

with the ALJ as to which charges were upheld,¹ it finds that the appropriate penalty for the appellant's threatening his supervisor was a 15 working day suspension and the appropriate penalty for his subsequent threatening to shoot a co-worker was his removal from employment.

Further, the Commission has reviewed the appellant's exceptions regarding this matter and finds them unpersuasive. Specifically, his argument that he was prejudiced by not having the ability to argue about the propriety of the penalty in a post hearing brief to the ALJ is unconvincing as the Commission's review of the penalty is *de novo*. In that regard, the Commission finds ample evidence that the appellant's infractions are clearly deserving of the penalties imposed. The incident where the appellant threatened his supervisor is certainly worthy of a 15 working day suspension. Moreover, the appellant's disturbing propensity for violent threats, such as his threatening to shoot a co-worker, is sufficiently egregious to support the penalty of removal. Further, while the appellant argues that the ALJ did not list or summarize the testimony of certain witnesses, he has not indicated how these witnesses would change the outcome of this matter in any way. Finally, the appellant's contention that he cannot be removed since, under the appointing authority's policies, such a penalty is not allowable is misplaced. As indicated above, the Commission's review of the penalty is *de novo*, and the Commission is not bound in any way by an appointing authority's penalty schedule. *See In the Matter of Gregory McDaniel*, Docket No. A-5583-02T2 (App. Div. May 24, 2004); *In the Matter of Leonard Wilson* (MSB, decided April 6, 2005); *In the Matter of Patricia Everingham* (MSB, decided March 13, 2003); *In the Matter of George Roskilly* (MSB, decided November 20, 2002).

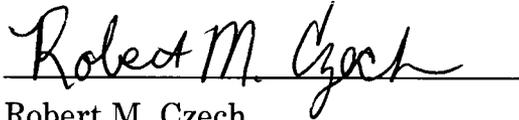
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 15 working days and removing him from employment was justified. The Commission therefore affirms those actions and dismisses the appeal of John Hugate.

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

¹ The Commission notes that while the charges underlying the five working day suspension were not sustained, the appellant would not be entitled to any back pay for that reversal since he was removed from employment prior to serving the suspension. However, his official personnel record should only reflect the 15 working day suspension and removal.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
NOVEMBER 5, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00489-15

AGENCY DKT. NO. 2015-1715

**IN THE MATTER OF JOHN HUGATE,
STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION.**

Mark D. Laderman, Esq., for appellant John Hugate (Kamensky Cohen & Riechelson, attorneys)

Nonee Wagner, Deputy Attorney General, for respondent State of New Jersey, Department of Transportation (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: September 22, 2015

Decided: October 7, 2015

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

Appellant, John Hugate, is an Automotive Mechanic for the State of New Jersey Department of Transportation (DOT). He has been employed by the DOT for approximately nine years. Respondent seeks to remove appellant from his position as a result of three incidents which occurred in August 2013, shortly after appellant

returned from a leave of absence. He has been charged with three separate counts of a violation of N.J.A.C. 4A:2-2.3(a)12, and a violation of the DOT Guidelines for Employee Conduct; specifically verbal threats of violence, intimidation, coercion or interference in violation of Section III(D).

PROCEDURAL HISTORY

On September 5, 2013, the appellant was suspended without pay and served with a Preliminary Notice of Disciplinary Action seeking his immediate removal. A Final Notice of Disciplinary Action sustaining the termination was issued on November 18, 2014. The appellant requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on January 9, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. The matter was heard on July 21, 2015, July 22, 2015, July 24, 2015, and July 27, 2015. The parties filed post hearing submissions on September 22, 2015, and the record closed on that date.

TESTIMONY

For respondent

James Caffey is a Maintenance Worker for the NJ DOT. He was a mechanic's helper at the time this incident arose in September of 2013, and was stationed at Building 17, at the Fernwood Yard in Ewing, N.J. His job responsibilities were to assist in the repair of vehicles, helped the mechanics, and whatever else needed to be done around the garage. Mr. Caffrey worked with the appellant sometimes and would go out and help him on the road with various things. In October of 2013, he was moved to his current position as a maintenance worker.

