

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF JANUARY, 2020



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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 17745-18

AGENCY DKT. NO. 2019-1405

**IN THE MATTER OF ODISE CARR,
CAMDEN COUNTY, POLICE
DEPARTMENT.**

Christopher St. John, Esq., for appellant, Odise Carr, (Law Offices of Agre & St. John, attorneys)

Michael J. DiPiero, Esq., for respondent, Camden County, Police Department, (Brown & Connery, L.L.P., attorneys)

Record Closed: November 26, 2019

Decided: December 12, 2019

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

Appellant, Odise Carr (Carr), a Sergeant in the Camden County Police Department (Department), appeals a thirty-day suspension and demotion to County Police Officer pursuant to a Final Notice of Disciplinary Action (FNDA), dated November 1, 2018. The charges stem from a February 22, 2018, incident that involved a claim of excessive force by Carr's subordinate in conducting an arrest and a lack of supervision by Carr. Charges presented include N.J.A.C. 4A:2-2.3(a)(1) - incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3) - inability to perform duties; N.J.A.C.

4A:2-2.3(a)(6) - conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) - neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12) - other sufficient cause. Carr is also charged with violating the following section of the Department's Rules and Regulations: 3:1.6 - neglect of duty; 2:1.4 – supervisors; 3:1.7 – performance of duty; 3:1.5 – general responsibilities; 3:1.32 - work expectation; 3:2.1 – prohibited activity on duty; 3.1.1 - standards of conduct; 3.1.10 - obedience to law & regulations; 3.2.21 - all other conduct; and 3:2.2 - use of force.

Appellant maintains that he complied with the requirements of the policies and procedures that were in place at the time of the incident on February 22, 2018. In addition, appellant denies witnessing the officer under his command striking the suspect.

PROCEDURAL HISTORY

On August 7, 2018, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. Appellant requested a departmental hearing which was held on October 19, 2018. The respondent issued a FNDA on November 1, 2018, sustaining the charges listed in the PNDA and suspending appellant for ten working days beginning November 2, 2018, and ending November 18, 2018, with twenty days held in abeyance, and demoted appellant to the position of Police Officer. Appellant appealed on November 16, 2018. The matter was transmitted by the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law (OAL) where it was filed on December 12, 2018, as a contested case. N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The hearing was held on June 28, 2019. The record remained open to allow the parties to submit post-hearing submissions. After reviewing the post-hearing submissions, I held a telephone conference call with the parties on November 26, 2019 and closed the record that day.

FACTUAL DISCUSSIONS AND FINDINGS

Testimony

Alexsandro Ibarrodo (Ibarrodo) is a Department Captain and the Commander of the Internal Affairs Bureau (IA). He was involved in the IA investigation of the February 22, 2018, incident. IA's involvement began on February 23, 2019, when E.M.¹ filed a citizen's complaint alleging excessive force in connection with his arrest. (R-1.) E.M. advised the Department that he was beaten without cause and struck multiple times in the head by a police officer who was placing him in custody. The police officer, identified as Officer Romantino (Romantino), served under Carr's command. E.M. had a video of the incident on his cell phone that he recorded from the camera stationed outside the liquor store.

The citizen's complaint triggered the investigation. As part of the investigation, the IA investigators reviewed the video footage from the body-worn cameras of the responding officers involved. During the hearing, the Department played the video recording from the body-worn camera of Officer Brandon Gallagher. (R-2.) The recording showed Romantino striking the suspect in the back of the head while on the ground.

The next video recording played at the hearing was from Carr's body-worn camera. (R-3.) Ibarrodo identified Carr, who appeared in the footage with Sergeant Fegley (Fegley). As Carr approached the suspect (E.M.), he issued commands ordering E.M. to stop moving and to put his hands up. As narrated by Ibarrodo, E.M. appeared to be following Carr's commands. With the approach of other officers, the scene became chaotic. In Ibarrodo's opinion, Carr should have remained in control and instructed the other officers to secure each of E.M.'s arms and handcuff him. Instead, Carr relinquished control to subordinate officers and walked away. The result of Carr's action was that excessive force was used by an officer under Carr's command in securing the suspect.

