



STATE OF NEW JERSEY

In the Matter of Robert Palubinskas
City of Asbury Park, Department of
Building and Housing

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2015-3157, 2016-616
& 2016-617
OAL DKT. NOS. CSV 11825-15,
11826-15 & 11827-15
(Consolidated)

ISSUED: OCTOBER 23, 2019 BW

The appeals of Robert Palubinskas, Housing Inspector, City of Asbury Park, Department of Building and Housing, of his 15 and 20 working day suspensions and removal effective May 7, 2015, on charges, were heard by Administrative Law Judge Patricia M. Kerins, who rendered her initial decision on September 17, 2019. No exceptions were filed.

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 (Commission), at its meeting of October 23, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and removing the appellant was justified. The Commission therefore affirms those actions and dismisses the appeals of Robert Palubinskas.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF OCTOBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 11825-15,
CSV 11826-15, and CSV 11827-15
AGENCY DKT. NOS. 2015-3157,
2016-616, and 2016-617
CONSOLIDATED

**IN THE MATTER OF ROBERT PALUBINSKAS,
CITY OF ASBURY PARK, DEPARTMENT OF
BUILDING AND HOUSING.**

Leonard Schiro, Esq., for appellant Robert Palubinskas (Mets, Schiro & McGovern, LLP, attorneys)

Steven S. Glickman, Esq., for respondent City of Asbury Park (Law Offices of Steven S. Glickman, LLC, attorneys)

Record Closed: December 22, 2016

Decided: September 17, 2019

BEFORE PATRICIA M. KERINS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In these consolidated matters, appellant Robert Palubinskas (Palubinskas) appeals from disciplinary actions taken by respondent City of Asbury Park (Asbury).

Those actions include two periods of suspension and his removal from his position as a building inspector.

On July 30, 2015, the above-captioned cases were transmitted to the Office of Administrative Law (OAL) for hearing as contested cases. In each matter appellant challenged the disciplinary action taken by respondent against him. Those actions consisted of one fifteen-day suspension and one twenty-day suspension, as well as removal from his position. On February 4, 2016, an Order was entered consolidating the three matters. A hearing was conducted on May 9, 2016, and the record closed on December 22, 2016, after the filing of post-hearing submissions by the parties. Extensions of time were granted for the filing of the Initial Decision.

FACTUAL DISCUSSION

General Background Facts

Palubinskas was employed as a building inspector for Asbury. He was so employed when Robert McKeon (McKeon) was hired in July 2014 as the new director of Code Enforcement. In an attempt to assert more supervision over the Code Enforcement staff, McKeon instituted a new time-sheet policy and other new procedures, such as having property owners sign documentation as to how long inspectors spent doing their inspections. As McKeon stated in uncontroverted testimony, Asbury's city manager, Jack Kelly, expressed a concern to him over the Code Enforcement office and requested that he improve productivity and oversight of the staff.

Palubinskas chafed under McKeon's new procedures and management, as he related in an interview in February 2015 (R-18). Between December 2014 and March 2015 three disciplinary actions were filed against him. The first two resulted in suspensions, and the last action resulted in his removal. In the hearing in this matter Asbury presented several witnesses and documentary evidence. Appellant presented no witnesses and did not testify in his own behalf.

Disciplinary Action of December 19, 2014 (CSV 11827-15)

The first of these consolidated matters arises out of a Final Notice of Disciplinary Action (FNDA) dated July 2, 2015, sustaining charges filed against Palubinskas in a Preliminary Notice of Disciplinary Action dated December 19, 2014 (December PNDA) and upholding a twenty-day suspension. A review of the specifications underlying those charges shows that the specification as to his conduct on December 6, 2014, is duplicative of Specification #2 in the disciplinary action filed on March 18, 2015 (CSV 11825-15). Due to that duplication, the alleged conduct regarding appellant removing files without authorization from the Code Enforcement offices will be discussed as part of the charges brought in a Preliminary Notice of Disciplinary Action dated March 18, 2015 (March PNDA).

As testified to by McKeon, the first of the charges filed against appellant began with an incident on November 25, 2014. McKeon was approached in City Hall by what he described as an irate citizen who told him that he had seen an Asbury city vehicle in neighboring Belmar. He showed McKeon a picture on his cell phone taken around 2 p.m. that day showing Palubinskas driving his assigned city vehicle in Belmar. The citizen expressed his upset over a city vehicle being driven out of Asbury when he was having difficulty getting property inspections scheduled by Code Enforcement staff. As a result, McKeon sought out Palubinskas, whom he found eating lunch in a conference room. When questioned by McKeon, Palubinskas stated that he was passing through Belmar and simply picked up lunch to bring back to the office. In a discussion shortly afterward in McKeon's office, McKeon testified that Palubinskas was upset over being questioned about his whereabouts that day, stating that he had every right to use his city vehicle wherever and whenever he wanted. McKeon described Palubinskas as being loud and disrespectful to him, refusing to provide information on where he was earlier in the day and why he was passing through a neighboring town in his city vehicle.

