

review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF DECEMBER, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 15144-17

AGENCY DKT. NO. 2018-800

**IN THE MATTER OF CASSY POLLANDER,
GLOUCESTER CITY, POLICE DEPARTMENT.**

Arthur J. Murray, Esq., for appellant, Cassy Pollander (Alterman and Associates, LLC, attorneys)

Joseph Antinori, Esq., for respondent, Gloucester City, Police Department, (Brown & Connery, LLP, attorneys)

Record Closed: October 4, 2018

Decided: November 19, 2018

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

The appellant, Cassy Pollander, appeals her dismissal by the respondent, Gloucester City Police Department (Department), at the end of her working test period.

PROCEDURAL HISTORY

On August 24, 2017, the respondent notified the appellant that her employment with the Gloucester City Police Department was terminated, effective August 24, 2017, and advised her of her right to appeal the termination. The appellant filed a timely appeal and the matter was transmitted to the Office of Administrative Law on October 13, 2017, for hearing as a contested case. The case was heard on June 5, 2018 and June 6, 2018. The record remained open for the receipt of written summations by the parties. On October 4, 2018, all summations were received, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

Sergeant James Little worked for the Gloucester's City Police Department for thirteen years and has been a sergeant since 2016. He became a Field Training Officer (FTO) in approximately 2010 and received training for the position, including but not limited to instruction concerning training and evaluation of new recruits through the Field Training Program. The Field Training Program lasts twelve weeks for those recruits who do not encounter problems. The program is comprised of three phases: general police department operations and structure, motor vehicle stops, and observation of the officer as he works alone. Failure to successfully complete the Field Training Program would result in termination.

Little was the appellant's FTO. He utilized the Field Training Program – Recruit Training Manual, which enumerated each work function or objective that he was to review with the appellant. (J-4.) The appellant was required to perform and be deemed proficient in each category to pass the Field Training Program. The appellant received written materials concerning the functions and objectives listed in the manual and Little instructed her concerning each item. The appellant was then required to instruct and perform each function. Little indicated on the manual the date the appellant was first trained concerning a particular function or objective; the date the appellant performed the function or objective, either on the job or in a scenario-based training; and the date when she was deemed proficient in the subject. Little and the appellant initialed each entry when she was deemed proficient. Ibid. This portion of the appellant's training commenced August

27, 2016, and Little initialed the last entries on December 12, 2016. Ibid. Little explained that this did not mean that the Field Training Program was necessarily complete at that time.

Little was also required to review with the appellant multiple items listed on a Daily Observation Report (“DOR”) (J-5.), and sign-off on the DOR when the appellant performed each item. On a daily basis, he assessed the appellant’s performance and graded it using a numeric rating system. A rating of “1” through “3” indicated unacceptable performance; “4” was minimally acceptable; “5” through “7” was above average. Each day’s DOR was signed by the appellant, Little, and a supervisor. Little reviewed the appellant’s performance and progress with her daily or once every two or three days, and offered guidance concerning how she could improve. He directed her to policies and procedures when necessary. The appellant could be re-evaluated on subsequent days and could receive a higher rating if her performance improved. The DOR process commenced August 27, 2016, and ended January 19, 2017.¹

September 19, 2016, was the first day Little formally evaluated the appellant’s performance. That day, he found the appellant’s performance was least satisfactory with respect to “Problem Solving-Decision Making.” He wrote, “Pt. C. Pollander was unsure on several calls for service. She would not make eye contact with people she was dealing with. Her confidence level is low and she needs to work on speaking up while speaking with the general public.” (J-5 at 110-111.) This continued to be a problem for the appellant, which Little recorded and discussed with her throughout the Field Training Program:

- On September 20, 2016, Little wrote the appellant was “very uncomfortable while processing a prisoner. She was hesitant to control the prisoner while fingerprinting him. This issue was discussed with her.” Ibid. at 112-113.
- On September 23, 2016, the appellant “showed signs of being nervous and timid when asked to perform self-initiated field activity.” Ibid. at 114-115.

¹ The data in the DOR was transferred, in summary form, to a Biweekly Progress Chart . (J-6.)

- On September 25, 2016, the appellant's "least satisfactory area of performance" involved officer safety. The appellant "responded to a removal of an intoxicated male from a bar. The male approached her and was standing very close to her. She became very nervous and would not tell the male to back away from her. I had to move the male away from her. While placing the same male under arrest he resisted other officers' attempts to place him in handcuffs. Ofc. Pollander stood by and would not intervene." Ibid. at 118-119. The appellant's performance was not acceptable, and she received a score of "3" for officer safety because she did not take control of the scene and allowed the male suspect to control it. Ibid.
- On October 3, 2016, the appellant's performance was not acceptable with respect to "problem solving - decision making." She needed "to work on being more confident when handling minor calls for service. She becomes very unsure and nervous when first arriving on scene. This will improve with experience." Ibid. at 124-125.
- On October 7, 2016, the appellant's least satisfactory area of performance was again "problem solving – decision making." Little wrote she "still needs to improve on her field performance. She becomes nervous at times and needs guidance." Ibid. at 128-129.
- On October 8, 2016, the appellant's least satisfactory area of performance was "self-initiated field activity." Little wrote, the appellant "still needs to improve on her field performance. She becomes nervous at times and needs guidance. She needs to be aware of her surroundings and identifying suspicious activity." Ibid. at 130-131.
- On October 9, 2016, the appellant's performance in the area of "self-initiated field activity" was not acceptable. Little wrote the appellant "still needs to

improve on her field performance. She becomes nervous at times and needs guidance.” Ibid. at 132-133.

- On October 13, 2016, the appellant’s performance in the area of “office safety general” was not acceptable. Little wrote about an incident in which the appellant entered a vacant house without having her weapon out; walked through the first floor without checking corners; kept her weapon at her side when she unholstered it; did not point the weapon in the direction she was walking while she walked to the second floor; and “rushed from room to room without covering corners” on the second floor. Ibid. at 136-137. “I counseled Ofc. Pollander on scene and showed her several times how to clear steps and rooms.” Ibid. Little also wrote the appellant was struggling in the area of “problem solving-decision making. While handling basic calls for service, which she has performed in the past, she freezes and look to me for advice. She needs to learn to make decisions on her own. This will come with time but she should be further along in this area.” Ibid. Little discussed this with the appellant.
- On October 18, 2016, the appellant’s performance in the area of “problem solving and decision making” was not acceptable. Little wrote the appellant, “continues to struggle in this area. She has been advised on several occasions to make decisions to solve the problem at hand.” Ibid. at 140-141.
- On October 27, 2016, the appellant’s performance was deemed “not acceptable” in five areas. Little wrote about a domestic violence call to which the appellant responded but “did not take charge of the scene or separate the parties involved.” Ibid. at 150-151. Little wrote the appellant “continues to struggle in this area. When faced with a stressful situation, she freezes up and is unsure of how to solve the issue at hand. Upon arriving at the scene of a disorderly female call, Ofc. Pollander was advised the female left the area and was possibly in an apartment in that location.

She left the scene without checking any of the apartments.” Ibid. Little reviewed this with the appellant.

- On October 31, 2016, the appellant’s performance was “not acceptable” in the areas of self-initiated field activity and problem solving-decision making. Little wrote the appellant “continues to struggle in the area of [problem solving-decision making]. I have retrained her in this area. She understands and accepts that she needs to do a better job.” Ibid. at 152-153.