Mr. Caffrey testified that he used to talk to appellant about karate since he was also interested in karate. Appellant told him that he was a black belt and about some of the moves that he knew. He testified that appellant never showed him any moves and never threatened him. He testified that on August 6, 2013, he was having a conversation with the appellant about who was going to be their supervisor while Dean

Gephart was on vacation. Mr. Caffey stated that when the appellant learned that Mr. Lawrence was going to be their supervisor, he said "that if [Mr. Lawrence] hounds me for two weeks, I am going to end up hurting him." The next day, Mr. Caffey reported this conversation to his supervisor. He wrote out a short statement regarding the conversation and gave it to Mr. Lawrence. Mr. Kryzwicki, his union representative took him to the Inspector General (IG) to report the incident. Mr. Caffey reiterated that he never felt threatened by the appellant and never had any trouble with him, but he was concerned by what he said.

Richard Lawrence is a Garage Supervisor I, which is the title that he held in 2013 when this incident occurred. He oversees the operations at the Fernwood garage. There are four garages and a plow shop at the Fernwood plant in Ewing. He has been employed by the DOT for thirty years. He used to do mechanic work, but currently he is a supervisor and just oversees the work that is done on the state DOT vehicles. He testified that Mike Johnson was a supervisor, but he was out on a leave of absence at the time of the incident in question. Mr. Lawrence testified that he had been called in to help supervise the employees in Building 17 in Mr. Johnson's absence. He testified that there were issues with the appellant's work quality, as well as his failure to stay on task and properly complete assigned repairs. He testified that the appellant was a road mechanic, which meant that he was called to go out and diagnose a problem with a vehicle on the road, repair it and return. When you are a road mechanic, you are pretty much on your own and not in the shop.

He testified that due to all the problems with Mr. Hugate, the IG's office recommended that we leave him on the road until the investigation was completed. However, Mr. Lawrence took the appellant off road duty as a result of some issues with repairs not being properly completed on a truck in the shop. The appellant was not written up for the incomplete job, but he was told that he needed to complete the repairs and would be in the shop until they were completed. Mr. Lawrence was aware that the appellant had filed a complaint during this time period claiming that he was being harassed and picked on my other employees, and that several employees had filed a

complaint against the appellant. When Mr. Caffrey advised him of the threat that the appellant made on August 6, 2013, he filed a complaint with the IG.

Mr. Lawrence was questioned at length about the meeting which occurred with Mr. Hugate on June 6, 2013. Mr. Lawrence testified that the IG's office recommended that they offer to have appellant resign. He conceded that he was in the room with Mr. Kryzwicki and Mr. Hugate when they told him to resign or face criminal charges. Mr. Lawrence testified that the IG authorized this offer, but no one for the IG's office ever confirmed this. When questioned about what "criminal charges they were talking about," Mr. Lawrence did not know. Mr. Lawrence again claimed the IG's office was involved in this offer, but could not provide the name of anyone he spoke to in the IG's office, nor could he provide any information about the charges that were being referred to in the meeting. The representative from the IG's office denied authorizing any such offer.

James Schmidt is a Manager for the Bureau of Equipment and Traffic Operations at DOT. He has been in this position since 2012. Mr. Schmidt testified that he had no firsthand knowledge about the allegations in the disciplinary action. He testified that the appellant had some concerns that he expressed to him that he thought he was getting picked on by other employees. He was aware that the appellant had some problems with Richard Lawrence and he thought that Richard Lawrence was out to get him. He testified that Richard Lawrence reported to him that the appellant was "wondering a bit," and failing to show up. He testified that the vehicles are equipped with GPS and you could track where people were going, and Lawrence claimed appellant was straying from the job sites. However, he never received any documentation to back up Mr. Lawrence's allegations. He testified that Mr. Hugate came to him and talked about a transfer out of the department. He testified that he directed Mr. Hugate to make the request to Andrew Tunnard. He does not know what, if anything was done with appellant's request for a transfer.

Mr. Schmidt testified that he talked to John regularly and that things were very professional. He knew that Mr. Lawrence had talked to him once about coming in late

but he was not aware of any other problems. Mr. Schmidt testified that Mike Johnson had some mental health issues, so that was why they put Dean Gephart in charge temporarily. Mike Johnson had been out quite a bit during this time period. Mr. Schmidt had no firsthand knowledge of what occurred on August 30, 2013, as he was touring the facility with someone from the State of New Jersey Office of Management and Budget.