¹ E.M. are the initials of the suspect who was arrested on February 22, 2018.

A supervisor making an arrest is charged with several responsibilities. The most important responsibility is to make sure that the arrest is done properly while insuring the safety of the officers and the suspect.

With the arrival of the other officers, Carr left E.M. and went to assist Fegley, who had engaged the second suspect. There was nothing on the video from Carr's body-worn camera that indicated to Ibarrodo that Fegley was in danger or needed assistance. During a subsequent interview, Carr told Ibarrodo that he only went to assist Fegley because Fegley was alone, not because Fegley was in danger.

Carr went to assist Fegley before his own suspect, E.M., was put in handcuffs and secured. This was deemed by Ibarrodo to be an error in judgment. Carr should have stayed as the officer in charge to make sure E.M. was safely secured. The sound of the strikes and E.M. yelling about being hit were audible from Carr's body camera recording. However, Carr maintained that he never heard either sound and did not know that E.M. had been hit. The recording showed Romantino walking by Carr and Carr asking him if he was all right. Ibarrodo criticized Carr's actions because instead of investigating the use of force and arranging for medical treatment, he avoided it by walking away towards the suspect's parked car and generally policing the area.

The next video viewed was from Fegley's body-worn camera. (R-4.) Fegley and Carr drove to the scene together in Carr's patrol car. In the Department, most of the units are single person units. Sergeants driving in the same patrol car is not a permitted practice due to the nature of their duties. It is also a safety concern. Each vehicle contains a locator device that allows the Department to monitor the location of its vehicles. This allows for more efficient dispatching and the ability to locate officers by using the location of their vehicles. During the investigation, it was revealed that Carr and Fegley often rode together, thereby, leaving a vehicle at the station which defeated the purpose of the vehicle location device.

While viewing the video from Fegley's body-worn camera, Ibarrodo remarked that there was no indication that Fegley was having difficulty securing his suspect. The suspect was up against a wall and responding to Fegley's commands. Carr entered the

viewing area and patted the suspect's leg, looking for a gun. Ibarrodo commented that Carr was seen turning his head in the direction where Romantino had E.M. on the ground. From the recording, the strikes being delivered by Romantino and E.M.'s cries for him to stop were audible. The next sound is Fegley's suspect being hand-cuffed, indicating to Ibarrodo that the suspect was secured. Ibarrodo also commented that Carr walked away after he finished patting down the suspect, before the suspect had been handcuffed.

As part of the investigation, Detective Crawford from IA, took a still picture of a screenshot from the external video recording from the camera at the liquor store. (R-6.) The Detective wrote the names of the officers, who were present on the scene next to their pictures. The picture showed that Carr was less than ten feet away from Romantino when he was punching E.M., after taking him to the ground.

The next video reviewed was from Romantino's body-worn camera. (R-5.) As the video was played, Ibarrodo identified Carr's voice giving commands to the suspect to put up his hands and stop moving. Romantino prepared an incident report that was approved by Carr. (R-7.) In the report, Romantino wrote that Carr instructed the suspect, (E.M.), to put his hands in the air and the suspect complied. However, he also wrote that the suspect stated he was not going to get on the ground. Ibarrodo stated that he never heard anyone give a command to get on the ground on any of the video recordings from the body cameras worn by the officers at the scene. When Ibarrodo questioned Carr about whether he commanded the suspect to get on the ground, Carr responded in the negative.

An officer drove E.M. from the scene to the hospital. Carr visited E.M. at the hospital and E.M. told him that the officer should not have hit him. After receiving this complaint, Carr was required to complete an IA reportable form. This form should have been submitted to the IA team charged with documenting and investigating use of force. Carr never reported what E.M. told him.