McKeon stated that he then asked Palubinskas for his time sheets and told him to complete a scheduled afternoon inspection and then report back to him later that afternoon. Palubinskas did not report back to him that afternoon, and McKeon followed

up with an email about the incident and appellant's non-responsiveness (R-7). In reply, Palubinskas disagreed with McKeon and lodged a series of accusations against him in his email response. He then called in sick on the next workday and took extended sick leave through the month of December. According to McKeon, while appellant was on his extended sick leave, a review of his files and worksheets showed that he had not entered his work into the computer system as required, and his inspection sheets were improperly filled out.

On cross-examination, McKeon admitted that there was no city policy in place at the time of the November 25, 2014, incident that prohibited Palubinskas from using his vehicle to obtain lunch in a neighboring town. However, subsequent to the incident Asbury implemented such a policy.

McKeon was a credible and unrebutted witness regarding his interactions with appellant and his testimony was corroborated to a large extent by the documentary evidence placed in the record by respondent. I **FIND** that Palubinskas failed to provide requested information to his superior McKeon on his whereabouts earlier in the day of November 25, 2014, and that in his discussions with McKeon he was insubordinate. I further **FIND** that he failed to report back to McKeon's office later in the afternoon of November 25, 2014, after he completed a scheduled inspection. I also **FIND** that an inspection of Palubinskas' work and files that took place during the month of December 2014 showed that he had failed to enter required information into the computer system and improperly filled out or incompletely maintained his time sheets.

Disciplinary Action of January 12, 2015 (CSV 11826-15)

The second disciplinary action taken against appellant arose out of his alleged actions and inaction on Wednesday January 7, 2015, as specified in a Preliminary Notice of Disciplinary Action dated January 12, 2015 (January PNDA). Appellant was notified that the fifteen-day suspension had been upheld in an FNDA dated July 2, 2015.

McKeon testified that he had implemented an inspection policy that required inspectors to spend Wednesdays out in the field addressing violations in their assigned city zone. On that day Palubinskas submitted a report for his zone that only listed two violations for the entire day. He had returned from his extended sick leave just before Christmas exhibiting a difficult attitude.

As McKeon did not believe only two violations existed in Palubinskas' entire zone, he sent another inspector out the following day to inspect that zone. That inspector returned with pictures of violations in over twenty-five properties in appellant's zone.

McKeon's credible testimony and the specification set forth in the disciplinary action were unrebutted by appellant. I **FIND** that appellant failed to adequately perform the required inspection of his assigned zone on January 7, 2015.

Disciplinary Action of March 18, 2015 (CSV 11825-15)

The third and final of these consolidated matters arises out of an FNDA dated May 7, 2015, sustaining charges filed against Palubinskas in a Preliminary Notice of Disciplinary Action dated March 18, 2015 (March PNDA) and upholding his removal. The specification lists four charges. The first two concern the alleged unauthorized removal by Palubinskas of files relating to properties owned by a Moshe Ritterman (Ritterman) from the Code Enforcement office and his use of those files in falsely accusing McKeon of improper conduct. He is also charged with providing false information to the Asbury police regarding removal of those files from the Code Enforcement office.

In support of its case, respondent presented the testimony of Gayle Brown (Brown), an Asbury employee and president of the union representing Palubinskas. She testified that just prior to Thanksgiving 2014 appellant contacted her regarding possible disciplinary charges he expected to be lodged against him by McKeon and advised her that he had documents to give her. She told him she would be working at City Hall on an upcoming Saturday and she would arrange entry for him. When he

arrived, she had John Byrd (Byrd), a custodian, escort him upstairs to the Code Enforcement offices. She assumed he was retrieving personal documents or effects and that he had a right to do so. However, after a while she felt he had been upstairs too long and had Byrd escort him back downstairs. He told her he had difficulty getting what he wanted off the computer and handed her a file. She stated she did not review what was in the file, and that in February 2015 she turned the file over to the Asbury police as requested.

On cross-examination she also was questioned regarding disciplinary actions taken by McKeon regarding his Code Enforcement staff. She allowed that since McKeon's arrival a number of disciplinary issues and actions had emanated from that office.