Throughout the Field Training Program, Little conducted scenario-based training with the appellant. The training addressed domestic violence, room clearing, felony car stops, in addition to other matters. Several officers, including Chief Morrell, recreated the incidents or actions to be addressed and the appellant responded. The officers provided feedback to the appellant concerning her responses.

The appellant was also required to take four “Cycle Quizzes” that tested her proficiency with, among other things, codes, Department policies, Attorney General Guidelines. (J-7.) The appellant passed each of the four quizzes. Ibid.

Little prepared End of Phase Evaluation reports. In the first, dated, September 29, 2016, he wrote the appellant was not yet performing at “solo beat officer level.” (J-8 at 246-248.) Little referenced the incident involving an intoxicated man, in which the appellant allowed him to “get too close to her on a call without asking or advising him to step back, before I intervened.” Ibid. He also noted that she had “problems identifying suspicious activity as well as MV violations[,] and “had to be counseled on several occasions about officer safety issues.” Ibid. “She approached vehicles during MV stops without looking in the back seat, prior to speaking with the driver. She did not blade² herself while speaking with drivers and stood at the driver’s side door, looking down at documents with both hands. Although this will come with more experience she needs to

²An officer should “blade” himself by directing his gun away from a person when standing face to face with that person. This ensures the weapon is not near a suspect. The appellant was trained concerning blading prior to the above incidents.

identify the safety issues and fix them.” Ibid. A supervisor reviewed and signed Little’s report. Ibid.

Little prepared an October 27, 2016, End of Phase report that indicated the appellant was not then “performing at solo beat officer level.” (J-8 at 249-250.) She “continued to struggle with decision making and self-initiated field activities. There were numerous times during this training period that [she] drove around the city without making any MV stops. During those times, I was with her and observed numerous MV violations. When [she] did make MV stops she often did not issue a traffic summons. Ofc. Pollander had safety issues during this time period. While responding to a domestic disturbance, she allowed all parties involved to continue to argue with one another. While on scene of an open door to an abandoned house, she entered without having her weapon out and did not clear corners.” Ibid. Little wrote about these incidents on the End of Phase report because the appellant continued to have problems in these areas.

Given the appellant’s performance and his belief that she was not qualified to serve as a solo officer, Little requested an extension of the appellant’s Field Training Program. He discussed his concerns with his sergeant and Lieutenant Morrell and submitted a November 24, 2016, Field Training and Evaluation Program Remedial Training Report, in which he indicated the appellant’s performance was “below standard” and she “needed special training concerning decision making, self-initiated field activity and officer safety.” (J-9.) Little wrote the appellant “has a hard time when dealing with stressful situations. She often freezes and looks to fellow officers for help. She hesitates to take control of the scene. I have talked to Ofc. Pollander about her performance on several occasions. She was counseled on this issue as well.” Ibid. The report also noted the appellant was “struggling with identifying and making MV stops. When she does make the MV stops she often gives verbal warnings. I discussed this with Ofc. Pollander on several occasions, and also demonstrated MV stops. With more time this area should improve.” Ibid. With respect to officer safety, the report noted, the appellant “sometimes struggles in this area. She cleared a vacant residence without unholstering her weapon and she did not clear any corners. While on scene of a domestic disturbance she allowed numerous people to argue in front of her without taking action. I’ve discussed these

issues with her on numerous occasions.” Ibid. The appellant signed the report on November 24, 2016, and she was approved for two additional weeks. Ibid.

On December 13, 2016, Little issued a DOR in which he indicated the appellant’s performance was unsatisfactory in the areas of officer safety-suspects/prisoners and control of conflict-voice. (J-5 at 196-197.) He wrote:

Ofc. Pollander conducted an MV stop at King and Mercer Street. When she requested backup units she did not provide the correct location. Upon arriving on the scene, Ofc. Pollander was standing out front of [a residence]. She advised me that while conducting a MV stop the female driver exited the vehicle and went inside [the residence]. She went on to state that she attempted to take the suspect into custody and the suspect pulled away from her and entered the residence. I entered the residence with another officer and had to wrestle her to the floor, where she was subsequently placed under arrest. While wrestling with the suspect, Ofc. Pollander stood by and did not actively assist myself with the lock-up. Ofc. Pollander turned her back on the suspect and began to walk away look for street sign, at which point she gave an incorrect location. She then allowed the suspect to enter the residence with[out] attempting to stop her. Also, it was learned a male was with the suspect, which Ofc. Pollander did not tell arriving officers prior to entering the residence.

While reviewing Ofc. Pollander’s [body worn camera], it was learned that [she] did not take control of the incident. She allowed the suspect to continue to control the scene and would not listen to her commands. She also did not activate her body worn camera during the initial MV stop. While processing the suspect at Police H.Q.’s Ofc. Pollander stood by and had to be told to finish processing her.
Ibid.

That same day, Little submitted a Remedial Training Report in which he described the above incidents and concerns. He noted the appellant “has a hard time when dealing with stressful situations. She continues to freeze up and looks to fellow officers for help. She hesitates to take control of the scene. I’ve talked to Ofc. Pollander about her performance on several occasions. She was counseled on this issue as well.” The appellant signed that report. (J-9.) Little requested the appellant receive additional training and memorialized this in a December 14, 2016, Formal Notice of Unsatisfactory

Performance/Progress report, in which he wrote, "Failure to bring your performance up to an acceptable level will result in your re-phasing, and could result in not successfully completing the Field Training and Evaluation Program, which would result in your termination." (J-10). The appellant signed the Formal Notice of Unsatisfactory Performance on December 14, 2016. Ibid. She received additional remedial field training.

On January 19, 2017, Little prepared a third End of Phase report, at the end of the appellant's field training. He indicated the appellant was performing at "solo beat officer level." (J-8 at 251-252.) He indicated that he believed the two additional remedial training sessions were helpful; however, the appellant needed additional training concerning officer safety and would need another officer to provide guidance. He explained the appellant, "had to be remediated two times during this phase of training. I felt that her self-initiated field activities were lacking as well as decision making skills. During this training phase, I conducted numerous training scenarios with her, which covered building clearing, domestic violence calls and MV stops. Toward the end of this phase her confidence level increased and she was far more comfortable handling calls for service. She rarely looked to other officers for help and made decisions on her own. She will make a great asset to the Gloucester City Police Department. She needs to continue her studies and learn from minor mistakes. I feel that she needs to be placed with a supervisor who will monitor her activities and make the appropriate corrections." Ibid. Little no longer served as the appellant's FTO after she completed the Field Training Program.

Sergeant Jason Flood joined the Department in 2002 and has been a Sergeant since November 2009. While the appellant was in the Field Training Program, Officer Little discussed the appellant's performance with him. Little expressed concern about her safety and stressful situations skills and that the appellant did not take action and was not assertive. Flood and Little conducted scenario-based training for the appellant. They placed her in high stress situations to see how she would act and they critiqued her performance, noting positive and negative aspects of her responses, and stressed the safety aspects of the scenarios. He and Little spoke with the appellant about these concerns throughout her year with the Department.

After the appellant passed the Field Training Program, Flood became aware of an incident in which she was flagged down while responding to a call. The appellant's response caused him concern and he counseled her about the need to be more assertive and to take control of the scene. He stressed the importance of ensuring officers' safety. Flood's conversations with the appellant primarily concerned high stress, officer safety issues.