As a result of the use of force during the arrest, Carr was required to file an Administrative Review Form to identify whether any changes in policy or procedure were needed in response to the incident. (R-8.) It was noted that a reasonable amount of force

may be used to subdue a suspect who is resisting arrest but should be measured in proportion to the resistance that the officer is encountering. In reviewing the video footage, Ibarrodo believed the force used by Romantino was excessive. A supervisor, who witnesses excessive force, must stop it. In his interview, Carr agreed and stated that if he had seen it, he would have stopped it. Carr further maintained that he never heard the strikes being delivered by Romantino, he only knew that Romantino took the suspect to the ground.

In his Administrative Review Report, Carr indicated that Romantino did not need additional training. (R-8.) This decision was made despite Carr's concerns about Romantino's stubbornness and aggression in dealing with people. Carr should have recommended training or at least notified his superiors. Instead, Carr dealt with Romantino informally and talked to him privately.

Carr mentioned that he considered recommending additional training for Romantino, but, after a discussion with Fegley, he changed his mind.

The incident was independently reviewed on the use of force. (R-9.) The independent review deemed that additional training was required, and disciplinary action was warranted.

On cross-examination, Ibarrodo stated that prior to his assignment to the I.A. unit, he worked as a patrol officer and was the commander of the Community Safety Division which was responsible for patrolling several areas throughout the city of Camden. He acknowledged that a call to respond to a situation where a person is armed with a gun is serious.

In reviewing additional video from Carr's body camera (R-3), Carr called dispatch to report the use of force and indicated that the suspect and Romantino were going to the hospital. Ibarrodo acknowledged that this was proper procedure but criticized the lack of detail Carr provided about the incident.

Ibarrondo criticized Carr's decisions in the field because Carr should have remained with his suspect until he was safely secured, and delegated policing the area and searching for the weapon to his subordinate officers.

When Carr visited the suspect in the hospital, the suspect told Carr that Romantino had no reason to hit him the way that he did. Although the suspect never said he wanted to file a complaint, Ibarrondo believed that the suspect's statement to Carr triggered Carr's responsibility to report the use of force. Romantino confirmed E.M.'s statement in his Incident Report when he wrote that he struck the suspect in the head with a closed fist. (R-8.)

Ibarrondo did not accept Carr's informal statement to Romantino after the incident as an approved counselling measure. Counselling is always documented. Without documentation, there was no record that Romantino was counselled by Carr for his actions.

Carr conducted eighteen different supervisory training sessions, through the computer-generated programs offered by the Department.

There was news coverage of the incident that portrayed an unflattering view of the Department's response to this incident, but Ibarrondo did not recall reading the news stories or watching the coverage. He claimed that the media coverage had no bearing on his investigation.

Ibarrondo was asked whether it was proper procedure for Carr to assist Fegley. In his response, Ibarrondo stated that Carr should not have left his own suspect without asserting control of the situation. Carr saw Romantino bring the suspect to the ground and did nothing about it. If Carr had not relinquished control of the situation to Romantino, there might have been a different outcome.

Ibarrondo could not recall the written policy against officers sharing a ride but stated that sergeants patrol by themselves and are assigned individual vehicles. He stated the reasons why sergeants are required to patrol alone but could not recall a

specific written policy. Knowing the officers' whereabouts through the automobile tracking device was the primary reason. Another reason was that every sergeant is responsible for conducting crime condition checks in the community. Ibarondo had no information or reason to believe that Carr was not meeting his required number of crime condition checks. He first became aware that Carr had driven in a patrol car with another supervisor when it became known through this incident.

On redirect examination, Ibarondo criticized Carr for not asking the questions to determine the "who, what, when, and why" of the situation that led to the use of force. Carr only had a brief interaction with Romantino at the scene and knew that Romantino injured his hand. He had a conversation with E.M. at the hospital, who told him that Romantino hit him in the head. He conducted no other interviews or reviewed any of the officers' body-worn camera recordings. Ibarondo maintained that Carr should have investigated the use of force on the scene as soon as the suspects were secured.

