A-5

STATE OF NEW JERSEY

In the Matter of Hayford Jarpa
Department of Military and Veterans Affairs, Veterans Haven Transitional Home

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-1783
OAL DKT. NO. CSV 19729-15

ISSUED: JUL 28 2017 BW

The appeal of Hayford Jarpa, Human Services Assistant, Department of Military and Veterans Affairs, Veterans Haven Transitional Home, 60 working day suspension, on charges, was heard by Administrative Law Judge Tama B. Hughes, who rendered her initial decision on May 9, 2017 reversing the 60 working day suspension. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on July 26, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

Since the penalty has been reversed, the appellant is entitled to the equivalent of 60 days of back pay, benefits, and seniority, pursuant to *N.J.A.C.* 4A:2-2.10. Further, since the appellant has prevailed, he is entitled to counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

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

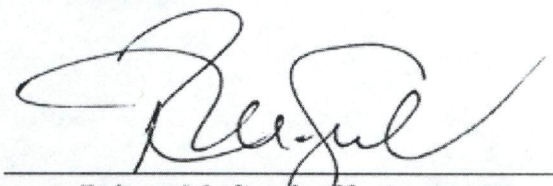
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Hayford Jarpa. The Commission further orders that appellant be granted the equivalent of 60 days 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.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C.* 4A:2-2.12. An affidavit of services in support of reasonable counsel fees 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 and *N.J.A.C.* 4A:2.12, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees 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 shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
JULY 26, 2017



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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 19729-15
AGENCY DKT. NO. 2016-1783

IN THE MATTER OF HAYFORD JARPA,
VETERANS HAVEN TRANSITIONAL HOME,
DEPARTMENT OF MILITARY AFFAIRS.

William A. Nash, Esq., appearing for appellant, Hayford Jarpa, (Law Office of Nash Law Firm, LLC, attorneys)

Susan C. Sweeney, Administrator Employee Relations, appearing for respondent, Veterans Haven Transitional Home, Department of Military Affairs, appearing pursuant to N.J.A.C. 1:1-5.4(a)2

Record Closed: March 27, 2017 Decided: May 9, 2017

BEFORE **TAMA B. HUGHES**, ALJ:

STATEMENT OF THE CASE

Appellant Hayford Jarpa, ("appellant") an Assistant at the Veterans Haven Transitional Home (VHTH or respondent), appeals a Final Notice of Disciplinary Action ("FNDA") and the sixty-day suspension for: 1) Conduct Unbecoming a Public Employee (N.J.A.C. 4A:2-2.3(a)(6)); 2) Other Sufficient Cause (N.J.A.C. 4A:2-2.3(a)(12))

specifically, notoriously disgraceful conduct (DD.230.05:C.16). Respondent's basis for the suspension originates from the arrest of appellant for second degree aggravated assault in violation of N.J.S.A. 2C:12-1(b)(2) which was ultimately downgraded and dismissed. Respondent alleges that appellant was untruthful about the arrest and subsequent investigation regarding the same.

PROCEDURAL HISTORY

On June 15, 2015, appellant was issued a Preliminary Notice of Disciplinary Action ("PNDA") suspending him with pay, effective June 11, 2015, due to appellant's arrest for aggravated assault on June 1, 2015. On June 25, 2015, an amended PNDA was issued to appellant suspending him without pay indefinitely. On September 1, 2015, a second amended PNDA was issued to appellant suspending him for 120 working days beginning on a date to be determined. On September 15, 2015, a third amended PNDA was issued to appellant suspending him for 120 days and provided appellant seventeen days within which to seek a departmental hearing. A departmental hearing was held on October 23, 2015, the result of which was the issuance of a FNDA on November 2, 2015, suspending appellant for sixty days. The appellant requested a hearing and the matter was filed at the Office of Administrative Law, on December 3, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. A settlement conference and prehearing conference were held on February 25, 2016, and August 19, 2016, respectively. The matter was heard on February 24, 2017, and February 27, 2017. The record closed on March 27, 2017.

