in the attached initial decision and the recommendation that the removal be upheld.

DISCUSSION

The appellant was removed on charges of incompetency, inefficiency or failure to perform duties, neglect of duty, conduct unbecoming a public employee, and violations of department rules and regulations for failure to perform duties as required by departmental policy, failure to follow the motor vehicle pursuit policy, and failure to exercise good judgment and care with regard to the safety of life and property. Specifically, the appointing authority asserted that on October 5, 2001, the appellant became involved in a multi-jurisdictional pursuit without the request of the initiating agency or authorization from his supervisor; engaged in pursuit tactics not within the parameters of departmental policy; engaged in pursuit tactics without authorization of a superior officer; caused unnecessary risk to the general public, the other officers involved in the pursuit and the suspects; and failed to exercise good judgment relative to the safety of the general motoring public and other law enforcement agencies involved in the pursuit as well as the suspects. Upon the appellant's timely appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In her initial decision, the ALJ found the testimony of the police officers who testified on behalf of the appointing authority to be credible, detailed and candid. The ALJ found the testimony of the appellant to be inconsistent, inherently improbable and outweighed by other credible evidence in the record. Also, the ALJ found the testimony of the appointing authority's expert, Michael Renahan, regarding the Pursuit Policy and the appellant's actions to be persuasive. While the appellant's expert, Steven Palamara, was a credible witness, his opinion on the appropriateness of the appellant's actions was based, in part, on the appellant's version of the events. In addition, the ALJ concluded that Palamara's opinions were based on an overly technical and narrow interpretation of the Pursuit Policy.

Moreover, the ALJ determined that the appellant failed to offer any credible or competent evidence to show that the Department's method of training was deficient. Rather, the record demonstrated that the Department devoted substantial time and effort to train its officers regarding pursuits. The ALJ reasoned that the appellant, based on his responses during an Internal Affairs interview regarding the subject incident, fully understood the policy provisions regarding monitoring pursuits and his claim that officers were unclear as to what acceptable monitoring entailed was not persuasive. The ALJ, after reviewing the pertinent provisions of the Pursuit Policy, found that the appellant had no authority to become involved in the pursuit. The ALJ determined that the appellant, without authorization, engaged in "clearing traffic," a tactic that was not permitted pursuant to the Pursuit Policy. The ALJ also determined that the appellant, without authorization and at a high rate of speed, engaged in the tactics of "boxing in" and "heading off," which created unnecessary risk to the general public, the other officers involved in the pursuit and the suspects. The ALJ concluded that the appellant failed to perform and neglected his duties during the pursuit. The ALJ also concluded that the appellant's conduct was unbecoming of a law enforcement officer given that he engaged in conduct in violation of his responsibilities as a police officer.

With respect to the penalty, the ALJ indicated that the seriousness of the appellant's infractions was a critical consideration especially given that his actions were extremely dangerous and could have resulted in dire consequences. The ALJ noted that the instant matter did not involve a single split second decision made during a pursuit but rather, the appellant, without seeking authorization, deliberately made the decision to pull out in front of a high-speed inter-jurisdictional pursuit and then engaged in tactics that were inherently dangerous. The ALJ also determined that the appellant had been afforded progressive discipline through counseling, letters of reprimand, a one-day suspension and a six-month suspension.[1] Accordingly, the ALJ recommended that the removal be upheld.

In his exceptions, the appellant makes several arguments as to why the ALJ's findings and conclusions were inaccurate. He contends that his witnesses all had extensive experience with respect to pursuits, whereas the appointing authority's witnesses were all upper-level management who were never involved in a pursuit. The appellant argues that Palamara's testimony was equally credible as Renahan's, who has no practical experience in real-life pursuits. In addition, the

---

[1]Regarding the six-month suspension, the Final Notice of Disciplinary Action (FNDA) dated October 18, 1999, indicated that the appellant was suspended for 180 days from June 24, 1999 through December 24, 1999. Specifically, the appellant was suspended without pay from June 24, 1999 through September 24, 1999, and as part of a negotiated settlement agreement, the appellant forfeited 44 vacation days from September 25, 1999 through December 24, 1999. The ALJ found no merit in the appellant's argument that he had only been suspended for three months since the forfeited vacation days could not be considered suspension time.

ALJ committed reversible error by not allowing Palamara to testify regarding routine practices, including "clearing traffic." He argues that the Department had insufficient training regarding unacceptable pursuit tactics that were not explicitly discussed in its policies. In this regard, the appellant contends that there was testimony by many of his witnesses that "clearing traffic" was an accepted tactic and never disallowed. He claims that he did not attempt to "head off" or "box in" the suspect. Further, he asserts that the ALJ ignored the plethora of evidence that demonstrated that at the time of the pursuit in question, the Department did not have a policy that required an officer to have specific permission before responding to an inter-jurisdictional pursuit or that the other jurisdiction must request assistance before another agency may become involved. The appellant avers that the ALJ ignored crucial evidence relating to an inter-jurisdictional pursuit in February 2001 (Stanton Crew pursuit) which involved similar tactics employed by the appellant. The ALJ's finding that the suspect did not pose an immediate threat to the public or other police officers necessitating the appellant's intervention is unsupportable, given that other officers have verified that the suspect was extremely dangerous. He adds that he did not engage in conduct unbecoming since at best, he lacked a clear understanding of his responsibilities under the Pursuit Policy. Moreover, he contends that he did not incur a six-month suspension regarding the 1999 matter and it was not reported as such. Finally, the appellant presents that the penalty is grossly disproportionate to the "less than twenty seconds worth of actions he took during the pursuit."