Carr has been employed by the Department since June 2013. He was promoted to the rank of sergeant in December 2017. While serving in law enforcement, Carr also served in the New Jersey Army Reserve National Guard from 2006 until 2017.

As a sergeant, Carr was assigned to the Neighborhood Response Team in South Camden. There were seven to twelve officers under his command.

On February 22, 2018, Carr was dispatched to the area of Collins and New Hampshire Avenues to respond due to a man armed with a gun. This was a high priority call. When he arrived at the scene, he noticed two men matching the description in front of the liquor store. He made a U-turn in his vehicle and noticed that the men started to briskly walk away. Carr engaged with one of the suspects (E.M.) and had to jog to catch up to him. Carr drew his duty weapon and held it at the low ready position and yelled at E.M. to stop moving and to put his hands up. E.M. continued to argue but reluctantly complied. While Carr was issuing the commands, Romantino attempted to grab E.M.'s arm and immediately took him to the ground. Two more officers arrived to assist Romantino, who was on the ground with E.M.

While this was happening with E.M., Carr noticed that Fegley was alone with the second suspect. Carr made a dash over to assist Fegley and patted down the suspect. The reason for Carr's actions was because of his training. Based on his training received at the Police Academy, the ratio of officers to suspects should be greater than two to one or even three to one. Using those ratios, Carr went to assist Fegley because he was alone and there were three officers now engaged with E.M.

Carr was aware that Romantino brought E.M. to the ground, but he did not see Romantino striking him and did not hear any sounds that would have alerted him that Romantino was striking the suspect.

After Carr finished patting down the suspect engaged by Fegley, he checked to make sure that E.M. was secured. Being satisfied that both suspects were secured, he walked over to secure the blue Dodge Durango. The gun was not found on either suspect, so Carr believed that it may have been stashed in the area of the vehicle. Finding the gun was a high priority.

From the scene, Carr informed the watch commander by radio that there had been a use of force, resulting in injuries to the officer and the suspect. The use of force based on Carr's observation was Romantino's action in taking the suspect to the ground. Both men were being transported to the hospital. About ten minutes later, Carr followed to the hospital to gather more information.

Carr met with the suspect, E.M., in the emergency room at the hospital. E.M. complained about his treatment by Romantino. Carr recalled that E.M. stated Romantino should not have hit him but he understood why he did. E.M. did not appear injured.

Upon returning to the station house, on February 22, 2018, Carr completed a required Administrative Review Form. (R-8.) The form requires the supervisor to answer four questions to determine if the use of force incident revealed deficiencies involving policy and procedure; the need for additional training; the need for additional equipment; or whether disciplinary action was warranted. Id. Initially, Carr considered checking the box that Romantino required additional training. Based on what was reported and what

Carr observed, he decided that there was no need for Romantino to bring the suspect to the ground. Carr ultimately made the decision that speaking to Romantino informally was sufficient and there was no need to check the box recommending additional training. He made the decision after consulting with Fegley.

Carr relied on his military training wherein he was taught to handle issues at the lowest level, so he believed speaking to Romantino about his actions was enough. Completing the form triggered an IA investigation, even without Carr reporting what E.M. told him at the hospital. Before completing the form, Carr had been able to review the footage from his body camera but not from the other officers' cameras. There was no requirement for Carr to review the body-worn cameras of the other involved officers.

Carr had driven to the scene in the same vehicle with Fegley. He was unaware of any policy that prohibited sergeants driving together. As a supervisor, Carr was responsible to perform one crime condition check per hour. He never had any problems with meeting this requirement.

Carr had been assigned to a team that helped the Department receive accreditation from the Commission on Accreditation of Law Enforcement Agencies (CALEA). As part of his efforts, Carr was named in a letter of recognition signed by the Chief of Police. (P-1.) The accreditation team recommended changes to how the body-worn camera footage was reviewed to make sure that officers were engaging with citizens in accordance with proper policy and procedure. Being assigned to this team was a prestigious position and an honor.