Flood also addressed the appellant after she responded to a call concerning two homeless men who were trespassing and drinking alcohol. The appellant responded to the scene alone. She used a flashlight because it was dark at that time. One of the men told her to turn off her flashlight and she did so. This presented a "huge safety aspect, not only that but she allowed the suspect to dictate what was going to happen during the stop." (T2³ 8:17-19.) Also, one of the men acted in a flirtatious manner toward the appellant. Based upon his review of the appellant's body worn camera video, Flood believed the appellant "did not outright rebuff those flirtations, she didn't flirt back with him but she should have been a little more assertive" and made it clear that she was in charge of the scene. (T2 8:21-25.) Also, the appellant turned off her body camera too soon. Flood told Morrell that he was concerned about the appellant's performance.

Flood and Captain Morrell spoke with the appellant about this incident. Morrell explained that the officer is in charge and the suspect may not dictate an officer's actions during a stop. He also explained that the appellant committed a safety violation by turning off her flashlight; she should have rebuffed the flirtatious suspect immediately; and addressed the early end of her body camera video.

Flood told the appellant that the administration reviewed her body worn camera videos and that her difficulty handling stressful situations and poor judgment might jeopardize her future with the Department. He "stressed to her that she needs to take action, be assertive, handle the jobs herself and prove that she can do the job herself." (T2 10:12-14.)

³ T1 refers to the transcript of the June 5, 2018, hearing date in this matter. T2 refers to the transcript of the June 6, 2018, hearing date.

After Flood advised the appellant that she needed to be more assertive, they responded to a domestic dispute together. As the appellant spoke with the two parties at the scene, Flood concluded the matter did not rise to the level of a domestic violence incident, as a crime had not occurred and there was not a threat of violence. Flood expected the appellant to tell the complainant that the police involvement was unwarranted. However, she did not. Flood took over because too much time had elapsed, and it appeared the appellant was unsure how to proceed. Flood discussed the incident with the appellant.

Based upon his interactions and observations of the appellant, Flood believed that, although she could handle "day to day routine calls", she froze when confronted by stressful situations and did not take "assertive action and handle the issue at hand." (T2 13:9-11.) His opinion of her capacity was "confirmed during the last incident when she allowed the driver to drive off the scene." (T2 21:22-23.) He explained:

[E]very day in police work you . . . might not be involved in stressful situations. In those situations she did fine. When a stressful situation came up . . . there were concerns and they were addressed with her. As I said, Officer Little and I would address them with her and the last time happened to be that incident where the driver drove off. After then I had severe concerns about her ability to take action during stressful situations.

[T2 21:22 to 22:7.]

Flood was not aware that the appellant had received documents concerning her performance and the risk of her not passing the working test period between January 19, 2017, and July 31, 2017. He did not recall preparing a document addressing his concerns while he was the appellant's supervisor, which was for approximately one year.

Lieutenant Stephen Burkhardt has been employed by the Gloucester City Police Department for twenty-three years and has served as a lieutenant for two and one-half years. He served as a sergeant for twelve years. As lieutenant, he served as supervisor of the Field Training Program with Captain Morrell.

FTO Little spoke with Burkhardt several times about the appellant's deficiencies during the Field Training Program. Little relayed his concerns about the appellant's performance while under stress and noted that it impacted the performance areas for which she was being evaluated, such as control of a conflict and officer safety. Little and Burkhardt discussed ideas for her training and Little asked Burkhardt to speak with the appellant. Burkhardt reviewed the appellant's training manual and observed the problems Little had encountered. He was also aware, from Little, Chief Morrell and Captain Morrell, that officers were assisting the appellant with scenario training and instruction, to help improve her decision making and conflict control skills.

Burkhardt spoke with the appellant in November 2016. They discussed the problems that Little identified and that were recorded in her file. He discussed ways she could better prepare to improve her performance in those areas and offered advice concerning contingency planning and other performance areas. He offered her "the same advice that was given to my own son who was a new officer about the same time as Officer Pollander and the things that I was telling him to try to prepare him and educate him, I gave the same advice to Officer Pollander." (T1:216-12-16.)

Burkhardt conducted an internal affairs investigation of which the appellant was the subject. On January 3, 2017, he issued a report on his investigation. He found the appellant did not comply with Department policy concerning use of her body worn camera during a traffic stop. She activated it after she had exited her vehicle and had already begun to engage with the driver of the stopped vehicle. This was contrary to the policy governing use of body worn cameras. Burkhardt recommended a "verbal reprimand" because this was the appellant's first violation of this policy. (J-22 at 335.) Chief Morrell issue an "oral reprimand" and noted that "[a]ny future violations may result in further discipline such as loss of time/suspension." (J-22 at 331.)

During his review of the body worn camera footage, Burkhardt observed that the appellant did not have control of the traffic stop and events following the stop. The driver of the stopped vehicle exited her vehicle and walked to the front door of her house. Neither action should have occurred; the appellant should have directed her to stay in the vehicle. Also, the appellant did not call out her location when she exited her vehicle, thus,

no one knew where she was or what she was doing. Burkhardt also observed on the camera footage that, while other officers were asking where she was, the appellant walked away from the driver to look for a street sign so she could respond to the officers. Furthermore, the driver was able to walk into her house and close the door, while the appellant was present. Burkhardt believed the appellant demonstrated a lack of control and created officer safety problems by turning her back on the other parties involved and looking for her location. He considered this a "serious violation." (T1:221-17.) In addition, the appellant did not tell the other officers who reported to the scene that a second person was present. Consequently, when the other officers entered the house to assist the appellant with the driver, they were surprised to find a second person there. This put the other officers at risk. Burkhardt relayed his concerns to the appellant's FTO. Burkhardt was not consulted prior to the appellant's release from the Field Training Program on January 19, 2017 (J-11.)

On August 8, 2017, Burkhardt reviewed the appellant's body worn camera video in response to an incident that involved domestic violence and eluding. He observed her actions and determined her overall performance was below standard. She "failed to act in a manner consistent with the responsibilities and duties of a police officer as well as the general rules and regulations set forth in the [Department] Rules and Regulations." (J-23 at 361.) Although the camera was activated late, he observed and learned from the appellant's report that the appellant drove her vehicle into a parking lot after a woman flagged her down. A man was also present there and the appellant proceeded to engage with both people before she announced her location and advised others of the circumstances. She should have immediately radioed her location and the nature of the incident to Central Communications. Her failure to do this was problematic, as the appellant was outnumbered, it was dark and no one else was in the area, and "things can go bad in a second and nobody is going to know that she's there in trouble." (T1 223:11-13.)

Furthermore, when the appellant drove into the parking lot, the man drove his vehicle alongside hers, such that their drivers' doors were "meeting." (T1 223:25.) The appellant exited her vehicle and was thus between both vehicles. Given that she did not know what the circumstances were at that time, this presented safety concerns "because the guy could have assaulted her with the door of his truck or sideswiped her." (T1 224:1-

3.) The appellant should have pulled away and moved a safe distance from the other vehicle.

The appellant walked to the woman and spoke with her briefly before starting to walk back to the man. The man started to drive away, notwithstanding the appellant telling him to stay. Burkhart recognized that she was “trying to deal with two people that are irate[.]” which is difficult, and that any officer could be involved with an individual who ignores him. (T1 224-8.) However, the appellant did not get the entire license plate number of the truck, even though she was standing immediately behind it. She alerted other officers that the man left the scene and she then returned to the woman. The woman provided the man’s name, date of birth, and where he lived. The appellant did not immediately relay this information to other officers. She continued to speak with the woman for over five minutes before she received a call from the dispatcher who asked if the appellant had any additional information about the man. The appellant relayed the information at that time. This created officer safety concerns and demonstrated a lack of control and initiative, as well as a failure to follow procedures. The incident raised concerns for Burkhart regarding whether the appellant was fit to serve. He explained:

[A]fter considering her training records and . . . the first [internal affairs] investigation and then this one, it seemed to me in my observation and in my experience dealing with recruits that her main issue was her performance under stress and . . . that problem branches out into other issues.