In reply, the appointing authority submits that the appellant received adequate training regarding pursuits. In addition, regardless of training, it is evident from the appellant's Internal Affairs interview that the appellant was fully aware of his obligations and responsibilities regarding inter-jurisdictional pursuits. Specifically, the appellant acknowledged that he needed permission from a supervisor to engage in or to get ahead of a pursuit, which he did not have in the instant matter. The appointing authority contends that the ALJ properly rejected Palamara's analysis given his overly technical and narrow interpretation of the Attorney General Guidelines and the Pursuit Policy. Palamara gave undue weight to the appellant's police report and account of events in order to draw his conclusions. However, on cross examination, Palamara supported the ALJ's findings, *i.e.*, there was no immediate threat to justify the appellant's becoming involved in the pursuit without his supervisor's express permission, there was no express permission to engage in the pursuit and sufficient cause did not exist for the appellant to continue pursuit. The appointing authority notes that even if the appellant had permission and was operating his vehicle at a low speed, he could not have engaged in "boxing in" or "heading off" safely because he did not have direct radio contact with the other patrol cars. Thus, the appellant's actions were extremely dangerous and he placed himself, the other police officers and the motoring public at great risk. After unsuccessfully attempting these maneuvers, the appellant also violated the Pursuit Policy by not properly communicating with

dispatch upon becoming the primary unit, for which he did not have express permission from his supervisor. The appointing authority maintains that the appellant's removal is appropriate given his lengthy disciplinary history. Although the appellant has been given ample opportunity to correct his behavior, he has consistently violated departmental rules and regulations.

Upon its *de novo* review of the entire record, the Commission agrees with the ALJ's assessment of the charges and the penalty. Initially, the Commission finds the appellant's exceptions unpersuasive. The appellant disputes the appropriateness of the ALJ's credibility determinations and he essentially reiterates his arguments made to the ALJ. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A.* 52:14B-10(c); *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super*. 527 (App. Div. 2004). The Commission agrees with the ALJ's determination that Renahan was more credible than Palamara. Specifically, Palamara based his conclusions on the appellant's version of the events and on a strict technical interpretation of specific portions of the Pursuit Policy which did not comport with other provisions of the policy or with its underlying purpose. In addition, there is no evidence that any purported "excluded" testimony regarding routine Departmental practices from Palamara would have changed the result. In this regard, as noted by the ALJ, the credible evidence did not support that the Department condoned any actions the officers may have taken that violated the Pursuit Policy. The Commission also finds that the appointing authority's witnesses were credible in their testimony regarding pursuit training and the appellant does not dispute that he received the mandatory training. Moreover, it is apparent from the appellant's Internal Affairs interview that he understood his responsibilities with respect to pursuits. The Commission finds no other reasons to discredit the other testimony from the appointing authority's witnesses as compared to the appellant's. Accordingly, after its review, the Commission finds that the ALJ's assessment of the credibility of the witnesses and her findings and conclusions based on those assessments were appropriate. The Commission agrees with the ALJ's findings regarding the Pursuit Policy and her credibility findings that the appellant violated that policy.

With respect to the penalty, 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. *See West New York v. Bock*, 38 *N.J.* 500 (1962). However, it is well established that when 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). The appellant's prior disciplinary history since his employment in 1991 includes two written reprimands, a one-day suspension and a six-month suspension.[2] In this case, the Commission agrees with the ALJ that the appellant's conduct in ignoring proper Police Department procedure regarding inter-jurisdictional pursuits warrants the upholding of the charges and his removal. Such conduct is indicative of the appellant's exercise of poor judgment which is not conducive to the performance of the duties of a Police Officer. The Commission is mindful that a Police Officer is a law enforcement employee who is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong,* 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied,* 47 *N.J.* 80 (1966). *See also, In re Phillips,* 117 *N.J.* 567 (1990). Therefore, after a thorough and independent review of the entire record, the Commission concludes that, based on the nature of the charges and the appellant's prior disciplinary record, the penalty of removal imposed by the appointing authority is neither unduly harsh nor disproportionate to the offenses, and should be upheld.

ORDER

The Civil Service Commission finds that the appointing authority's action in removing the appellant was justified. The Commission, therefore, affirms that action and dismisses the appeal of Michael Jasiecki.

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

---

[2] The Commission rejects the appellant's contention that this action was a three-month suspension since the second portion of the penalty involved forfeiting vacation days. A suspension is determined by the duration an individual is penalized for a given infraction. In this case, the appellant was clearly penalized for the equivalent of six months. Even assuming, *arguendo*, that the discipline was a three-month suspension, the penalty of removal for the current infraction still comports with the tenets of progressive discipline.