Asbury also presented the testimony of Byrd, who corroborated Brown's testimony that he escorted Palubinskas up to the Code Enforcement offices on that Saturday and left him there for a period of time. He did not recall if he had a folder with him when he arrived, but recalled that he did leave with a folder. Tamica Smith (Smith), a senior clerk in the Code Enforcement office, then testified. She was not aware of any policy that prohibited an inspector from taking home a Code Enforcement file. Nor was she aware of a policy that allowed it. She recalled that during this time period McKeon asked her to find the Ritterman file that he thought had been in his office. She could not locate it in the Code Enforcement offices or files. In an interview with the Asbury police on December 11, 2014 (R-12), she stated that when McKeon asked her to look for the files, she realized that Palubinskas must have been in the office, as his packages that had been delivered were missing from his desk. She also stated that a key for McKeon's office had been missing since October.

Barbara Yvonne Clayton (Clayton) then testified for Asbury, describing how Palubinskas approached her at City Hall in early January 2015 after her swearing-in ceremony. He told her that he had information for her and handed her papers. She then spoke to the mayor, who advised her to take the papers to Tony Nuncio, the city administrator. She did so, and he told her there was already an investigation in progress relating to them.

McKeon also testified regarding the missing Ritterman files and Palubinskas' alleged use of them. According to McKeon, Palubinskas accused him of having represented property owner Ritterman as a lawyer prior to McKeon's taking his position with Asbury. He also accused McKeon of favoring Ritterman in the matter of Code violations. As a result of those accusations the city investigated the allegations, even going back to McKeon's prior law firm seeking information on whether he had represented Ritterman. Initially, the accusations were set forth in appellant's reply email to McKeon on November 26, 2014 (R-7), which was copied to McKeon's superiors.

McKeon testified that Palubinskas' allegations were without merit, as the city's subsequent investigation so found. He testified in detail regarding his dealings with Ritterman as head of Code Enforcement, explaining each of the actions he took and that he had never represented Ritterman as a client. In fact, he had actually upheld most of the Code violations that Palubinskas had issued to Ritterman's properties.

McKeon then testified about the Ritterman files missing from the Code Enforcement offices. He noticed that they were missing after Palubinskas had visited the offices on a Saturday in December and they were not available for a court date that was scheduled for the violations. On cross-examination, he admitted that there was no log of the missing files, but he recalled that two Ritterman files that had been in his office were missing. He recalled that when Howard Pogorski retired from Code Enforcement, he had turned in his files and summons book, including Ritterman files, and those files had remained in the Code Enforcement offices. McKeon did admit that a hard-drive copy of Palubinskas' computer, which he had reported as missing, was subsequently found in his possession.

He also was questioned regarding the documents Palubinskas turned over to Clayton, responding that they consisted of Ritterman inspection violations and a failed certificate of occupancy and pages from appellant's log book. He admitted that his office was locked, and that other Code Enforcement staff had access to the department's files.

The final witness testifying for Asbury was Moshe Ritterman. He testified that he had never met McKeon until he was head of Code Enforcement and had never retained him or his law firm as counsel. He stated that after having difficulties with Palubinskas regarding inspections on his property he contacted McKeon. Both men met with him, and McKeon upheld Palubinskas on most violations. Violations on another property were dismissed in court, as title to the property had already transferred, and Ritterman was no longer the owner of record.

In addition to removing the Ritterman files from the Code Enforcement office, Palubinskas was charged with providing false information regarding those missing files to the Asbury police when they conducted an investigation of the missing files. In support of that charge, respondent offered a video of the Asbury police interview of appellant (R-18). In it Palubinskas denies taking the files, but admits that he printed out documents regarding Ritterman properties from his computer. He asserted that as he was on sick leave, he accessed the offices to pick up personal packages that had been delivered there for him and to obtain documents he felt he would need in responding to any disciplinary proceedings to be brought against him. During the interview he continued to make allegations of impropriety against McKeon even though he admitted he had not corroborated his accusations regarding McKeon's alleged representation of Ritterman as a client. Under questioning he again made accusations against McKeon, insisting that he had represented Ritterman "a year or year and a half ago."

With regard to the charge that Palubinskas left City Hall on December 6, 2014, with Code Enforcement files, Brown and Byrd were credible in their description of Palubinskas' actions in accessing the Code Enforcement offices on a Saturday while he was on sick leave. Each saw him leaving with a folder, and Brown credibly testified that he gave her documents as he was leaving. Smith and McKeon credibly testified that Ritterman files were missing from Code Enforcement shortly after that visit, and Clayton was given Ritterman documents by Palubinskas sometime in January 2015.