And unfortunately . . . issues like that command presence, the critical decision making, and officer safety are the most critical parts of a patrol officer’s job and she’s lacking in those areas because of her performance under stress and to me it . . . seems like it’s more of a personality thing. . . . [S]he kind of shies away from conflict I think, which most people don’t like conflict, but I think she has a problem with the conflict and tries to avoid it and when it presents, she kind of freezes up and can’t make . . . the correct decisions and act quickly and I think that’s what is the cause of . . . these other issues.

[T1 226:12 to 227:7.]

Burkhart authored an August 11, 2017, Internal Affairs report concerning his investigation of the incident. (J-21.) He did not recommend discipline, as he believed she did not intentionally fail to perform her duties. Rather, he thought she was “incapable of it in those situations.” (T1 228-13-14.) He wrote in his report that he and the appellant

“discussed the fact that she had a great deal of additional training during and after her field training period and that she has nearly one year of experience on the street, yet still failed to respond appropriately and perform her duties properly during this incident.” Ibid. He added that he “wasn’t sure if she was just indecisive, wasn’t sure how to do her job, or didn’t have it in her to step up and take action. I also told her that I was concerned whether or not she was capable of fighting to protect herself or her fellow officers, or make an arrest, if need be.” Ibid.

Burkhardt added that, at the end of the working test period, August 24, 2017, he was concerned that “eventually someone was going to suffer because of it, either herself or fellow officers or a citizen, because I was afraid she was going to . . . freeze up as she’s shown to freeze up and not make the proper decisions and that’s a liability to her and the other officers that we work with[.]” (T1 227:12-19.)

Burkhardt completed a “Report on Progress of Probationer,” which indicated the appellant’s performance during the work test period, from August 26, 2016 through February 26, 2017, was unsatisfactory. (J-16.) The report was prepared August 3, 2017 and was signed by the appellant, Burkhardt and Chief Morrell. Burkhardt was present when the appellant was provided a copy of the form. The progress report did not provide for an extension of the working test period or indicate that the appellant was to be terminated. (J-16.) Chief Morrell told the appellant she should have received the evaluation, but she had not received it. The August 3, 2017, report was to serve as her six-month evaluation.

Burkhardt explained that the form was prepared late because he and Chief Morrell did not previously know they were required to complete the form. The appellant was thus not advised, in writing, at or about the end of the initial review period, that her performance was unsatisfactory. Burkhardt was also not aware of any meetings with command level staff at or about the end of the initial review period during which the appellant was advised of her unsatisfactory performance. Burkhardt believed the August 3, 2017, notice was the first time the appellant was advised she received an unsatisfactory review for the first six months of her working test period.

Burkhardt prepared a second "Report on Progress of Probationer" for the working test period February 26, 2017, through August 26, 2017. This report was also dated August 3, 2017. This was before Johnson issued any reports from his observation of the appellant. The appellant's performance during this portion of the working test was deemed unsatisfactory and an extended working test was authorized. (J-17.) The Report was signed by the appellant, Burkhardt and Chief Morrell. The Chief had warned the appellant, during the August 3, 2017, meeting that she was at risk of termination.

Burkhardt discussed an extension of the appellant's working test period with Chief Morrell and Captain Morrell and they requested permission to extend her training period by an additional ninety days. They also decided to assign the appellant to Sergeant Johnson so that he could observe her. This was motivated by the August 11, 2017, Internal Affairs report. Burkhardt agreed that the appellant could benefit from the guidance of Johnson, an experienced FTO. The goal was to "get another set of eyes on the problem and see if there's anything we could do. I agreed 100 percent with exhausting all the options that we had." (T1:193-18 to 25.) Johnson was instructed to "evaluate basically as a shadow, ride with Officer Pollander, and just observe what she's doing and what she's not doing" and report to Burkhardt. (T1:196-20-22.) The appellant was advised of this on August 14, 2017.

The Department was subsequently advised it was not permitted to extend the appellant's working test period. Chief Morrell completed an August 24, 2017, "Report on Progress of Probationer" for the working test period August 24, 2016, through August 24, 2017. (J-18.) It advised the appellant's performance was unsatisfactory and she was to be terminated. Ibid. Burkhardt signed the form. Burkhardt noted that the appellant had been warned that she was at risk of termination.

Burkhardt also noted that the end date on termination notice did not match the end date on the two other progress reports. He thought that, perhaps, August 26, 2016, was the appellant's first day of employment after her August 24, 2016, graduation from the Academy, though he was not sure.

Sergeant Johnson has been employed by the Department since 1999 and became a Sergeant in 2014. On August 14, 2017, he met with Chief Morrell, Captain Morrell and Lieutenant Burkhardt who told him that the appellant's working test period was being extended; that she was having some problems with safety and command presence; and they wanted him to observe her and report his observations. He had not previously supervised the appellant. Johnson reviewed the appellant's training manual from her field training and some of her body camera tapes. Commencing August 19, 2017, the appellant was assigned to Johnson for ninety days. He was to report his observations each day they worked together. He was not instructed to train her. Johnson told the appellant about this assignment and that he would write a report each/ day they worked together.

Johnson and the appellant worked together twice, on August 20, 2017, and August 23, 2017. They rode in the same police vehicle those days. Johnson had several concerns about the appellant, which he reported to Burkhardt. (J-15.) On August 20, 2017, Johnson observed the appellant on several jobs and traffic stops. He noted she did not actively search for work and appeared to not notice several vehicle infractions that were in view. He wrote:

Ptl. C. Pollander does not attempt to quickly catch up to suspected violators to initiate a traffic stop. At one point, a vehicle rolled a stop sign in front of us as we were parked facing south, approximately 50 feet from the intersection of Collings Road and Essex Street. The offense was obvious and she did not notice. After pointing out and telling her to "to stop that car" she allowed 3 vehicles to pass us and get them between the violator and her patrol vehicle instead of driving around the cars in front of us in closing the gap. Once she turned onto Essex Street the car was no longer visible (it turned north onto Fillmore and ultimately stopped in front of the house on Sherman). Ptl. C. Pollander seemed unsure of how to find the offender after passing Fillmore in noticing it heading north. She was finally able to catch up to the offender after the offender had already parked and was exiting her vehicle. A verbal warning for the rolling of the stop sign was issued by me and we continued on.
[J-15 at 301-302.]

Johnson complimented the appellant's "good command of the stops." Ibid. He noted that the radio calls they responded to were not stressful and the appellant handled each job professionally and efficiently, and he observed no problems with those types of stops. Ibid. Although the appellant did not receive a copy of the memorandum, Sgt. Johnson discussed his observations with her on August 23, 2017, the next time they were on patrol together.

In his August 23, 2017, memorandum to Burkhardt, Johnson noted that the appellant "actively looked for and stopped several violations including one that I did not even notice. She did much better in this area." (J-15 at 303.) He also commended her handling of two stops and arrests, after he reminded her of a Department policy concerning custodial arrest of suspended drivers. Ibid. He noted that she did not check rear threats on August 20, 2017, because she believed Johnson was covering for her then. He advised her to proceed as if he were not there and she handled stops without "officer safety issues." Ibid. He did not "observe anything unsafe or problematic" during several stops that were not "stressful." Ibid.