Steve Kryzwicki is an Automotive Mechanic for the DOT. He has been in this position since 2013. Mr. Kryzwicki is the local 195 union president, and represents over 100 members. He works primarily on heavy equipment and works in Building 12. He started working in Building 17 on July 31, 2013, and prior to that he was in Building 12. The buildings are only a couple hundred yards away but they are separate buildings. He was the union president in May of 2013 and he recalled a meeting in June of 2013 with the appellant. He testified that it was not uncommon to have a meeting with someone before any charges are brought. He testified that he was unaware of any pending charges and did not have any information about any charges criminal or otherwise that were pending against the appellant. The tape recording of the meeting between him, Richard Lawrence, and John Hugate was played. He was unaware that the meeting was being recorded and characterized the taping by appellant as "dirty." He acknowledged that it was his voice and that he asked the appellant to resign or face criminal charges and other disciplinary charges.

Mr. Kryzwicki maintained that he had no idea what the potential charges were and he was just delivering a message from the IG's office. He testified that such a meeting was normal protocol. Mr. Kryzwicki could not provide the name of anyone from the IG's office to whom he allegedly spoke to about the offer that was conveyed to the appellant in that meeting. Mr. Kryzwicki maintained that he "never had any issues with the appellant." However, upon further questioning, he acknowledged that the appellant had asked for different representation at a prior union meeting and in the interview with the IG's office he stated that he "had long-standing issues with Mr. Hugate." On cross-examination, Mr. Kryzwicki conceded that he had some issues with the appellant in the past.

Mr. Kryzwicki then discussed the events which occurred on August 30, 2013. He testified that after the meeting he just discussed, appellant declined to resign and took a leave of absence. He was unaware of any charges which predated the August incidents. Moreover, he did not know what if any charges he was talking about in the meeting. He again maintained that he was just relating an offer from the IG's office but could not provide the name of anyone he spoke to or provide any documentation about the alleged charges. The only charges that he is aware of stem from incidents that occurred on August 6, 2013 and August 30, 2013.

He testified that on August 30, 2013, Richard Lawrence asked him to drive appellant home because he was being taken off the road and needed his own vehicle. He testified that he was just doing what he was asked to do and did not know why. Shortly after he was asked if he would give appellant a ride home, Gephart advised him that appellant said if something happened when Kryzwicki gave him a ride home, "he would shoot him and drag him into his house." Mr. Kryzwicki immediately proceeded to go to the IG's office and filed a complaint against appellant and went to the Ewing Township Police station and filed a criminal complaint against him. Ewing Township did not press charges, but Mr. Kryzwicki brought a personal complaint against the appellant which was eventually dismissed. No criminal charges were sustained against appellant. Mr. Kryzwicki maintained that appellant agreed to stay away from him which was all he wanted.

Dianne Barretts has been employed by the DOT for twenty-seven years. Her current title is Employee Relations Coordinator. She is currently the Acting Manager, since the manager had retired recently and had not been replaced. Her duties are to insure that all disciplinary actions are reviewed and policies and procedures of the department are followed. She is also involved in grievances and labor relations matters. She identified a memo that she prepared on August 20, 2013, after several employees from Building 17 came to her office to complain about the appellant. She prepared the memorandum but was not involved in the matter after that. She did not recall any specific statements from anyone and she is not aware if any further investigation or disciplinary action was brought. After she prepared a report, the matter was referred to

the IG and they completed the fact finding investigation, and determine if any allegations of work place violence are substantiated. She testified that she had no role in the investigation, or the preparation of the PNDA or the FNDA. She identified the department policy and procedures, which were moved into evidence.

Dean Gephart was employed by the DOT for thirty-six years and was an Assistant Crew Supervisor. He is now retired. Michael Johnson was his supervisor, and Richard Lawrence was Johnson's supervisor. He worked with heavy equipment in Building 17. Prior to becoming an Assistant Crew Supervisor, he had worked with the appellant in the repair shop. He testified that his duties required him to show people how to do repairs on specialty things. He did not work with appellant on a regular basis, but sometimes the road crew would drop things off to be repaired and sometime they would just do them right there. He testified that he never had any problems with the appellant until May of 2013. He testified that the appellant did not want to work with the guys in the shop and he was not getting along with them. He testified that he had to remind appellant that he needed to let him know where he was going and when he was leaving. When he told him this the first time, the appellant walked right out in front of him and did not tell him where he was going. He reminded him again later that he needed to let him know when he was leaving.