On cross-examination, Carr stated that he never looked at the video footage from Romantino's body-worn camera before writing his administrative review on the use of force. He admitted that even before the change in policy, it would not have been difficult for him to review another officer's video; it would just be time consuming. In retrospect, Carr agreed that he should have reviewed the video from Romantino's body-worn camera.

After the incident, Carr counseled Romantino to "slow down" and at the time believed that was enough compared to formal training. He has since changed his thinking.

On cross-examination, Carr was asked to explain why he refused the request for additional officers but claimed that the scene remained chaotic. Carr stated that there were at least ten to fifteen people in the area and the gun had not been recovered. Additional officers were not needed because the suspects were secured. When asked why this crowd of people never appeared on his chest worn camera, Carr had no explanation but stated that there were civilians in the area.

DISCUSSION

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). 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).

The Department is questioning Carr's leadership ability. Therefore, Carr's first-hand account, if credible, would be afforded greater weight than a hindsight review of the incident. However, Carr's testimony was at odds with unrefuted evidence. Carr maintained that he was unaware that Romantino struck E.M. when he completed his Administrative Review Form on the need for additional training. He testified that he understood that the use of force was Romantino's decision to take the suspect to the ground. Because it was the takedown, not the blows to the head, he gave Romantino the benefit of the doubt. Whether or not Carr heard the strikes in the heat of the moment, at the scene, is not dispositive. At the scene, it was clear from the evidence that Carr knew that Romantino hurt his hand. He even asked him if he was okay. Carr also knew from speaking with E.M. at the hospital before he completed the training form that E.M. complained about being struck by Romantino. Carr also testified that he reviewed his own body-worn camera recording before completing the form. The sound of the strikes

and E.M.'s complaints about being hit in the head were audible. Carr had the opportunity to view this footage removed from the chaos of the scene. Therefore, I **FIND** that Carr's statement that he did not know about the blows delivered by Romantino to the suspect on the ground was overborn by other testimony and showed that Carr was less than candid. Carr may not have witnessed the blows being delivered but he had been given the information to either form an opinion or investigate further.

Ibarrondo described his investigation and narrated the video recordings in a clear, informative, and concise manner. Appellant argued that the Department needed a scapegoat due to the unflattering media attention surrounding this incident and insinuated that Carr was that scapegoat. I **FIND** no evidence that IA conducted an improper investigation. The body-worn camera video recordings showed Romantino striking the suspect in the back of the head. The citizen's complaint and Romantino's incident report documented the abuse and triggered the need for an investigation. Carr's own Administrative Review Form on the need for additional training also triggered a review. Therefore, I **FIND** that there is no merit to the argument that this investigation was due to unflattering media coverage.

FINDINGS

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

Carr was the sergeant on the scene. He encountered E.M., who met the description of the man with the gun. Carr's weapon was drawn and the suspect was complying with his commands to stop moving and put his hands up. Romantino abruptly appeared and tackled the suspect to the ground. Carr relinquished control of the suspect to Romantino.

Carr failed to question Romantino's tactics in handling the suspect and failed to investigate Romantino's injury. After interviewing E.M. at the hospital, Carr did nothing about E.M.'s accusations against Romantino.

Returning to the station, despite what he had learned from Romantino and E.M., Carr failed to recognize the need for Romantino's additional training. Carr had the ability to review Romantino's body-worn camera recording but he failed to appreciate the value such information would have afforded him in making his recommendation about additional training.

Carr reviewed and signed Romantino's Offense/Incident Report on February 23, 2019. (R-7.) Even after Carr reviewed the narrative wherein, Romantino wrote that he struck the male in the head with a closed fist, he still failed to take any decisive action against Romantino. Romantino's report contained a statement that the suspect was ordered to get on the ground that was at odds with Carr's commands to the suspect. Despite this discrepancy, Carr never questioned Romantino about his report.

Carr and Fegley drove together in Carr's patrol car in responding to the February 22, 2018 call. There was no written policy or procedure against sergeants driving together. However, officers are deployed as individual units and sergeants have the added responsibility to perform crime condition checks in their respective district.