Johnson did not form a conclusion concerning whether the appellant had been adequately trained. He was not consulted by his supervisors concerning the appellant's termination. During the two days he worked with the appellant, he did not observe how she performed in stressful situations. Each of the matters with which they were involved were ordinary and not stressful.

Chief Brian Morrell worked for the Gloucester City Police Department for nineteen years and became Chief in January 2016. The appellant was the first person he hired. He received verbal reports from Burkhardt and Captain Morrell concerning her capacity to handle stressful situations on the street and officer safety issues. He found that the appellant continued to have difficulty with decision making, handling of stressful situations and officer safety issues after she was released from the Field Training Program.

Scenario-based training was established to help the appellant. Morrell played a "bad guy" in a domestic violence scenario, so he could observe how the appellant would react to a person on the street who challenges her authority. He saw that the appellant's

performance varied; she performed poorly on some occasions and was “okay” other times. (T1 239-6.) He offered her constructive criticism afterward.

Morrell reviewed the internal affairs investigation of the appellant’s use of her body worn camera and had concerns about her tactics and safety. She failed to control the suspect; allowed the driver to exit her vehicle and enter her home; did not know her location; and either did not call out her location or called out the wrong location because officers who were attempting to assist her could not find her. Morrell noted, “in those critical seconds anything could have happened.” (T1 240:20.) Furthermore, the appellant stood directly in front of the door as she attempted to enter the house, while arguing with the person who was inside the house. The appellant’s position placed her at risk of being shot by that person. The appellant should have stood to the side of the door or in another location that would have given her a tactical advantage. This was compounded by the appellant’s failure to alert other officers that a second person was in the house, which placed all officers at risk. The appellant was trained concerning these issues.

Morrell reviewed the second internal affairs report, as well as the appellant’s statement and her body worn camera video. This again caused Morrell to have concerns about the appellant’s tactics and her safety. She allowed the suspect to control and dictate the events. She did not immediately alert the Department that she was involved with the incident; she went back and forth between the two people involved; and the man who fled from her had “the tactical advantage the entire time because he was seated in a truck above her.” (T1 243:6-8.) Morrell noted the appellant did not know if the man had a weapon and, given how they were positioned, the appellant would have had no time to react had he exited the truck and attempted to attack her. Furthermore, after the man fled the scene in his truck, she failed to report important information to the responding officers and officers who were searching for the man.

On August 3, 2017, Morrell and Burkhardt met with the appellant because they were approaching the end of her working test period. The appellant had not passed the working test period and Morrell wanted to give her another ninety days to attempt to pass. He told the appellant her performance to date was unsatisfactory, particularly with respect to decision making, officer safety, street tactics and ability to handle stressful situations.

He told the appellant he would request permission from the Civil Service Commission to extend the working test period ninety days. He was not obligated to do this; he wanted to provide the appellant an additional opportunity to improve her skills and pass the test period.

During the same meeting, he gave the appellant two Civil Service Evaluation forms, both dated August 3, 2017. He testified that, when he inquired about an extension of the working test period, he learned that he was required to complete the forms. Even though the appellant did not receive one of the forms until almost six months after the end of the review period, the appellant was already aware of the concerns expressed in the document. He noted that the appellant should have been aware of the concerns, given "multiple safety violations, three Internal Affairs Investigations, and countless conversations[.]" (T1 275:19-21.) He acknowledged, however, that it would have been "fair" had the Department's concerns about her performance been memorialized and provided to her after she completed the Field Training Program and before the August 3, 2017, Evaluation Form.

Before the Civil Service Commission responded to his request for an extension of the appellant's working test period, Morrell decided to transfer the appellant from Flood to Johnson's supervision. He believed that, at that time, the appellant had received sufficient training and instruction. He hoped that if another officer rode with the appellant each day, observed her, and corrected any problems that arose, the appellant would pass her extended probationary working test period.

After the reassignment of the appellant to Johnson, Morrell learned that the Civil Service Commission denied his request to extend the appellant's working test period.⁴ He, Burkhardt, Captain Morrell and PBA delegate Barbara Kane then met with the appellant. Chief Morrell told her that they tried to extend her working test period but their request was denied by the Civil Service Commission. The Department was, thus,

⁴ On August 23, 2017, the Commission advised the City of Gloucester that an extension is permissible only when an employee took an approved leave of absence or furlough. The length of any extension would be limited to the amount of time used during the approved leave or furlough. (J-24.) Morrell testified that he did not recall discussing whether an extension was permissible prior to making the request.

required to either deem the appellant's performance satisfactory or terminate her employment. Morrell testified that, although he liked the appellant, he terminated her because he believed either she, another officer or a civilian was going to get hurt. Because the extension request was denied, Morrell issued an August 24, 2017, Report on Progress of Probationer, which notified that her performance was unsatisfactory and she would be terminated, and a letter explaining the appeals process (J-18, 19.)⁵

The appellant, **Cassey Pollander**, graduated from West Virginia University with a bachelor's degree in criminology in 2014. She applied for and was offered a position as a police officer with the Department, which was contingent upon graduating from the Academy. She started a twenty-two-week program with the Academy on April 4, 2016 and graduated on August 25, 2016. She commenced working as an officer with the Department on August 26, 2016.

She was required to complete a Field Training Officer Program, during which she was evaluated by an FTO and/or a sergeant with respect to a number of performance areas. She was assigned to Sgt. Flood's platoon under FTO Jimmy Little. The other FTOs were Sgt. Johnson, Kenneth Iepson and Keith Wall.

The Field Training Program was approximately three months long. The appellant's FTO was with her throughout the program to judge her progress and to provide instruction and respond to problems or questions. The program is conducted primarily in the field but is also conducted at police department headquarters. The appellant and her FTO traveled in the same vehicle except towards the end of the program during which time the appellant rode alone in her vehicle.

The appellant was aware that FTO Little recorded in the Field Training Program-Recruit Training Manual Acknowledgement Forms (J-4.) the areas in which she received training, the date of the training, the date she performed the training and "Final Sign-off."

⁵ Morrell noted that the dates on the second Progress Report are incorrect. He should have written that the start and end dates of the working test period were August 26, 2016, and August 26, 2017. (J-18.)

FTO Little and the appellant initialed each entry; the appellant's initials were adjacent to "Recruit Officer" ("RO"). The last entry was dated December 12, 2016. Her field training continued for approximately one additional month after the last entry. (J-4.) (T1 36)

FTO Little also completed a "Daily Officer Report" ("DOR") for every shift that he and the appellant worked together. (J-5) Little rated the appellant's performance on various aspects of her performance, commencing August 27, 2016 and ending DOR January 19, 2017.

The appellant and Little would review the DOR and discuss her scores and how she might improve her rating, when necessary. The DOR was the only written documentation concerning the appellant's performance and areas where improvement was necessary. Biweekly Progress Charts contained the ratings from the DOR forms for August 27, 2016 through January 19, 2016. The appellant reviewed the biweekly progress charts when she met with her FTO.

The appellant was administered quizzes throughout the Field Training Program. (J-7.) The appellant and FTO reviewed the quizzes and discussed any incorrect answers. The FTO provided suggestions for improvement.