TESTIMONY

Justin Seidel ("Seidel"), a Patrolman for the Buena Police Department testified that on May 31, 2015, at 12:57 a.m., he was dispatched to appellant's home on the report of a domestic matter. (R-3). Upon arrival, less than a minute later, he found appellant's son, Hayford Jarpa, Jr., ("Jarpa") standing outside, bleeding from a two-inch laceration on his head. Jarpa, who was highly intoxicated and stumbling at the time,

informed Seidel that he and his father had gotten into an altercation and appellant hit him with a folding chair. Due to the head injury, an ambulance was called and Jarpa was taken to the hospital where he was subsequently admitted, due to his level of intoxication. Appellant was not located at the residence and while Jarpa's mother was present, she did not want to speak to the police. Seidel stated that per protocol, all domestics go on warrants. In this case, the judge was telephonically contacted and an arrest warrant was authorized for aggravated assault with bail set at $2,500 at ten percent. Thereafter, a physical warrant was generated with a copy for the respondent. (R-7). Also generated were Incident and Case Detail reports detailing the events of the evening. (R-2 and R-4). Seidel testified that he drove by the residence a couple of times that night to try to serve appellant with the warrant, however, was unable to locate him.

On June 1, 2015, at 4:30 p.m., appellant turned himself in to the Buena Police Department where he was fingerprinted, photographed and posted bail. (R-5 and R-6). Appellant was given a copy of the bail receipt and informed that he was to appear in court on June 4, 2015. (R-10). Seidel stated that while he told the next shift to serve appellant with a copy of the warrant, he could not say for certain if that occurred. Seidel also stated that in his experience as a police officer, when a person is fingerprinted, photographed and pays bail, they understand that they have been arrested. The charges were downgraded by the county and ultimately dismissed in Municipal Court on August 27, 2015, (R-8, P-1 and P-2) due to a statement provided under oath by Jarpa that he did not want to proceed.

On cross-examination, Seidel stated that the police had been to the appellant's home once before on an unrelated, non-domestic matter. Seidel also testified that he did not know what time the incident occurred on May 31, 2015, or what time the appellant left the residence. Seidel also stated that he did not leave copies of the warrant at the house and did not inform the female (who he assumed to be appellant's wife) that there was an active warrant for appellant's arrest, just that he needed to go to the police station. Seidel further stated that while it is protocol to give a defendant a

copy of their arrest warrant, there is no documentation in the system to verify that had occurred in appellant's case.

Cindy Leese ("Leese"), Manager, Human Resources for the Department of Military Affairs testified that she is responsible for all personnel issues for respondent. Leese stated that her department received notification that appellant had been arrested and fingerprinted. Due to this notification, per protocol, on June 11, 2015, Leese informed appellant's supervisors that appellant had to be placed off duty with pay immediately. (R-14). Leese was informed later in the day via email by Staff Supervisor Leanne Donahue ("Donahue") that appellant had been placed off-duty and was also questioned about what had occurred. According to Donahue, appellant informed her that there had been a fight at his house when he was not there and that the police went to his home looking for him. When appellant went to the police station he was told that he had to appear in court on June 4, 2011. On June 4, 2015, appellant was informed that he had been charged with aggravated assault and asked if he had received the complaint, which he had not. According to appellant, he was told to wait to see what comes through by the court and then left. He has not heard from them since. (R-14). On this same date, Leese received a call from appellant who informed her that nothing happened involving him and that the judge said that everything was handled and that he could go home.

Leese stated that on June 12, 2015, she received another call from appellant who informed her that he had gone to the police station and was informed that the charges were dismissed. Leese told appellant that he needed to get something in writing to that effect and fax it over. Nothing was faxed over the next couple of days. On June 15, 2015, Leese received another call from appellant who stated that the police would not put anything in writing. When Leese questioned this, appellant indicated that he was going to get an attorney and that he had been allowed to go back home on June 4, 2015. On this same date, Leese spoke to the assistant prosecutor handling appellant's criminal matter. Leese was informed that appellant's charges would either go to the grand jury or go to municipal court but that they would not be dismissed.

Shortly thereafter, appellant was placed on leave without pay. (R-15). Due to appellant's inconsistencies in his statements to her, Leese created a timeline of calls. (R-16). Leese testified that she received a call from appellant on August 28, 2015, wherein appellant questioned whether Leese had received the fax he had sent. When she told him "no", he indicated that he would re-fax everything. Two fax sheets came in that were blank. (R-17 and R-18).

When questioned whether there was a policy requiring an employee to notify respondent if he/she were arrested, Leese said yes. When questioned where it was and whether it was in the Corrective and Disciplinary Action Booklet ("Disciplinary Booklet") (P-4), Leese stated that she does not use the book nor is she familiar with it. When questioned where the policy would be requiring such notification, Leese stated that she believed it was in the Title 4A book.