LEGAL ANALYSIS AND CONCLUSIONS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension, demotion, or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The

standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Here, the respondent charged appellant with violations of: N.J.A.C. 4A:2-2.3(a)(1) - incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3) – inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6) - conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) - neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12) - other sufficient cause, including violations of the Departments Rules and Regulations: 3:1.6, 2:1.4, 3:1.7, 3:1.5, 3:1.32, 3:2.1, 3:1.1, 3.1.10, 3.2.21, and 3.2.20.

In his defense, Carr asserted that he did not witness Romantino striking the defendant and that he complied with all Department Rules and Regulations in force and effect as of February 22, 2018. In hindsight after having the benefit of reviewing the body-worn camera video recordings, Carr agreed that he should have recommended Romantino for training. Carr also conceded that it was not the best practice to drive with another sergeant in responding to a call or performing crime condition checks.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980). Here, while Carr may not have witnessed Romantino hitting the suspect, as a Sergeant he had the duty to remain in control of the situation, investigate the use of force, and report it. Instead, he failed to report what the suspect had told him and failed to investigate the nature of the injury to Romantino's hand. He wrote a report that failed to recommend training. Even after learning of the abuse from Romantino's own report, he failed to take any action. For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden as it relates to charge N.J.A.C. 4A:2-2.3(a)(1).

Carr was charged with "inability to perform duties," N.J.A.C. 4A:2-2.3(a)(3). This can also be a non-disciplinary type of charge, where the employer seeks to prove that an employee should be demoted or removed due to his physical, intellectual, or psychological inability to perform his duties. Rivera v. Hudson County Department of Corrections, CSR 06456-16, Initial Decision (October 24, 2016). Police officers are expected to be involved with a high degree of dangerous activities such as restraining and detaining suspects and supervising and assisting fellow officers and other public safety personnel in times of crisis. In this case, Carr had prior supervisory experience, both in the military and with the Department. He had the highest test score on his examination to become a supervisor. There is no evidence before me that Carr lacked the temperament, or the psychological, intellectual, or physical ability to perform his duties. I **CONCLUDE** that the preponderance of the credible evidence does not support the charge that Carr was unable to perform his duties under N.J.A.C. 4A:2-2.3(a)(3).

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998). 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)).

As noted above, Carr had the suspect under his authority. He allowed a subordinate officer to aggressively take the suspect to the ground and walked away after it happened. He never questioned Romantino's tactics or investigated his hand injury. A Sergeant's failure to prevent an officer from using excessive force, relinquishing his authority, and failing to report are examples of conduct that has a tendency to affect the

morale or efficiency of a governmental unit. For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden as it relates to charge N.J.A.C. 4A:2-2.3(a)(6).

Carr was also charged with neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7). There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term 'negligent' connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee breached a duty owed to the performance of the job.

Here, Carr failed to report Romantino's use of force, he signed Romantino's Incident Report without questioning a material statement contained therein, and he failed to recognize that Romantino was an officer in need of additional training. For the reasons cited herein and above, I **CONCLUDE** that the respondent has met its burden as it relates to charge N.J.A.C. 4A:2-2.3(a)(7).

Carr was also charged with violation of N.J.A.C. 4A:2-2.3(a)(12) – other sufficient cause. This charge is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. The 'other sufficient cause' set forth in the preliminary and final notices of discipline are the violations of various Department Rules and Regulations. I **CONCLUDE** that the charged violations for neglect of duty (3:1.6), supervisors (2:1.4), performance of duty (3:1.7), general responsibilities (3:1.5), work expectation (3:1.32), standards of conduct (3:1.1), obedience to law and regulations (3:1.10), all other conduct (3:2.21), and use of force (3:2:20) are sustained for the reasons set forth above. Therefore, I **CONCLUDE** that the Department has met its burden as it

relates to charge N.J.A.C. 4A:2-2.3(a)(12), concerning Carr's violation of the above Rules and Regulations.