End of Phase Evaluations were issued, which identified the appellant's strengths and weaknesses throughout each phase of her training. (J-8.) FTO Little reviewed this information with her and he offered suggestions concerning how to improve where necessary. The evaluations were signed by the appellant, FTO Little and Sgt. Iepson. The last End of Phase Evaluation was issued in January 2017.

The appellant had three phases of training and an additional remedial phase. She was required to participate in a remedial training phase because it was determined that she was not then operating at a solo officer capacity. The remedial training involved reviewing matters the appellant previously engaged in and how she could handle those matters. She recalled that this added a month or two to her Field Training Program. Remedial Training Report Evaluations, dated November 24, 2016 and December 13, 2016, were issued and were signed by the appellant, FTO Little and Sgt. Iepson. (J-9.)

On December 14, 2016, a Formal Notice of Unsatisfactory Performance was issued to the appellant and signed by her, FTO Little and Sgt. Iepson. (J-10.) The document addressed areas in which the appellant needed improvement. Little discussed it with her and she understood that she would be sent for training on street survival at the Academy. The appellant attended and completed the street survival class at the Gloucester County Police Academy as well as a de-escalation training program that all Department members were required to complete

On January 9, 2017, Chief Morrell issued an internal affairs investigation report concerning the appellant's misuse of her body worn camera. (J-20.) As a result of the investigative findings, she received an oral reprimand. The appellant explained that the report followed a motor vehicle stop with which she was involved. She activated her vehicle overhead lights to indicate to the car in front of her that it should stop. The female driver of the stopped vehicle got out of her car and tried to go into a nearby house. The appellant forgot to activate her body worn camera as she exited her patrol vehicle. She activated it when she realized her mistake. This prompted the initiation of an internal affairs investigation.

On January 19, 2017, a Field Training Program Final Report, was issued. It indicated that the appellant had been released from the field training program. (J-11.) The appellant understood this to mean that she had successfully completed the program and would be released as a solo officer even though she would still be subject to a probationary period through August 2017. The appellant would then function as a police officer on patrol on her own, in a vehicle without another officer.

The appellant and another officer were the subjects of another internal affairs investigation concerning a domestic violence incident to which they responded. When she arrived at the scene Officer McKinney was talking to the person he believed was the victim. Neither the appellant nor McKinney got information from the victim and they instead entered the house to speak with the alleged defendant. Officer O'Donnell arrived at the scene and spoke with and gathered information from the victim. He learned that the victim was seventeen years old. The appellant believes she had been disciplined for

this incident and had been told that she would attend a course concerning Attorney General guidelines for these situations.

The appellant claims that she met with supervisors on various occasions to discuss "how she could improve a situation," but that they did not discuss her progress. (T1 53:18.) Between January 19, 2017, when she completed the Field Training Program, and August 14, 2017, when she was advised that she had been reassigned to a different shift, she did not receive any memoranda, emails or other written documentation from supervisory staff concerning her performance, other than the Internal Affairs reports that she received. No supervisory staff spoke with her about areas in which she needed to improve.

On August 3, 2017, she met with Chief Morrell and Lieutenant Burkhart. They reviewed areas of her work that were unsatisfactory and advised that they would extend her working test by three months. The appellant was given a "Report on Progress of Probationer," which indicated her performance during the work test period, from August 26, 2016, through February 26, 2017, was unsatisfactory. The report was prepared August 3, 2017. It did not provide for an extension of the working test period nor indicate that the appellant was to be terminated. (J-16.) Chief Morrell told the appellant she should have received a six-month evaluation but had not. This report was to serve as her six-month evaluation. The appellant did not recall any discussion concerning the unsatisfactory rating.

The appellant was also provided a second "Report on Progress of Probationer" for February 26, 2017, through August 26, 2017. This report was dated August 3, 2017. The appellant's performance during this portion of the working test was deemed unsatisfactory and an extended working test was authorized. (J-17.) Both forms were signed by the appellant, Lieutenant Burkhart and Chief Morrell.

With respect to the second unsatisfactory rating, the Chief and Lieutenant told the appellant that her decision-making skills were lacking and they had concern for her safety and other officers' safety. The appellant did not recall seeing any documentation explaining their concerns. She was told during the August 3, 2017, meeting that she

would be terminated at the end of her extended working test period if she did not improve in the areas in which she was deficient.

The appellant was the subject of a third internal affairs investigation, which resulted in an August 11, 2017, investigation report. (J-21.) A woman flagged down the appellant to report that there had been a hit-and-run accident. A man told the appellant that he hit the woman's car because she had thrown a rock at it. As the appellant spoke with the woman in an effort to "calm down the situation," the man drove off in his vehicle, ignoring the appellant's direction for him to stop. The appellant explained that she, "chose to stay with the female at the scene instead of chasing after the driver of the vehicle until I could figure out what the situation was." (T1 57:9-11.) The appellant was interviewed, and she understood that she was the subject of an internal affairs investigation because the Department believed she did not complete her duties properly. She did not recall receiving a written report contract concerning this incident as she was terminated before the outcome of the investigation. She had not previously seen the internal affairs investigation report.

On August 14, 2017 the appellant was "reassigned to a different shift" under the supervision of Sgt. Johnson. (J-14.) At that time, she believed that her working test period had been extended.

On August 24, 2017, the appellant met with Chief Morrell and Burkhart and was given a notice of termination. (J-18.) The notice advised that her performance during her working test period was unsatisfactory. Ibid. She was advised that her working test period had not been extended because the Civil Service Commission denied the Department's request. She was also given a memorandum from Chief Morrell, dated August 24, 2017, advising that she was terminated effective immediately and she could appeal this decision to the Civil Service Commission within twenty days. (J-19.) The appellant was unaware of the termination prior to the August 24, 2017, meeting.

With respect to discussions about her performance, the appellant recalled a conversation with a Captain, in the late spring or early summer of 2017, about an incident in which she was involved. The Captain reviewed a recording of an incident with her, and

he advised her how she could have handled the situation differently and improve her performance. She also recalled a discussion with the Lieutenant after the first internal affairs investigation, during which he expressed appreciation that the incident occurred during her Field Training Program, and not while she was working on her own. He told her to keep up the good work. She was also counseled by Sergeant Flood after an internal affairs investigation concerning compliance with Attorney General guidelines and the need to confirm the age of domestic violence victims. She also met with Sergeant Johnson at or about August 20, to discuss his memorandum.

On cross-examination, the appellant acknowledged that her field training program had been extended twice, rather than once, and that it ended January 19, 2017, rather than November 2016, when it should have ended. Her program was approximately twenty weeks long, rather than twelve, which is the routine length of field training programs. During the training program, Officer Little counseled her concerning how to handle stressful situations and making better decisions at those time.

The appellant acknowledged that, even though she completed the Field Training Program, she was still on a probationary period in conjunction with her working test period. She also acknowledged that, at that time, the Department continued to have concerns about her performance, particularly her ability to handle stressful, confrontational situations, and it arranged for her to participate in hypothetical scenarios that would allow role playing of such circumstances. She recalled the January 19, 2017, End of Phase Evaluation Report, Officer Little wrote that she still had significant weaknesses, as she had to be “remediated” two times during this phase of training and her “self-initiated field activities were lacking as well as decision making skills.” (J-8.) He added:

During this training phase, I conducted numerous trading scenarios with her, which covered building, clearing, domestic violence calls and MV stops. Toward the end of this phase her confidence level increased as she was far more comfortable handling calls for service. She rarely looked to other officers for help and make decisions on her own. She will make a great asset to the Gloucester City Police Department. She needs to continue her studies and learn from minor mistakes. I feel that she needs to be placed with

a supervisor who will monitor activities and make the appropriate corrections.