While the record is replete with evidence that the Ritterman files were missing from the Code Enforcement offices after Palubinskas visited, there is also evidence that there was no log of those files and the Code Enforcement offices were accessed by

staff other than Palubinskas. McKeon and Smith recalled that the files at some point were in McKeon's office, which was locked after hours. Additionally, a key to that office had gone missing sometime in October 2014. It is worth noting as well that McKeon had reported a hard drive missing along with the Ritterman files, and that hard drive was then located by McKeon.

In his interview with the Asbury police Palubinskas did not deny that he accessed Ritterman documents on his computer during his office visit on December 6, 2014, nor did he deny providing some of those documents to Brown and Clayton. That interview was unsworn, and Palubinskas did not provide sworn testimony at the hearing in this matter. As the first of the four charges in the March PNDA asserts that Palubinskas removed the missing Ritterman files, it is necessary to determine if he actually removed those files. Based on the record before me, I **FIND** by a preponderance of the evidence that appellant removed the Ritterman files from the Code Enforcement office on December 6, 2014. Respondent presented evidence showing that he had both motive and opportunity to remove the files. After spending a significant amount of time in the office he was seen leaving with a file, and subsequently provided Brown and Clayton with documents related to Ritterman properties. While others had access to the Code Enforcement offices, the files were not missing until after his visit. In his unsworn interview with Asbury police, at one point he states that he told Tony Nuncio, an assistant city manager, that he had the files, and then quickly backtracks in the interview. A review of the record shows that respondent made the requisite showing for a finding that appellant took the files. Palubinskas in turn failed to rebut that showing at the hearing.

With regard to the second charge in the March PNDA, I **FIND** that Palubinskas provided Clayton with documents relating to Ritterman properties from Code Enforcement files. From the record it appears that those documents were not confidential documents, but rather records that could be provided to the public. However, I **FIND** that Palubinskas provided Clayton with those documents in furtherance of his accusations of impropriety against McKeon.

The third specification at issue requires a determination as to whether appellant falsely accused his superior McKeon of improprieties in his dealings with Ritterman and his properties. McKeon and Ritterman both testified credibly that they had no professional or personal relationship prior to the fall of 2014. Palubinskas admittedly did not verify his accusations that McKeon had previously represented Ritterman and provided no evidence that actions taken by McKeon provided Ritterman with preferential treatment. McKeon testified credibly and in detail about any actions he took regarding Ritterman's properties and the resulting city investigation he endured as a result of Palubinskas' accusations. I **FIND** that appellant made the false and unfounded accusations that McKeon had represented Ritterman as a legal client and that he had provided preferential treatment to Ritterman. I further **FIND** that such accusations were made over a period of time, beginning with his November 26, 2014, email continuing through his video interview of February 26, 2015.

As to the fourth and final specification, I **FIND** that Palubinskas provided false information to the Asbury police in his interview by denying that he removed the Ritterman files from the Code Enforcement office.

LEGAL DISCUSSION

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). 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).

In these consolidated matters, Palubinskas has been charged in three separate matters with violations of N.J.A.C. 4A:2-2.3(a) as follows:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
12. Other sufficient cause.

With regards to the charges proffered against appellant, insubordination and conduct unbecoming are the offenses most consistently charged in the three disciplinary actions. Black's Law Dictionary 919 (10th ed. 2014) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

"Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corp. Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

"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 Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

With regard to the December PNDA, respondent did not carry its burden in its charge that appellant misused a city vehicle or that he was neglectful of his duties on November 25, 2014. There was no city policy prohibiting him from using his city vehicle to obtain lunch in a nearby town and there was no proof that he neglected his inspection duties that day. Palubinski however, was insubordinate to McKeon in his remarks when they met that day in November and in his failure to return to the office and provide verification of his time. When he did respond by email to McKeon the next day, much of that response consisted of unverified accusations toward his superior. The charge of insubordination is therefore upheld. The charge of failure to perform duties also is upheld, as Palubinskas failed to enter inspection data into Asbury's system and did not submit properly completed time sheets signed by the owners of the properties he inspected.

The January PNDA involved Palubinskas' failure to adequately inspect his assigned zone for violations. His finding of only two violations that day contrasted with his colleague's photo verification of twenty-five violations. As such, the charge of failure to perform his duties is upheld.

