

imposed. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 15 working day suspension to a five working day suspension. The Commission further orders that appellant be granted 10 days of back pay, benefits, and seniority. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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 20th DAY OF MAY, 2020



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05646-19

AGENCY DKT. NO. 2019-2859

**IN THE MATTER OF VALERIE HICKS,
CITY OF NEWARK, DEPARTMENT OF
ENGINEERING.**

Seth M. Gollin, Esq., for appellant Valerie Hicks pursuant to N.J.A.C. 1:1-5.4(a)(6)

Hugh A. Thompson, Assistant Corporation Counsel, for respondent City of
Newark (Kenyatta K. Stewart, Corporation Counsel)

Record Closed: February 10, 2020

Decided: March 26, 2020

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Appellant, Valerie Hicks (Hicks or appellant), appeals a fifteen-day suspension as a Code Enforcement Officer with the City of Newark (the City or respondent) for failing to comply with her duties and follow proper protocol in connection with an inspection, and for conducting herself in an unprofessional manner. Hicks denies the charges.

PROCEDURAL HISTORY

In February 2019, the City served Hicks with a Preliminary Notice of Disciplinary Action (PNDA) which informed her of the charges made against her, including: insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause. Hicks was served with a Final Notice of Disciplinary Action (FNDA) dated March 27, 2019, which sustained the charges set forth in the PNDA.

The New Jersey Civil Service Commission (the Commission) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on April 29, 2019, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing took place on December 4, 2019, and the record closed on February 10, 2020, upon receipt of the post-hearing summations.

FACTUAL DISCUSSION

I **FIND** as **FACT** the following uncontroverted facts:

Hicks is a Code Enforcement Officer who was transferred in August 2018 from the Division of Code Enforcement to the Division of Traffic and Signals, which are part of the City's Department of Engineering.

On September 6, 2018, Hicks conducted an inspection of the inside of a residential building located in the City. She was granted access into the building, and into at least one of the apartments, by a resident. Hicks was accompanied by a City zoning officer. Later that day, Hicks created a complaint against the property owner, Daegeon Ryu (Ryu), notifying him that the property had been inspected and observed to be in violation of three City Ordinances, including a zoning violation that charged the owner with changing or converting the structure into an illegal rooming house without obtaining a Certificate of Occupancy. (R-2E.)

In January 2019, Ryu submitted a complaint to the City alleging that Hicks was constantly threatening him by demanding cash to settle the case.

Following several scheduled municipal court appearances on the complaint issued to Ryu, the case was dismissed. A Certificate of Code Compliance established that Ryu's property was in fact a three-family house.

Charges

Respondent asserts that Hicks was not authorized to conduct the inspection of the interior of the property and to file the complaint for code violation after transferring to the Division of Traffic and Signals. The March 27, 2019 FNDA lists the following as the incidents giving rise to the charges:

On 9/6/18 at 3:51 pm, Ms. Hicks failed to comply with her duties as an inspector under the Division of Traffic & Signals by creating a complaint in the system for the owner of . . . [address intentionally omitted]. Ms. Hicks has been working under the supervision of Manager Singleton. Hicks' duties are to conduct inspections as it relates to permits with occupational construction permits. Further, Ms. Hicks failed to follow proper protocol for the internal inspections at . . . [address omitted]. In addition, she improperly instructed tenants not to pay their rent and Ms. Hicks threatened the owner of . . . [address omitted]. Lastly, on 1/25/2019, Ms. Hicks conducted herself in an unprofessional manner when she became irate and disrespectful to Court Liaison Wilder in the courtroom.

In its post-hearing summation, the City more specifically asserts that Hicks failed to follow proper procedure and protocol when she (1) deviated from her duties under the Division of Traffic and Signals and conducted an unauthorized inspection, (2) failed to inform her superior of the inspection, (3) failed to notify a Code Enforcement Officer to conduct the interior inspection per protocol, (4) did not conduct a complete inspection of the property to make an accurate assessment, and (5) instructed tenants not to pay rent, which is not protocol.

Testimony

For Respondent:

Daegon Ryu (Ryu) owns the property at issue, which he maintains has always been a three-family home despite Hicks' assertion that the building was illegally converted into a rooming house. On September 6, 2018, Hicks called Ryu for access to the house while he was at work. He testified that Hicks entered the building without his permission.