[ibid.]

The appellant acknowledged that Officer Little recommended “more scenario-based training” for the appellant. ibid. After January 19, 2017, officers developed hypothetical scenarios in which the appellant could roll play in order to help her develop skills and handling stressful, confrontational situations. The Department established this for the appellant, to help improve her performance. Some of the scenarios involved domestic violence incidents and how to clear buildings. She was reassigned to Sergeant Johnson’s platoon in August 2017, “so that he could supervise me and that I would be in the vehicle with him and he would be discussing my performance with her supervisor throughout my extended working test period that the Department was going to give me.” (T1:79-20-24.) This was intended to permit another officer to evaluate the appellant’s performance as the Department wanted to have the input from a different officer, in addition to that of Sergeant Flood. The appellant was told by Sergeant Flood that if she did not improve in certain areas, she would be terminated, even though her field training was done. Although the appellant did not specifically recall that Officer Little told her that he believed she needed to be monitored by a supervisor after the Field Training Program was done, she testified that she had no reason to believe that he did not so advise her.

The appellant also recalled that Lieutenant Burkhardt counseled her in November 2016, concerning the need for her to engage in contingency planning to “help increase the speed and accuracy of the decision-making process in high stress situations.” (J-21 at 365.) Lieutenant Burkhardt reflected on that conversation in an internal memorandum that memorialized his August 11, 2017, meeting with the appellant. He wrote in the memorandum that they revisited their November 2016, conversation and he asked the appellant “if she had ever thought about what her plan would be if a male was coming at her and threatening to assault her. She stated she never thought about that scenario.” ibid. Lieutenant Burkhardt continued:

I expressed to Ptl. Pollander that it bothered me that we talked so long ago, at great length, about contingency planning and

that she never took the initiative to follow through with this to improve her job performance and for her own safety, along with the safety of the officers she serves with. We discussed the fact that she had a great deal of additional training during and after her field training period and that she is nearly one year of experience on the street, yet still failed to respond appropriately and perform her duties properly. During this incident. I then expressed my concern as to the cause of this problem. I told her I was not sure if she was just indecisive, was not sure how to do her job, or did not have it in her to step up and take action. I also told her that I was concerned whether or not she was capable of fighting to protect yourself or her fellow officers, or make an arrest, if need be.

[ibid.]

The appellant acknowledged that it is important for a police officer to be able to handle confrontational, stressful situations. Failure in this regard could pose a danger to her, her fellow officers and the public. When asked if she had an "understanding throughout the one year working test period that one of the concerns that the [Department] had with you is that you had difficulty handling stressful, confrontational situations[.]" the appellant answered, "It was my understanding that they were more concerned with my decision-making which ultimately led to their evaluation of me possibly freezing up in stressful situations." (T1:80-22-25.) She was told this by Little during her field training and by other officers, including Flood, after the training was over. She acknowledged that the Department attempted to help improve her performance where it was lacking.

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. 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). A credibility determination requires an overall assessment of the witness's story in light of its

rationality, internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the witnesses during the hearing. Each of the Department’s officers, Sergeant Little, Sergeant Johnson, Sergeant Flood, Lieutenant Burkhardt and Chief Morrell, comported themselves professionally and their testimony was internally consistent and consistent with the other witness’ accounts. Their objective observations of the appellant’s performance were confirmed by numerous contemporaneously-written documents. The documentary evidence corroborated that they attempted to extend the appellant’s working test period and that an extension was procedurally impermissible. The witnesses demonstrated a sincere desire to see the appellant succeed and communicated with her about her performance throughout the year. However, none could permit the appellant to place herself, her fellow officers and citizens at risk due to her difficulty handling stressful, non-routine situations. I **FIND** each witness’ testimony to be credible.

The appellant testified credibly, as she acknowledged that the officers with whom she worked raised concerns about her ability to perform under stressful circumstances and counseled her throughout the year of her working test period, including after her Field Training Program was finished. Even if she was not given written documentation of her deficiencies each time the issue was addressed, she acknowledged that she was routinely counseled and received extra training opportunities. She also acknowledged that her performance problems were significant and could lead to problematic outcomes.

Therefore, based upon the testimonial and documentary evidence, and having the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following additional **FACTS**:

The Department determined the appellant’s performance was unsatisfactory in crucial performance areas such that it could not appropriately permit her to continue with the Department after her working test period ended. After months of observing and counseling the appellant, and based on objective criteria, the Department found that she

performed poorly when confronted by non-routine, stressful situations. She “froze” or made poor decisions and demonstrated poor judgment on several occasions under such circumstances. This continued throughout her working test period, including an incident that required an internal affairs investigation and about which the Lieutenant expressed his concern that she still had not improved her job performance in areas that are among the most critical parts of a police officer’s job.

The Department sought to help the appellant improve and pass her working test period. It provided her additional opportunities to improve her skills, including two remedial training sessions, scenario-based training, in which her supervisors participated, and additional training at the Academy. Officers and supervisors counseled her throughout her working test period, both during and after her Field Training Program. Toward the end of her working test period, she was assigned to another officer who was tasked with observing and counseling her. The Department even sought to provide the appellant additional time to successfully complete her working test period, notwithstanding her history of problems with stressful situations, poor decision making, and failing to comply with Department procedures.

The Department generated numerous reports throughout the appellant’s working test period in which it documented its concerns. The appellant saw and signed several of the documents.

The appellant had ample notice of the Department’s concerns. She did not contest that she was counseled by her supervisors throughout the year-long working test period. She acknowledged that the Department was concerned about her decision making and the possibility of her “freezing up in stressful situations.” She also acknowledged that she was advised of these concerns during and after the Field Training Program and that the Department attempted to help improve her performance where it was lacking.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

A working test period is intended to "permit an appointing authority to determine whether an employee satisfactorily performs the duties of [his or her] title." N.J.S.A. 11A:4-15. The probationary period is not intended to provide an opportunity for further training to qualify for the position. "Rather, it is part of the testing process, given in addition to the examination conducted by the Civil Service Department. During that period the employee must demonstrate that he is competent to discharge the duties of the position." Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 355 (App. Div. 1960). Termination at the end of the working test period may occur for unsatisfactory performance. See N.J.S.A. 11A:2-6(a)(4); N.J.A.C. 4A:2-4 and 4A:4-5.4(a); In re Voigtsberger, 2017 N.J. Super. Unpub. LEXIS 2599, *5-6 (October 17, 2017).

In an appeal from an employee's termination at the conclusion of a working test period, the employee shoulders the burden of proving that the appointing authority's "action was in bad faith." N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee is entitled to a new full or shortened working test period and, if appropriate, other remedies. N.J.A.C. 4A:2-4.3(c). The basic test is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of the position. See Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960); Devine v. Plainfield, 31 N.J. Super. 300, 303-04 (App. Div. 1954); Lingrell v. New Jersey Civil Serv. Comm'n, 131 N.J.L. 461 462 (1944). In general, good faith has been defined as meaning "honesty of purpose and integrity of conduct with respect to a given subject." Smith v. Whitman, 39 N.J. 397, 405 (1963). As stated in Schopf v. New Jersey Department of Labor, 96 N.J.A.R. 2d 853 (CSV 1996):

If the opinion is formed based upon actual observations of the employee's performance of the duties of the position, and is an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties if the appointment becomes permanent, it must be considered to have been made in good faith.