Leanne Donahue ("Donahue"), Staff Supervisor for respondent, testified that she is appellant's supervisor. On June 11, 2015, based upon a call and email that she received from Leese, she met with appellant to suspend him and collect his keys. At the time of the meeting, she questioned whether he was involved in any legal issues. Appellant thought a moment, hesitated and then informed her that there was a fight at his house but that he was not home when it had occurred. Appellant went on further to state that the police came to his house a couple of times looking for him. When appellant spoke to the police, he was told that he had been charged with aggravated assault and that he needed to appear in court on June 4, 2015. He appeared before the judge on that date but did not receive a complaint and was told to go home and wait. Donahue prepared a statement regarding this meeting. (R-12). Donahue had previously been unaware that there was a court date on June 4, 2015, prior to her meeting with appellant on June 11, 2015.

Alicia Bonner ("Bonner"), Staff Assistant for respondent, testified that she has been appellant's supervisor for the last five years. On June 11, 2015, she sat in the meeting wherein appellant was suspended. In questioning appellant about the incident

that occurred on June 1, 2015, appellant stated that there was a fight at his home. The next day while at work, the police came to his house looking for him. Appellant stated that he went to the police station after work and was told to report to court on a specific date. He did not state that he was charged with assault or that he was arrested. Appellant appeared in court on June 4, 2015, however the judge did not go forward with the matter. Bonner wrote a statement on the same date as the meeting regarding what was discussed. (R-11).

On cross-examination, Bonner stated that appellant was one of the best employees at the veteran's home and that she was "stunned" when he was being put out. Bonner stated that appellant has integrity, a work ethic and is reliable. At no time, has he been aggressive with patients. Bonner testified that she is aware that appellant's son is an alcoholic with several DUI's. Bonner further stated that she did not recall whether appellant had to go to court prior to June 11, 2015, however if he had to go to court on a work day, he would need permission to get off early.

Hayford Jarpa Jr. ("Jarpa") testified that he drinks daily. When he drinks, he doesn't black out. When questioned if anything happens when he drinks in excess, Jarpa stated that the first time that happened, he was in an accident. The second time was during his daughter's birthday party on May 30, 2015, at his parent's home when he had several different drinks. Jarpa stated that he does not remember the police being called at midnight on May 30, 2015, or a recollection of anything except for renting a "bouncing house" for the kids and at 6:30 p.m., bringing out the checkbook to pay for the delivery. Jarpa did not remember wanting to go to Atlantic City or his father taking his keys. Jarpa stated that his father did not hit him with a chair but he did remember slipping, falling and bleeding and waking up in the hospital the next day. He did not recall calling the police. Jarpa testified that he is a different person when he is drunk and that his dad has never hit him. He was not sure why he told the police that his father had hit him. When questioned if there was another party someplace on the same date, Jarpa said "yes," there was a graduation party for one of his parents' friend's child. Jarpa has been convicted of three DUI's. When questioned on cross-

examination if his story to the police about his dad hitting him was a lie, Jarpa said, yes. Throughout his testimony, Jarpa was smirking.

Hayford Jarpa, Sr. testified that he is a Liberian-born native and has lived in the United States for the past sixteen years. He is married with nine living children. He has a Bachelor of Arts Degree and a Master Degree from Manchester University. Appellant has worked for respondent for the past five years as a Human Services Assistant (HSA) and prior to that worked for the Division of Youth and Family Services. He has worked for the State of New Jersey since 2007.

Appellant stated that on May 30, 2015, there was a birthday party for two grandchildren at his home. There was alcohol at the party which started around 2:00 p.m. At 8:00 p.m., he told everyone to shut the party down. In-or-around that time, he left to go to a party that was being held by a member of the Liberian community. His son and son-in-law were drunk when he went to leave and they were about to get into a car to drive to Atlantic City. Appellant took the car keys away from his son. He has never hit his son. When he arrived home after midnight, he learned that his son was injured. His wife said that his son fell and was bleeding. Appellant testified that his wife believes the police took him, however someone else said that an ambulance came and took him. Appellant testified that he was only home for ten minutes when he left to go to the hospital. Once there, he met a Buena Police Officer whom he knew very well, however he couldn't remember his name. The Police Officer did not detain him at that time.