On September 26, 2018, H.R., a tenant, handed Ryu a complaint prepared by Hicks informing him of alleged code violations. Ryu testified that H.R. told him that he knew the inspector personally and that she would drop the complaint if he paid H.R. \$500. Ryu paid H.R. the \$500 and H.R. later asked him for another \$3500, which Ryu did not pay. On cross-examination, Ryu conceded that he did not know what H.R. did with the \$500 and that H.R. tricked him into giving him the money.

H.R. had owed Ryu rent since July 2018. He paid Ryu the back-rent in early September 2018, but Ryu refunded the back-rent when H.R. demanded a refund because, he asserted, the building was in code violation. On cross, Ryu conceded that Hicks never ordered him to make any of these payments to H.R., and that he was taken advantage of by this tenant.

Ryu kept a surveillance camera in the first-floor hallway of the building, which recorded Hicks entering the building again on January 15, with another inspector, and meeting with H.R. and other tenants. He testified that Hicks and another inspector entered his building while he was at work, and that Hicks told H.R. and other tenants to go to the court hearing and make some money. He conceded, however, that he never heard Hicks tell any resident not to pay their rent. H.R. was the only tenant who did not pay the rent at that time, and he was ultimately evicted.

Ryu went to municipal court with his attorney approximately four times concerning the complaint, which was ultimately dismissed. He described Hicks as aggressive at the hearings because she made him feel uncomfortable, but he did not provide any examples

of aggressive behavior when asked. At the first hearing date, Ryu's attorney showed the prosecutor a certificate of code compliance showing the property was in fact a three-family property, but Hicks claimed that it was forged and the hearing was adjourned. Ryu testified that after the court hearing, and in the presence of an attorney, Hicks told him to pay the money to H.R.

Charles Wilder (Wilder) has been employed with the City of Newark since December 1990. He is a Code Enforcement Officer and the Court Liaison Officer who was present at the January 25 court hearing. He testified that at the hearing, Hicks became irate and disrespectful towards Ryu when she learned that the hearing was being adjourned because his attorney was sick. Wilder testified that she was also very disrespectful and very loud with him, and that she threw a ball of paper at him. They were in a conference room and she was loud enough for the people in the small courtroom outside the conference room to hear. A Court Officer was present who observed Hicks' behavior, but he did not intervene and only looked at Wilder. Following this incident, Wilder sent his supervisor, Thomas McDonald, an e-mail reporting Hicks' "disrespectful" and "unbecoming" conduct in the presence of City resident witnesses that day, but did not mention in the e-mail that she threw paper at him. (R-2C.) Wilder testified that he was upset with Hicks' behavior and that it was not the first time that she behaved in this manner.

Thomas McDonald (McDonald) has been employed by the City of Newark since 1992 and is currently the manager of the Division of Code Enforcement. Hicks reported to McDonald before being transferred to the Division of Traffic and Signals in August 2018.

McDonald was informed by the Director of the Department of Engineering that a complaint had been filed against Hicks concerning her September 6 inspection and the manner in which she treated Ryu, who questioned whether the inspection was legal. McDonald reviewed Hicks' report, met with Ryu and visited the property to verify that the complaint filed by Hicks was legitimate. He was unable to determine whether Hicks' determination regarding the zoning violation was legitimate because he did not have access to all of the units in the apartment building to make that determination.

McDonald testified that the employees with the Division of Traffic and Signals do not inspect the interior of City properties, and that this would only be permitted with the authorization of either McDonald or the Department's Director. McDonald never authorized Hicks to conduct the inspection inside the residence at issue here, and once she left his Division in August 2018, she was no longer authorized to enter residential buildings to conduct inspections.

McDonald denied that Hicks requested the transfer out of his Division because she no longer wanted to work under him, although he conceded that he and Hicks were not getting along when she left his Division. When she transferred to the Division of Traffic and Signals, Hicks still had the same Code Enforcement Officer title and job description. He testified that the job description of a Code Enforcement Officer in the City of Newark is to enforce City ordinances. McDonald also conceded that he was unaware of any written protocol that limits certain Code Enforcement Officers from conducting inspections inside City residences.