See also Valerie Hurling-Hall v County of Union, 2003 N.J. AGEN LEXIS 162, *1.

N.J.A.C. 4A:4-5.3(b) requires appointing authorities to prepare a progress report on law enforcement employees at the end of six months and a final report at the conclusion of the working test period. It has been held that “[a] fair evaluation period is further evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance.” Sokolowsky v. Twp. of Freehold, 92 N.J.A.R.2d (CSV) 155, 157.

A new working test period has been ordered when an appointing authority failed to provide progress or final reports. In Sokolowsky, the Merit System Board concurred with the ALJ’s conclusion that the appellant should be afforded a new working test period because the appointing authority failed to fulfill the evaluation requirements. Although the appellant had received verbal criticism from his supervisor during his working test period, the ALJ found he never had the impression that his supervisor was unsatisfied with his work. While the appellant’s supervisor had prepared an interoffice memorandum stating that he was dissatisfied with the appellant’s work approximately two months into the employee’s working test period, the supervisor did not discuss the contents of this memorandum with the appellant and the evidence did not establish that the appellant received it. In concluding that the appellant was entitled to a new full working test period, the ALJ noted that a “fair evaluation period” is “evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance.” Sokolowsky, 92 N.J.A.R.2d (CSV) at 157. The ALJ held that “the appointing authority failed to fulfill the . . . requirements for a fair evaluation period.” Ibid. Specifically, although the appellant “was verbally advised concerning deficiencies in his performance,” “he received no written report concerning his progress,” and “[t]he consequence of the appointing authority’s failure to provide the appellant with timely written notification of deficiencies was denial of a fair evaluation of his work performance.” Ibid.

In In the Matter of Jose Maldonado, Passaic County Board of Social Services, OAL Dkt. No. CSV 0773-04 (Adopted, Final Decision, July 30, 2008), the ALJ ordered the appointing authority to provide a new working test period to the appellant because it had

not adequately informed the appellant of the deficiencies in his work performance during his working test period. The appellant was provided two written reports before he was released from employment: a training report, which contained positive reviews of his progress, and a partially unsatisfactory final evaluation. Prior to the final evaluation, his supervisors neither met with or counseled him to advise him of his progress or notice of deficiencies. The only written criticism provided by a supervisor concerned his cologne usage. The ALJ found that other comments made to the appellant by his supervisors did not provide him "fair notice of any deficiencies so as to afford him the opportunity to correct problems before the end of his working test period." Id. at 3. The ALJ found credible the appellant's testimony that he was not apprised of deficiencies in his performance. Accordingly, the ALJ found that "the appellant's release for deficiencies in his job performance that were not adequately brought to his attention through the required progress report evidenced a lack of good faith." Ibid.

The Commission adopted the ALJ's opinion. However, it noted, "[I]t must be emphasized that the lack of written notice, standing alone, does not evidence bad faith." Id. at 4. For an appellate to succeed on appeal, he must demonstrate bad faith on the part of the appointing authority. Ibid.

In In the Matter of James Matus, OAL Dkt. No. CSV5065-07 (Adopted, Final Decision, December 21, 2007), the Commission reiterated that "procedural violations of N.J.A.C. 4A:4-5.1 *et. seq.*, including the non-receipt of progress reports, may create a presumption of bad faith. However, that presumption can be rebutted via evidence that the employee was otherwise aware of work performance and other deficiencies during the working test period."

In Matus, the appellant was provided no progress reports during his working test period. Nonetheless, the ALJ and Commission found that the appellant had been advised of his performance deficiencies and disciplined during the working test period. He was also warned about his excessive use of leave time. Thus, the determination concerning the appellant's continued employment was based on "legitimate, work-related reasons" and was made in good faith, notwithstanding the absence of progress reports. Id. at 2.

Here, although the appellant argued that she was “kept in the dark”⁶ about how her work performance was viewed, there is ample evidence that she had actual notice of the Department’s view of her performance. The evidence, including the appellant’s testimony, demonstrated that she was advised of the Department’s concerns throughout the working test period, including after she had completed the Field Training Program. Furthermore, there is no evidence indicating that the Department was motivated by bias or ill motive. Rather, there is substantial evidence that the appellant’s colleagues liked her and wanted her to succeed. Indeed, they created additional training opportunities for her and sought to extend her working test period. Ultimately, the additional training did not correct the appellant’s deficiencies and the Department was not permitted to extend the working test period. The appellant’s supervisors could not legitimately conclude that she passed the working test period when she demonstrated that she still lacked fundamental skills. Accordingly, I **CONCLUDE** the appellant has not met her burden of proving, by a preponderance of the credible evidence, that the Department⁷ acted in bad faith when it released her at the end of her working test period.

ORDER

Based on the foregoing, I hereby **ORDER** that the Gloucester City Police Department’s release of the appellant at the end of her working test period be **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

⁶ Appellant’s brief at 30.

⁷ In her post-hearing brief, the appellant argued that Gloucester City is a party to this matter and that it had an ill intent toward her. She contended the City had an “interested motive in not complying with the Civil Service Rules and Regulations.” Brief at 24. In support of this, she argued Gloucester City failed to train the Department’s command-level staff concerning civil service rules and that this “equates to willful blindness.” The appellant offered no evidence concerning the training provided by the City to the Department. Chief Morrell testified concerning his misunderstanding about the need for progress reports and acknowledged that it would have been fair to provide a timely progress report. Lt. Burkhardt acknowledged that they should have met with the appellant at the time her first progress report should have been issued. There was, however, no evidence that these omissions were caused by the absence of training or inappropriate training. Accordingly, the appellant did not present evidence in support of this claim.

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.

November 19, 2018

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency:

11/19/18

Date Mailed to Parties:

11/19/18

vj

APPENDIX

List of Witnesses

For appellant and respondent:

Cassy Pollander

Sergeant James Little

Sergeant Johnson

Lieutenant Stephen Burkhardt

Chief Brian Morrell

Sergeant Jason Flood

List of Exhibits

- J1: Gloucester City Memo Dated March 31, 2016
- J2: Gloucester City Memo Dated August 17, 2016
- J3: Gloucester City FTO Program Manual
- J4: Gloucester City FTO Acknowledgement Forms
- J5: Gloucester City DOR Reports
- J6: Gloucester City Bi Weekly Progress Charts

- J7: Cycle Quizzes
- J8: Gloucester City End of Phase Evaluation
- J9: Gloucester City Remedial Training Report
- J10: Gloucester City Formal Notice of Unsatisfactory Performance
- J11: Gloucester City Field Training Final Report
- J12: Certificates Earned by Appellant
- J13: MVA Report Involving Appellant
- J14: Gloucester City Memo Dated August 14, 2017
- J15: Gloucester City Memo Dated August 20, 2017
- J16: Report on Progress Prepared August 3, 2017 (First)
- J17: Report on Progress Prepared August 3, 2017 (Second)
- J18: Report on Progress Prepared August 24, 2017
- J19: Gloucester City Memo Dated August 24, 2017
- J20: Gloucester City Memo Dated January 9, 2017
- J21: Gloucester City Report Dated August 11, 2017
- J22: Internal Affairs File for Case 2016-2
- J23: Internal Affairs File for Case 2017-16

J24: Redacted Email Chain of August 23, 2017