Mr. Gephart testified regarding an incident with the appellant when he was told to take a box truck that needed a major repair to a vendor. He told appellant to take the truck to the vendor, drop it off and come right back. Appellant was annoyed with the request, and he reeved up the vehicle and backed it out at a high rate of speed. He testified that it was very dangerous and if anyone was behind him, they would have been injured. I spoke to him about the incident and I reported it to his supervisor, Richard Lawrence. He testified that there was another incident on May 28, 2014, where a vehicle had a tail light out that needed to be repaired. Mr. Gephart testified that he had already asked the appellant to repair it and he did not do it. When he asked him about it again, he got very angry and punched the tail light out with his fist. It was hard plastic and pretty thick, and the whole thing shattered. He testified that he was shocked, and

the other workers were afraid and scared at this behavior. Mr. Gephart also reported this conduct to Mr. Lawrence.

When appellant returned from a leave of absence in early August 2013, Mr. Gephart testified that he received a directive from Mr. Lawrence that appellant was not to deal with the vendors directly and they were to go through a supervisor. He was also told that appellant was not supposed to talk to Mr. Johnson. Gephart stated that he reminded appellant several times after he saw him talking to Mr. Johnson. Mr. Gephart did not know the specifics as to why appellant was not supposed to talk to Mr. Johnson or any outside vendors, but he tried to enforce the directive from his supervisor, Richard Lawrence. He testified that he was going out on vacation, and Mr. Lawrence was going to be in charge when he was out.

On the morning of August 30, 2015, Mr. Gephart testified that he advised appellant that he was being assigned to the shop because there was a vehicle that he did not repair properly. He was normally on the road, so I advised him in the morning that he would have to turn in the state vehicle. The appellant told him that he would need to go home and get his own vehicle, so he told him that he would find him a ride. Mr. Gephart testified that the only person who was willing to take him home was Steve Kryzwicki. The appellant asked him if Hickson or Campione could take him, but they did not want to. He was not happy about Steve Kryzwicki taking him home and that is when he told me that if something happened with Steve, he "would shoot him and drag him in the house." Mr. Gephart testified that he was very alarmed at this statement and he reported it to Jimmy Schmidt. When he returned to the building, the Ewing Township police had come and they had taken the appellant. He testified that he was not there when appellant returned to get his things.

Rochelle Miller has worked for the NJ DOT for thirteen years. She is an Investigator for the Office of the Inspector General. She reports to Tom Flannigan, who is the head of the department. They investigate allegations of wrongdoing by employees of DOT. They complete an investigation and prepare a report and that is the end of the role of the employee relations department. She testified that they are not involved in

preparing the Notice of Discipline or the disciplinary process. She was assigned to investigate John Hugate and complaints made by several employees.

She testified that she does not know anything about the June 6, 2013, meeting where they offered appellant the opportunity to resign, but she does not believe anyone from the IG's office was involved with, or directed such an offer. She testified that her office is not authorized to make settlement offers. They conduct the investigations and prepare a report. Any such offers would come from the office of employee relations or human resources, not the IG's office. She thought the offer made in the June 6, 2013, meeting was highly unusual and she referred it to her supervisor, Mr. Flannigan.

She investigated the incident involving the threat to Mr. Lawrence of bodily harm. She interviewed Mr. Caffey who heard the statement. She had also reviewed a harassment complaint that appellant had filed around the same time alleging that he was being picked on and about the meeting of June 6, 2013. She interviewed several people before the August incidents, including when several of the employees came over together and complained about the appellant sometime in August. The employee statements were nonspecific and she did not recall who reported what, but prepared a report of the meeting. After interviewing the witnesses regarding the August 6, 2013 statement made to Mr. Caffey, she found that the threat made regarding working with Mr. Lawrence constituted a threat of violence and violated the violence in the workplace policy. She likewise found that the comment to Mr. Gephart was credible and the threat of shooting Mr. Kryzwicki was actionable and violated the workplace violence policy. She had very little evidence regarding the generalized complaint in the first incident, but no reason to doubt the allegations.

For appellant

John Hugate is a Road Mechanic for the DOT. He has been employed at DOT for approximately nine years. He testified that sometime in 2013, he felt like he was being harassed by his supervisor and several of the employees. He testified that his supervisor, Mr. Lawrence, used to just watch him and find things wrong with what he was doing. He did not treat other employees this way and he felt they were all just out to get him. He testified that he had long standing issues with Mr. Kryzwicki and that he was always nasty to him. He testified that he showed up to represent him at a union meeting and that he requested someone else but they would not give him someone else.