McDonald testified that Hicks was informed in writing by the Director that she was no longer to conduct inspections inside the properties. He did not, however, see any such written notice.¹

McDonald acknowledged that Hicks was accompanied by Susan Brown (Brown), a zoning officer, at the September inspection, and that she was accompanied by Grace Porter, another Code Enforcement Officer, during the January 15 inspection. He agreed that City zoning officers, such as Brown, have the authority to conduct inspections inside properties as well.

On rebuttal, McDonald conceded that inspectors are told to look for work if they do not have an assignment. They can conduct inspections in response to incoming complaints that are made by citizens, the mayor's office, or others and they can also

¹ No such notice was presented at the hearing and the Director did not testify.

conduct inspections in response to complaints that are brought to their attention while traveling the City.

Kimberly Singleton (Singleton) has been employed by the City of Newark since December 2015. She is currently the manager of the Division of Traffic and Signals and has supervised Hicks since her transfer to the Division in August 2018. She described Hicks' duties as a Code Enforcement Officer in the Division of Traffic and Signals as including handling any permit violations or violations of traffic and signal ordinances. Code Enforcement Officers in her Division are essentially assigned to "streets and sidewalks" in the City. While employees of her Division do not conduct inspections inside residences, on cross-examination she conceded that there was one instance in early January 2019 when Hicks was asked to conduct an inspection inside a residence. Singleton explained that this inspection was an emergency and had been approved by the Director. Singleton was unaware that Hicks had inspected the inside of the residence at issue here until she was informed of this by McDonald and the Director.

Singleton testified that when Hicks transferred to the Division of Traffic and Signals, she informed Hicks that she would no longer be conducting inspections inside City properties, and discussed her new job duties. Hicks was not, however, given any written job description or written instruction concerning her duties at the Division of Traffic and Signals.

For Appellant:

Grace Porter (Porter) has worked with the City of Newark for twenty-three years. She is currently a Code Enforcement Officer in the Division of Code Enforcement. Porter accompanied Hicks on the January 15, 2019 inspection.

Porter worked for a few months as a Code Enforcement Officer in the Division of Traffic and Signals. While there, she testified that she received assignments from both McDonald and Singleton. When she was assigned to the Division of Traffic and Signals, Singleton would also direct her to conduct inspections inside City properties, and she was never told what types of inspections she could or could not conduct. She was also never

given any written protocol concerning the types of inspections she could conduct. As a Code Enforcement Officer, Porter received requests for inspections by individuals from City residents, the mayor's office, and from the zoning officer. As a Code Enforcement Officer, she was required to conduct the investigations and she was not required to obtain her manager's approval prior to doing so. When they had no work, Code Enforcement Officers were instructed to look for code violations in the City.

Valerie Hicks (Hicks) has worked for the City of Newark for eighteen years. As a Code Enforcement Officer, she requested a transfer from the Division of Code Enforcement to the Division of Traffic and Signals because she no longer wanted to report directly to McDonald. While they once got along very well, after she became her local union's president in 2017, she decided that she no longer wanted to work under his supervision because she did not like the way he treated her union members. Hicks felt that the Division employees were being improperly disciplined, contrary to protocol and without proper notice. Prior to becoming involved in her local union, she had worked well with McDonald and she complimented him on his institutional knowledge and the training that he provided her.

Hicks denied receiving any instruction concerning her job duties when she transferred to the Division of Traffic and Signals. She requested the transfer because she no longer wanted to report to McDonald, however, she was under the impression that she was going to continue with her usual job duties as a Code Enforcement Officer—i.e., to enforce City ordinances—but report to Singleton. Hicks' job title never changed, and nobody ever told her not to do her "regular job."

Hicks looked for work herself because she was not being given assignments at the Division of Traffic and Signals. Other City employees would approach Hicks and ask her to conduct inspections, including inspections inside residences, which she did. Hicks was never told that she needed approval from her manager prior to conducting any inspection.

If nobody gave her work, she was to look for work. That is what McDonald had instructed the Code Enforcement Officers to do.

On September 6, 2019, zoning officer Brown asked Hicks to conduct an inspection of Ryu's property. Hicks had worked with Brown since 2018 and McDonald had been aware of this and never told her that she should not work with Brown or respond to her requests for investigations. Brown asked Hicks to write up Ryu's property as a possible violation based on what they observed in the house that day. As a result of their investigation, Hicks created a complaint and was given a court date. Based on her observation and experience, she thought the property was a one-family house that had been converted into smaller units because it was "cut up" into rooms. She admitted that she made her assessment without inspecting the entire property and admitted that she was wrong, as it turned out it was a three-family house.