The next day, May 31, 2015, appellant went to work. Appellant testified that he worked two shifts - the midnight shift from 11:30 p.m. to 7:00 a.m. and the morning shift from 7:00 a.m. to 3:30 p.m. While at work he received a call from his wife stating that the police had been to their house looking for him. Appellant told his wife to go to the police station and see what they wanted and in so doing, was informed that appellant needed to turn himself in and bring bail money in the amount of $2,500 – ten percent or $250. After work, appellant went to the police station where he was finger printed,

photographed, paid bail in the amount of $250 and given a receipt. Appellant stated that he called Leese from the Police Station to inform her that he had been charged with aggravated assault and fingerprinted, but that he was told to go home. Leese informed appellant to put it in writing.

On June 2, 2015, appellant gave Bonner the bond receipt and requested a half-day off to go to court on June 4, 2015. On June 4, 2015, appellant went to court, showed the judge the bond receipt and was told to go home and wait. He was also told to go back to the police station to receive the charges. Appellant stated that he hired an attorney and the charges were dismissed. Appellant also stated that he told Leese that he had been arrested for aggravated assault. When questioned whether he hid anything from his supervisors or misrepresented anything, he said, no. Appellant testified that both Leese and Bonner were lying when they said they did not know what was happening prior to June 11, 2015. Leese was lying because he called her from the Police Station to inform her that he had been arrested and was also incorrect in her statements in (R-16). Bonner was lying because she gave him a half day off on June 4, 2015, to go to court.

The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' 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 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, 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. In re Perrone, 5 N.J. 514. 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** that on May 31, 2015, appellant was charged by Buena Police Department for Aggravated Assault in violation of N.J.S.A. 2C:12-1B(2) and bail was set at $2,500 at ten percent. I **FIND** Jarpa's testimony disingenuous. However, I further **FIND** that no evidence was presented that appellant assaulted Jarpa with a steel folding chair on May 31, 2015, causing him bodily injury. I further **FIND** that no evidence was presented that appellant intentionally left his residence to elude or evade the police.

I **FIND** that on June 1, 2015, when appellant learned that the police were looking for him, he turned himself in. I **FIND** that upon turning himself in, appellant was formally arrested and processed by the Buena Police Department, posted bail in the amount of $2,500 at ten percent ($250) and received a bail receipt that reflected both the charges and court appearance date of June 4, 2015. I **FIND** that appellant was cognizant of the charges levied against him at that time and the fact that he had been placed under arrest when he was fingerprinted, photographed and posted bail – regardless of whether he was served with a copy of the warrant.

I **FIND** that appellant's testimony was not credible when he testified that he had contacted Leese from the police station to report his arrest. I **FIND** that respondent was not formally made aware of appellant's arrest until June 11, 2015, when Leese received notification that appellant had been arrested and fingerprinted. I **FIND** that while respondent has a disciplinary booklet, there is nothing contained therein, nor was there credible evidence presented, that requires an employee to disclose an arrest.

I **FIND** that appellant was responsive to his supervisors when questioned about the criminal charges levied against him. However, appellant was misleading to Leese regarding the case status. I **FIND** that the "incident's giving rise to the charge(s) and

the date(s) on which it/they occurred" identified in the PNDA, first through third amendments thereto, and the FNDA, do not identify or mention appellant's failure to disclose his arrest, inconsistent information and/or lack of candor regarding his arrest or case status. I **FIND** that no evidence was presented to support the supposition that respondent's failure to report his arrest or accurately report the status of the criminal matter was in violation of a departmental policy, employee handbook or the disciplinary booklet.

LEGAL DISCUSSION AND CONCLUSION

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Merit System Board requires the Office of Administrative Law (OAL) to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty, if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Here, respondent was charged with violating N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a State Employee and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, specifically, DD.230.05:C.16 – Notoriously Disgraceful Conduct.

Conduct Unbecoming a Public Employee is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental

unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 NJ. 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 "incident's" giving rise to the FNDA identifies the following basis for the sustained charges: 1) warrant for the arrest of appellant for a domestic violence incident; 2) appellant striking Jarpa with a steel folding chair causing him bodily injury; and 3) leaving the scene when 911 was called.

The record reflects that appellant was charged with aggravated assault on May 31, 2015, and formally arrested the following day when he voluntarily went to the police station after learning that the police were looking for him. These charges were dismissed in August 2015, and no evidence was presented at the hearing to support a finding that appellant assaulted his son or attempted to evade or elude the police.