The final set of charges dealt with Palubinskas' taking of the Ritterman Code Enforcement files, his use of Ritterman documents in his continued unfounded

accusations toward McKeon, and his denial of his removal of the files to the Asbury police. That PNDA also charged him with making unfounded accusations against his superior, McKeon. As set forth above, Palubinskas removed the files from the Code Enforcement office and used otherwise public documents from those files as part of his continued accusations against McKeon. Further, he was not truthful about his actions to the Asbury police. As to his unfounded accusations toward McKeon, he made those accusations over a period of months to numerous Asbury staff and officials, in various venues. The charges of insubordination and conduct unbecoming a public employee are upheld.

As set forth above, I **CONCLUDE** that respondent has proven by a preponderance of the evidence that Palubinskas violated the above provisions of N.J.A.C. 4A:2-2.3(a). The appropriate penalty for such violations must therefore be determined. When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the Civil Service Commission is required to reevaluate the proofs and penalty on appeal, based on the charges presented. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Brock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Bock, 38 N.J. at 522–24. Major discipline may include removal, disciplinary demotion, a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Further, a system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention.

In this matter, it is clear that Palubinskas has committed serious offenses. The twenty-day suspension for the conduct specified in the December PNDA was appropriate and is upheld. Appellant was not only insubordinate, he evinced a disregard for Asbury and its citizens by insisting that he could use his city vehicle in any manner he saw fit. His email response to McKeon was disproportionate to what McKeon had sought from him, an accounting of his time and actions. A review of his work by McKeon in December revealed that appellant had failed in his duties by not having completed time documents and updating his work in the computer system. With regard to the second disciplinary action, the fifteen-day suspension was appropriate. His finding of only two violations in his area was so disproportionate to his colleague's documentation of twenty-five violations the next day that it warranted a serious response, particularly after his previous violation.

Finally, the third disciplinary action raises the issue of whether appellant's removal should be upheld. His actions toward his superior were of a serious and continued nature. Without proof he accused him over months of ethical and possibly criminal violations. He admittedly had no proof that McKeon had represented Ritterman as a client, yet he persisted in stating such as fact to Asbury staff and officials, insisting that the purported and unproven relationship had led to favorable treatment by McKeon toward Ritterman. Finally, his removal of files from the Code Enforcement office and his failure to disclose such to the Asbury police in their administrative interview compels a conclusion that removal is the appropriate penalty.

ORDER

The disciplinary actions taken by respondent against appellant in these consolidated matters are upheld and his appeal of those actions is **DISMISSED**.

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.

9/17/19
DATE

Patricia M. Kerins
PATRICIA M. KERINS, ALJ

Date Received at Agency:

September 17, 2019 (mailed)

Date Mailed to Parties:

September 17, 2019 (mailed)

PMK/mel

APPENDIX

WITNESSES

For Appellant:

None

For Respondent:

Moshe Ritterman

Gale Brown

John Byrd

Tamica Smith

Barbara Yvonne Clayton

Robert McKeon

EXHIBITS

For Appellant:

A-1 Warning

For Respondent:

R-1 Final Notice of Disciplinary Action dated July 2, 2015

R-2 Preliminary Notice of Disciplinary Action dated December 19, 2014

R-3 Final Notice of Disciplinary Action dated July 2, 2015

R-4 Preliminary Notice of Disciplinary Action dated January 12, 2015

R-5 Final Notice of Disciplinary Action dated May 7, 2015

R-6 Preliminary Notice of Disciplinary Action dated March 18, 2015

R-7 E-mail stream including e-mail from Rob McKeon to Robert Palubinskas dated November 26, 2014; e-mail from Robert Palubinskas to Rob McKeon dated November 26, 2014; and e-mail from Tony Salerno to Steve Ramseur dated January 16, 2015

- R-8 Supplemental Narrative submitted by Detective Daniel Kowsaluk dated January 18, 2012 [Computer error. Actual date is January 18, 2015]
- R-9 Supplemental Narrative submitted by Detective Steven Ramseur dated February 11, 2015
- R-10 Statement of Gail Brown dated December 10, 2014
- R-11 Statement of John Byrd dated December 10, 2014
- R-12 Statement of Tamica Smith dated December 11, 2014
- R-13 Statement of Robert McKeon dated December 11, 2014
- R-14 Statement of Barbara Yvonne Clayton dated January 8, 2015
- R-15 Statement of Anthony Nuccio dated January 15, 2015
- R-16 Statement of Robert McKeon dated January 21, 2015
- R-17 Statement of Moche Ritterman dated January 22, 2015
- R-18 CD of statement of Robert Palubinskas