When tenants make complaints, the landlord does not have to be present for an inspection. Here, the complaint was made by a tenant to Brown. Hicks took pictures of the rooms she inspected on the first floor and based on what the tenants told her, and her observations, she believed the house had been illegally converted into a rooming house. She never told the tenants not to pay the rent, but told them that if the conversion was deemed illegal, they could get six months of rent.

Hicks denied asking H.R., Ryu, or any tenant, for any payment, and she never received any money from them.

During one of the scheduled hearings, the judge instructed Hicks to inspect the entire property since she had not inspected all three floors. She returned to the building on January 15, 2019 with Porter per the judge's order.

Hicks appeared for the January 25 hearing, but was told by Wilder that McDonald said that the case would be rescheduled. Hicks was upset that she and the landlord had appeared for the hearing and that it was being rescheduled. She spoke with the prosecutor and told Wilder that since she was there, she could handle her own case and did not need Wilder to handle it. She denied speaking with Ryu directly at any hearing,

but did speak with his attorney, and she denied ever threatening Ryu. Hicks also denied throwing paper at Wilder, although she conceded that she did not get along with him and that she was upset. Had she thrown a paper ball at him, as he asserted, she would have been escorted out of the building by the Court Officer who stood nearby.

Hicks testified that Singleton asked her to inspect the inside of another property in January 2019, and that this type of inspection was similar to the ones she would normally conduct in the course of her work as a Code Enforcement Officer.

In response to the City's assertion in the FNDA that her duties "are to conduct inspections as it relates to permits with occupational construction permits," Hicks did not know what was meant by "occupational construction permits," and testified that she was never asked to conduct inspections relating to occupational construction permits.

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).

Overall, Hicks presented as a credible witness who cares about her work. I found her testimony to be sincere in that she believed that she would be able to continue to conduct code violation inspections inside City properties after her transfer to the Division of Traffic and Signals. When she transferred to the Division about two weeks prior to the September inspection, she maintained the same Code Enforcement Officer title and there is no evidence that she was given anything in writing from the Department concerning any new job duties. I found her testimony truthful in that she was never informed that she no longer had the authority to conduct indoor inspections of properties.

While Singleton testified that she informed Hicks verbally of her new job duties and that she would not be conducting inspections inside residences, she spoke in generalities, and presented no written record of any such meeting or discussion. Moreover, Singleton's testimony that her Division employees are not authorized to conduct indoor inspections was also not entirely accurate as she herself had asked Hicks to conduct an

inspection inside a residence in January 2019. Porter's testimony only raised additional doubt that the duties of a Code Enforcement Officer in the Division of Traffic and Signals are clearly defined for its employees, and that some Code Enforcement Officers are prohibited from conducting certain types of code violation inspections. In fact, based on the testimony, there appears to be quite a bit of overlap between the duties of a Code Enforcement Officer in the Division of Code Enforcement and one in the Division of Traffic and Signals.

While McDonald testified that the Director informed Hicks of her new job duties and that she would no longer be conducting inspections inside City properties, the Director himself did not testify and no written document was offered into evidence to substantiate this testimony. McDonald's testimony that Hicks was informed by the Director that she would no longer be conducting indoor inspections is unsubstantiated, and therefore inadmissible, hearsay.

Wilder presented as a credible witness concerning his interactions with Hicks on or around January 25, 2019, and specifically Hicks' irate response to hearing that the matter had been adjourned. He was so disturbed by her behavior that day, that he immediately informed his manager of their interaction. Hicks conceded that she was upset about that and felt that Wilder, who she admittedly did not like, should not have been involved in her case. She was also angry at the fact that it was McDonald who sought to reschedule the hearing. Wilder's testimony that Hicks spoke with him in a disrespectful and loud manner, and threw a paper at him, was more credible than Hicks' testimony concerning their interaction on January 25, 2019.