He testified that he is a Road Mechanic which means he is out on the road repairing vehicles that breakdown on the road. He repairs them on the road, and if he can't, they are brought into the shop for repairs. There is also work to do in the shop and that is where he reports to work every morning. He testified that on June 6, 2015, he was called into a meeting with Mr. Kryzwicki and Mr. Lawrence. They advised him that he could resign or they were going to "go criminal on him." He testified that he had no idea what they were talking about. He tape-recorded the meeting, because he did not trust them and he knew they were out to get him. He testified that he was so stressed out after that meeting that he took a leave of absence for two months. He returned on August 6, 2013.

He testified that when he returned, Mr. Johnson was on leave and Mr. Lawrence was in charge. He testified that he thought Mr. Lawrence was out to get him, so he requested a transfer. He talked to Mr. Schmidt about it, and Schmidt advised him to request a transfer. Sometime in August, he was talking to Mr. Caffey who told him they were going to have to report to Mr. Lawrence when Gephart was out on vacation. He did not deny that he made some statement about not being happy about this, as he thought Lawrence was out to get him. He testified that on August 30, 2013, when he arrived at work, he was told that he was being taken off the road and had to work in the shop. He testified that they told him it was because he did not repair a vehicle properly.

He testified that this was not true and he was being targeted. He testified that he did not want Mr. Kryzwicki to take him home, because he did not like him and did not want him to know where he lived. He testified that Mr. Gephart told him that he was the only one who would take him home and the appellant conceded that he said something about shooting him if he came to his house. He testified that that was the end of it and the next thing he knew the police were there. The appellant testified that when he returned to pick up his belongings, all of the guys were out in front of the garage mocking him.

FINDINGS OF FACT

In view of the contradictory testimony presented by the parties, the resolution of the charges against John Hugate requires that I make credibility determinations in order to find the critical facts. A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. In re Perrone, 5 N.J. 514, 521-22 (1950) see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had the opportunity to carefully observe the demeanor of Mr. Lawrence and Mr. Kryzwicki, it is my view that neither Mr. Lawrence nor Mr. Kryzwicki was credible in their testimony. It was clear from their testimony that they had personal issues with Mr. Hugate which clouded their ability to act in a professional manner in

their roles as supervisor and union president. Their version of the facts was a moving target, very inconsistent, and completely lacking in any credibility.

Notwithstanding the lack of credibility of Mr. Lawrence and Mr. Kryzwicki, I **FIND** that Mr. Caffey and Mr. Gephart were very sincere and credible, and I **FIND** as **FACT** that the appellant did in fact threaten Mr. Lawrence on August 6, 2013, and Mr. Kryzwicki on August 30, 2015. I also **FIND** as **FACT** that there were several incidents which occurred prior to the June 6, 2013 meeting, which would have justified charges being brought, including, but not limited to, punching out the head light of a state vehicle and operating a state vehicle in an unsafe manner. I **FIND** no credible evidence to substantiate the general complaints that were made to the IGs office by the employees sometime in August. I **FIND** that the tactics imposed by Mr. Kryzwicki and Mr. Lawrence in the June 6, 2013, meeting were inappropriate and unprofessional. However, this conduct is not subject to my review and does not excuse or exonerate the appellant in connection with the threats of violence against Mr. Kryzwicki and Mr. Lawrence.

The appellant does not deny the essential facts of the case. The appellant alleges that he was taunted by the other employees. However, he does not deny the statements that he made threatening violence to Mr. Kryzwicki and Mr. Lawrence. Moreover, the appellant does not deny the incidents which occurred with Mr. Gephart, which clearly would have resulted in charges being brought. It is clear that that these incidents are what precipitated the June 6, 2013, meeting. However, since the appellant went out on leave, no such charges were brought before the threats of violence which occurred in August, which necessitated the immediate suspension of the appellant. The charges referred to in the June 6, 2013, meeting were never brought, or are not before me. Furthermore, regardless of how inappropriate the tactics in the June 6, 2013 meeting may have been, it does not exonerate or justify the threats of violence made by the appellant on August 6, 2013 and August 30, 2013.

LEGAL DISCUSSION AND CONCLUSION

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). This applies to both permanent career service employees or those in their working test period relative to such issues as removal, suspension, or fine and disciplinary demotion. N.J.S.A. 11A:2-14, 2-6. The State has the burden to establish by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1982).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant seeking his removal. Specifically, Mr. Hugate has been charged with violating N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause and DOT Guidelines for Employee Conduct and Discipline, Section III D, Assault and/or Battery.