Respondent argues that the charge of conduct unbecoming was properly sustained due to appellant's lack of candor or truthfulness surrounding his arrest and case disposition. Respondent further asserts that given appellant's position as a direct care worker at a facility charged with rehabilitation and care of at-risk population, such conduct cannot be tolerated thereby supporting a finding of conduct unbecoming.

Appellant's alleged failure to be truthful or forthcoming regarding his arrest and pending case disposition was not one of the enumerated "incident's" identified on the FNDA or the amended PNDA's as the basis for the disciplinary action.

Plain notice is the standard to be applied when considering the adequacy of disciplinary charges filed against public employees. Pepe v. Township of Springfield, 337 N.J. Super. 94, 97 (App. Div. 2001). Hammond v. Monmouth County Sheriff's Dep't, 317 N.J. Super. 199, 204 (App. Div. 1999): "No provision of law empowers the public employer to prosecute charges before the Board which the appointing authority has, itself, dismissed after the required local disciplinary proceedings have been held." Cf. N.J.S.A. 11A:2-13, -14, -15; City of Orange v. De Stefano, 48 N.J. Super. 407, 419-20 (App. Div. 1958). Stated otherwise, charges are a sine qua non of a valid disciplinary proceeding. It is elementary that an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority. The de novo hearing on the administrative appeal is limited to the charges made below. West New York v. Bock, 38 N.J. 500, 522 (1962) "Where an employee who is entitled to notice of "cause" and hearing before discharge is tried on one specific charge, as here, and is found not guilty thereof but solely of other charges, never specified or actually tried before either the original hearer or on appeal to the Commission, the penalty imposed will be set aside." City of Orange v. De Stefano, supra, 48 N.J. Super. 407; Kramer v. Civil Serv. Comm'n, 120 N.J.L. 599 (Sup. Ct. 1938). However, if the person had reasonable notice in time to defend at the hearing, then the core concerns of fairness are met.

In Campbell v. Department of Civil Service, 39 N.J. 556 (1963), Bernard Campbell ("Campbell") was charged with incompetency, inefficiency and poor service ratings. During the hearing, evidence was introduced relating to two additional matters which occurred during the pendency of the hearing which bore on Campbell's fitness to continue in his position. Campbell was advised that the two matters would also be considered by the Acting Commissioner of the Department of Labor and Industry. Campbell did not introduce any evidence to meet the two new charges, however

introduced evidence bearing on the other ten other charges. Upon the close of the hearing, the Acting Commissioner sustained the charges and removed Campbell from his position. Thereafter, a hearing de novo was held before the Civil Service Commissioner who sustained Campbell's removal. On appeal, one of the arguments set forth by Campbell was the contention that the appointing authority failed to enumerate the cause which constituted the grounds for removal and the act of the employee constituting such cause. In upholding the Civil Service Commissioner's findings, the Court stated:

> ...the preliminary notice of disciplinary action which was served by the Department of Labor and Industry upon Mr. Campbell was on a form prepared by the Commission and referred to both of the quoted grounds for removal. While the notice might well have set forth the specifics supporting the general charges of incompetency and inefficiency, Mr. Campbell was made fully aware of them during the days of hearing before the Department and was afforded ample opportunity to meet them. Furthermore, his appeal before the Civil Service Commission was de novo and by that time Mr. Campbell was thoroughly familiar with the individual charges, including the additional charges of injudicious conduct in Burkley and improper practice before the Division during his suspension. He was undoubtedly entitled to fair notice and opportunity to be heard. See West New York v. Bock, 38 N.J. 500, 522 (1962). But he had that, he never made formal application for further particularization, and if there was any procedural irregularity it did not prejudice him...

Campbell further argued that the charges outside of the preliminary notice were improperly considered. In response to this argument, the Court found that the charges were duly raised before the Acting Commissioner and that Campbell was advised that they would be considered and that he could introduce evidence to meet them. He did not. The Court went on to state:

> ...in any event, the original notice may be considered as having been amended or supplemented to include them specifically. On his appeal, they were part and parcel of the

> charges heard de novo by the Commission which fairly received evidence with respect to them from both the Department and the appellant... Campbell supra at 580.

The instant matter is distinguishable from Campbell in that the appellant was not provided notice that respondent's charges were premised upon lack of candor or truthfulness surrounding his arrest and case disposition. Even assuming arguendo appellant had been placed on notice of such a charge, no credible evidence was presented at the hearing to support such a finding.