Finally, while Ryu appeared as a sympathetic witness, his testimony was not entirely reliable. He was upset by the fact that his tenant, H.R., had taken advantage of him by convincing Ryu to give him a refund on the back-rent he had just paid him, and by demanding that Ryu pay him \$500 to resolve the case. Ryu clearly fell prey to this tenant. There is no evidence, however, that Hicks collaborated with H.R. to demand these payments, nor that she ever threatened Ryu, or received any payment from Ryu or H.R. Despite Ryu's assertion, he never heard Hicks instruct the tenants not to pay their rent,

and his testimony that Hicks threatened him, and demanded that he pay H.R. while in the presence of an attorney, seemed doubtful and farfetched.

Based upon my review of the evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following additional **FACTS**:

A few days after transferring to the Division of Traffic and Signals, Hicks was asked by zoning officer Brown to assist in conducting an inspection of Ryu's property after Brown received a complaint by resident H.R. Hicks and Brown were granted access inside the building by tenants on September 6, 2018, and Hicks conducted an internal inspection of the property believing that she was authorized to conduct the inspection, as she had been while working under the Division of Code Enforcement.

As a Code Enforcement Officer with the Division of Code Enforcement, Hicks conducted internal inspections in response to requests of citizens and zoning officers, and these did not require approval from the manager or Director. When Hicks transferred to the Division of Traffic and Signals, she continued to operate under the assumption that she did not require approval from any supervisor to conduct internal inspections of City residences. She was even asked by her manager, Singleton, to conduct an internal inspection of another property in January 2019.

The evidence presented by the City does not establish that Hicks was ever informed that she was no longer authorized to conduct internal inspections of City residences upon her transfer to the Division of Traffic and Signals, nor that she was required to inform a supervisor or other Code Enforcement Officer of any internal inspections conducted or requested. Moreover, the City did not establish, by a preponderance of the evidence, that Hicks failed to comply with her duties as a Code Enforcement Officer by creating a complaint in the system following the September 6, 2018 inspection, or that she failed to follow proper protocol for the internal inspections at that residence. While Hicks concedes that she did not inspect every unit in the building, the evidence is inconclusive that this constituted a violation of Department protocol or procedure.

There is also no evidence that Hicks instructed Ryu's tenants not to pay rent. Despite Ryu's assertion, the video recordings taken inside his building do not show that she did. No reliable evidence was presented to establish that Hicks ever threaten Ryu, attempt to extort money from him, or that she ever received any payment as a result of her inspection of the property. Ryu was taken advantage of by his tenant, H.R., and despite the City's suspicions, there is simply no evidence that Hicks was involved in any conspiracy with H.R. to extort money from Ryu.

When Hicks presented to the scheduled hearing on January 25, 2019, she became upset and angry when she was informed by Wilder that the hearing scheduled for that day was being rescheduled once again. She was angry that Wilder was involved in the matter and that McDonald had requested that it be rescheduled. While in a room adjacent to the courtroom, Hicks conducted herself in an unprofessional manner by becoming loud and disrespectful toward Wilder, and by throwing a ball of paper at him. A Court Officer was present but did not intervene, although Hicks was loud enough for the Court Officer, and City residents inside the courtroom to hear.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of

the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the appellant’s actions constitute a violation of the charges set forth in the March 27, 2019 FNDA. If so, the second issue is whether the violation warrants a fifteen-day suspension or a lesser penalty, if any.

Hicks is charged with violating the provisions of N.J.A.C. 4A:2-2.3 relating to insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. “Insubordination” may consist of refusing or failing to follow the instructions of a supervisor. See Eaddy v. Dep’t of Transp., 208 N.J. Super. 156, 158-59 (App. Div.), certif. granted, 104 N.J. 392, order vacated, appeal dismissed, 105 N.J. 569 (1986).

The charge of “inability to perform duties,” under N.J.A.C. 4A:2-2.3(a)(3), has been upheld where the employee is incompetent to execute his or her job responsibility. Klusaritz v. Cape May Cnty., 387 N.J. Super. (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county).

There is no precise definition for “conduct unbecoming a public employee,” and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit Sys.Bd. (June 26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase “unbecoming conduct” is an elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for

municipal employees and confidence in the operation of municipal services.” Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), the court stated that a finding of misconduct need not “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.”