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, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

Based upon the testimony and findings, I **CONCLUDE** that the respondent has not satisfied the burden of proving by a preponderance of the credible evidence the allegations set forth in Incident 1 of the PNDA. I further **CONCLUDE** that the respondent has satisfied its burden of proving by a preponderance of the evidence that appellant violated the no violence in the workplace policy by threatening to hurt Mr. Lawrence on August 6, 2013 (“Incident 2”), and threatening to shoot Mr. Kryzwicki on August 30, 2013 (“Incident 3”). The issue then becomes the level of discipline to be imposed for conduct in question.

PENALTY

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. 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 evaluate the proofs and penalty on appeal, based on the charges. N.J.S.A. 11A:2-19; West New York v. Bock, 38 N.J. 500 (1962). With respect to the discipline, under the precedent established by West New York v. Bock, courts have stated, “[a]lthough we recognize that a tribunal may not consider an employee’s past record to prove a present charge, that past record may be considered when determining the

appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990) (citing West New York v. Bock, supra, 38 N.J. at 523). 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).

The appellant has been employed by DOT for nine years. He has no prior discipline. The applicable work place violence provision of the DOT Employee Discipline guidelines provide as follows under Section III (D): “Official Reprimand to 5 days, for the first offense; 6-15 days for second offence; and Removal for third offense.” In addition, the policy provides that “Threatening a supervisor with violence and/or actually committing a violence/physical act against a supervisor could result in removal for a first offense depending upon the circumstances surround the incident including provocation, extent of physical contact, and injury to a supervisor.” In the instance case, the appellant threatened to hurt Mr. Lawrence and threatened to shoot Mr. Kryzwicki. I find under the circumstance, and in the current climate of a no tolerance to violence in the workplace, that removal was appropriate in this matter.

Accordingly, I **CONCLUDE** that an appropriate penalty for this violation is removal.

ORDER

I **ORDER** that the penalty of removal imposed by the appointing authority is **AFFIRMED**.

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.

October 7, 2015
DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

10/7/15

Date Mailed to Parties:

10/7/15

SGC/vj

APPENDIX

WITNESSES

For appellant:

John Hugate

For respondent:

Richard Lawrence
Dean Gephart
James Schmidt
James Caffey
Rochelle Miller
Stephen Kryzwicki

EXHIBITS

For respondent:

- R-1 Statement by James Caffey, dated August 7, 2013
- R-2 Workplace Violence Signature Sheet
- R-3 Memo to File
- R-4 Workplace Violence Incident Report
- R-5 Job Specifications
- R-6 Police Report
- R-7 Complaint Ewing Township
- R-8 Letter from Barbara Johnson-Stokes, Esq.
- R-9 Memorandum from Barretts
- R-10 Amended PNDA
- R-11 FNDA

- R-12 DOT Disciplinary Guidelines
- R-13 DOT Workplace Violence Policy
- R-14 OUT
- R-15 Memorandum of Interview Dean Gephart
- R-16 Workplace Violence Incident Report Hugate
- R-17 Memorandum of Interview Richard Lawrence
- R-18 Memorandum of Interview Kim Stuhltrage
- R-19 Memorandum of Interview Nicholas DiPierro
- R-20 Memorandum of Interview James Hixson
- R-21 Memorandum of Interview Richard Campioni
- R-22 Memorandum of Interview Stanley Saganowski
- R-23 Memorandum of Interview Brian Meisner
- R-24 Memorandum of Interview Richard Lawrence
- R-25 Memorandum of Interview James Caffey
- R-26 Memorandum of Interview James Schmidt
- R-27 Memorandum of Interview John Hugate
- R-28 Emails from Barretts to Miller
- R-29 Memorandum of Interview Reaffirmed James Hixson
- R-30 Memorandum of Interview reaffirmed Richard Campioni
- R-31 Memorandum of Interview Reaffirmed John Gates
- R-32 Memorandum of Interview Nicholas DePierro
- R-33 Memorandum of Interview Brian Meisner
- R034 memorandum of Interview Roger Cook
- R-35 Memorandum of Interview reaffirmed Richard Stoer
- R-36 Memorandum of Interview Robert Scaccetti
- R-37 Memorandum of Interview Stanley Saganowski
- R-38 Memorandum of Interview James Caffey
- R-39 Memorandum of Interview Ronald Mayer

For appellant:

- A-1 Audio tape of Meeting June 6, 2013
- A-2 Richard Lawrence tardiness memo
- A-3 Workplace Violence Incident report
- A-4 Memorandum of Interview Stephen Kryzwicki
- A-5 Lawrence Memo to Hugate
- A-6 Transfer Request from Hugate
- A-7 Workplace violence incident form