Based upon the foregoing, I **CONCLUDE** that respondent has not met its burden in demonstrating a violation of N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a State Employee) under either the assault charge or failure to truthfully report the arrest/case disposition.

Having not met its burden demonstrating a violation of N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming a State Employee, I **CONCLUDE** that the charge of violation of N.J.A.C. 4A:2-2.3a(6) Conduct Unbecoming a State Employee is hereby **DISMISSED**.

Appellant was also charged with a violation of N.J.A.C. 4A:2-2.3(a)12 (other sufficient cause) specifically, a violation of departmental directive 230.05:C.16 (notoriously disgraceful conduct). There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against appellant. The charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation" Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <hjttp://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>. Likewise, notoriously disgraceful conduct is not defined in the Disciplinary Booklet nor did respondent introduce into evidence any rules, provisions or employee handbook which gives further definition to the charge. Black's Law Dictionary, sixth edition, defines "notorious" as "generally known and talked of; well or widely known; forming a

part of common knowledge, or universally recognized" and "disgrace" as "ignominy; shame; dishonor."

As noted above, the incident giving rise to the PNDA (as amended) and the FNDA, was appellant's arrest for aggravated assault. This aggravated assault charge was downgraded and ultimately dismissed. No evidence was presented at the hearing to support a finding that appellant assaulted his son or attempted to elude the police. Respondent argues that the sustained charges were based upon appellants "incorrect, inconsistent and nonsensical information pertaining to his arrest and subsequent disposition of a criminal matter where he was a named defendant." The PNDA (as amended) and FNDA do not articulate this basis, nor is it supported by the record.

Based on the foregoing, I **CONCLUDE** that respondent has not met its burden in demonstrating a violation of Other Sufficient Cause, specifically violation of DD.230.05 (Notoriously Disgraceful Conduct).

Having not met its burden demonstrating a violation of DD.230.05 - Notoriously disgraceful conduct, I **CONCLUDE** that the charge of violation of N.J.A.C. 4A:2-2.3a(12), Other Sufficient Cause, specifically DD.230.05:C.16 Notoriously Disgraceful Conduct, is hereby **DISMISSED**.

ORDER

Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the charges of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a State Employee and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, specifically DD.23-05:C.16 Notoriously Disgraceful Conduct be **DISMISSED**. It is further **ORDERED** that appellant be awarded back pay and reasonable attorney fees. The amount of back pay shall be mitigated in accordance with guidelines set forth in N.J.A.C. 4A:2-2.10(d)(3).

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.

Tama B Hughes

May 9, 2017
DATE

TAMA B. HUGHES, ALJ

Date Received at Agency: 5/9/17

Date Mailed to Parties: 5/11/17

/vj/lam

APPENDIX

WITNESSES

For appellant:

Hayford J. Jarpa, Jr.

Hayford J. Jarpa, Sr.

For respondent:

Justin J. Seidel – Police Officer – Buena Police Department

Cindy Leese – Manager Human Resources, Department of Military Affairs

Leanne Donahue – Staff Supervisor, Veterans Haven South

Alicia Bonner – Staff Assistant 1, Veterans Haven South

EXHIBITS

For appellant:

P-1 Municipal Court Finding Codes

P-2 Complaint-Warrant

P-3 Letter (Mattleman, Weinroth & Miller, PC)

P-4 Corrective and Disciplinary Action Booklet

For respondent:

R-1 Final Notice of Disciplinary Action, Preliminary Notice of Disciplinary Action, Preliminary Notices of Disciplinary Action Amendments one through three

R-2 Buena Police Department Domestic Violence Incident Report

R-3 Buena Police Department CAD Activity Report

R-4 Buena Police Department – Case Detail (two pages)

R-5 Buena Police Department Supplemental Report (four pages)

R-6 Buena Police Department Arrest Docket (two pages)

R-7 Buena Police Department Domestic Violence Complaint – Warrant (one page)

R-8 NJ Automated Complaint System Charge Disposition Maintenance (one page)

R-9 Not submitted into evidence

R-10 Municipal Court Bail Receipt Franklin Joint Municipal Court

R-11 Statement – Alicia Bonner

R-12 Statement – Leanne Donahue

R-13 Not submitted into evidence

R-14 E-mail dated June 11, 2015

R-15 Email dated June 16, 2015

R-16 Time Line for Hayford Jarpa

R-17 Memorandum for The Record

R-18 Fax Sheets (blank)