“Neglect of duty” has been interpreted to mean that an employee “neglected to perform an act required by his or her job title or was negligent in its discharge.” In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), njlaw.rutgers.edu/collections/oal/. The term “neglect” means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” means conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

Here, the incidents giving rise to the charges primarily involve Hicks’ inspections of the property, how she failed to comply with her duties and follow proper protocol in conducting the inspections, and how she conducted herself with the landlord and tenants. Given my finding of facts, however, the only wrongful conduct that Hicks is guilty of here is that she conducted herself in an unprofessional manner towards a co-worker on January 25, 2019. She was loud and disrespectful, and threw a ball of paper at him, because she wanted to proceed with the hearing without his involvement. This took place within earshot of City residents sitting inside the courtroom. Her unprofessional and aggressive behavior was alarming enough to her co-worker that he immediately reported it to his supervisor. While Hicks’ conduct was not sufficiently egregious to necessitate intervention by the Court Officer who stood nearby, it was unwarranted and unbecoming. I **CONCLUDE**, therefore, that respondent has demonstrated, by a preponderance of the credible evidence, that Hicks’ conduct on January 25, 2019 constituted conduct

unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and that such charge must be **SUSTAINED**.

I also **CONCLUDE** that, given the findings of fact, respondent has not met its burden of proof on the remaining disciplinary charges, and these charges should be **REVERSED**: insubordination; inability to perform duties; neglect of duty; and other sufficient cause.

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's 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. Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

Here, respondent maintains a fifteen-day suspension is the appropriate penalty and consistent with the concept of progressive discipline given Hicks' disciplinary history. In considering whether a fifteen-day suspension is appropriate given Hicks' conduct on January 25, 2019, I took into account the testimony of both Wilder and Hicks, as well as Hicks' limited disciplinary history, which includes two one-day suspensions and one three-day suspension between fourteen and seventeen years ago.² Although her conduct was not sufficiently egregious or threatening to require intervention by the Court Officer, it was

² Hicks' disciplinary history includes: a one-day suspension in 2005 for a charge of "Incompetency, Inefficiency or Failure to Perform Duties;" a three-day suspension in 2003 for charges of "Incompetency," "Insubordination," "Conduct Unbecoming a public employee," and "Neglect of Duty;" and a three-day suspension in 2002 for a charge of "Insubordination."

unprofessional, discourteous and unbecoming a public employee, particularly when she threw a ball of paper at her co-worker. I **CONCLUDE** that appellant's conduct warrants discipline, but that a fifteen-day suspension is excessive. Consistent with the concept of progressive discipline, and taking into account Hicks' minimal and remote disciplinary history, I **CONCLUDE** that a more appropriate penalty for her conduct on January 25, 2019 is a five-day suspension.

ORDER

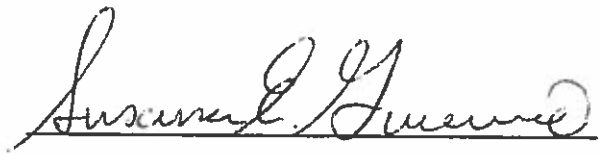
It is **ORDERED** that the charges of insubordination, inability to perform duties, neglect of duty, and other sufficient cause are **REVERSED**. It is further **ORDERED** that the charge of conduct unbecoming a public employee be and hereby is **SUSTAINED**, and that the fifteen-day suspension be reduced to a five-day suspension.

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.

March 26, 2020
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

WITNESSES

For Appellant:

Valerie Hicks
Grace Porter

For Respondent:

Daegeon Ryu
Charles Wilder
Thomas McDonald
Kimberly Singleton

EXHIBITS

For Appellant:

- A-1 Letter from Susan Brown to Valerie Hicks December 18, 2018
- A-2 E-mail exchanges sent to Valerie Hicks
- A-3 E-mail exchanges concerning reinspection

For Respondent:

- R-1 Final Notice of Disciplinary Action dated March 27, 2019 and Preliminary Notice of Disciplinary Action dated February 11, 2019
- R-2A Citizen's complaint of Valerie Hicks
- R-2B Complaint for 52-56 X Street
- R-2C E-mail from Charles Wilder to Thomas McDonald dated January 25, 2019
- R-2D Code Enforcement Update created by Valerie Hicks
- R-2E Court Case Report following September 6, 2018 inspection
- R-2F Certificate of Code Compliance
- R-2G Daily Report for Grace Porter
- R-2H Video
- R-3 Three Notices of Minor Disciplinary Action