Regarding the charge that Carr violated the Rule and Regulation that prohibited certain activity while on duty, set forth under 3:2.1(a) through (k), I **CONCLUDE** that the Department has not shown that Carr engaged in any of the listed prohibited activities. This violation is **DISMISSED**.

PENALTY

N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. In general, principles of progressive discipline apply to the discipline of officers. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board (now the Commission) considers numerous factors, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. "Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990).

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Carr's status as a police sergeant subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1980). Police Officers represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J.

Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

The Department suspended Carr for thirty days and demoted him to the position of Police Officer. Carr served ten working days of a thirty-day suspension. The remaining twenty days are being held in abeyance. As a supervisor, Carr was responsible for maintaining an overall situational awareness to protect those in his charge, including suspects, police officers, and community members. He was also responsible to evaluate guide and train his subordinates. His failure to report the use of excessive force by a subordinate and failure to accurately review the incident report warrants disciplinary action. A supervisor, who exhibited the following conduct, warrants a demotion: the relinquishment of control of a suspect to a subordinate after witnessing the subordinate aggressively bringing the suspect to the ground; failure to investigate the use of force; and failure to recognize a subordinate's need for training.

In West New York v. Bock, 38 N.J. 500, 523 (1962), the New Jersey Supreme Court stated that a public employee's prior disciplinary record may be referred to, where appropriate, in assessing the reasonableness of a penalty for a current offense. However, exceptions to the application of "progressive discipline" have been made where certain acts are "so egregious in nature and/or so detrimental to the public welfare that immediate termination is warranted, notwithstanding a good disciplinary history."

With the above in mind, Carr did exhibit many exemplary traits. He never received a negative counseling or a disciplinary charge as an officer of the Department. He was hand-picked to be a member of the CALEA² accreditation team. He cooperated during the investigation process. Moreover, he acknowledged his shortcomings and errors in judgment in connection with his actions involving the February 22, 2018, incident.

For the reasons stated above and given the seriousness of an excessive force investigation, I **CONCLUDE** that a ten-day suspension and demotion to the position of Police Officer is appropriate. Given Carr's otherwise exemplary record of service, I

² CALEA is an acronym for the Commission on Accreditation of Law Enforcement Agencies.

CONCLUDE that the twenty-day suspension, currently being held in abeyance by the Department, be **DISMISSED**, in consideration of the gravity of the demotion.

ORDER

Accordingly, I **ORDER** that the action of the Department in suspending Carr for thirty working days be **REDUCED** to ten working days. I **further ORDER** that the action of the Department in demoting Carr from a Sergeant to a Police Officer is **AFFIRMED**. Carr's appeal 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.

December 12, 2019
DATE

Kathleen M. Calemno
KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

December 12, 2019

Date Mailed to Parties:

December 12, 2019

KMC/tat

WITNESSES

For Appellant:

Odise Carr

For Respondent:

Alexsandro Ibarondo

EXHIBITS

For Appellant:

P-1 Letter of Recognition

For Respondent:

- R-1 Citizen Complaint Information Form, dated February 23, 2018
- R-2 Recording from body-worn camera, Officer Brandon Gallagher
- R-3 Recording from body-worn camera, Sergeant Odise Carr
- R-4 Recording from body-worn camera, Sergeant Andrew Fegley
- R-5 Recording from body-worn camera, Officer Nicholas Romantino
- R-6 Photograph outside Fairview Liquor Store
- R-7 Romantino's Incident Report
- R-8 Carr's Administrative Review Form
- R-9 IA's Administrative Review Form
- R-10 Carr's Audio Statement #1
- R-10a Carr's IA Statement #1 Listening Aid
- R-11 Carr's Audio Statement #2
- R-11a Carr's IA Statement #2 Listening Aid
- R-12 Carr's Audio Statement #3
- R-12a Carr's IA Statement #3 Listening Aid

- R-13 NRT P8 – D2 Lineup
- R-14 NRT P8 – D4 Lineup
- R-15 Department's Rules & Regulations
- R-16 Recording from body-worn camera, Sergeant Augus