STATE OF NEW JERSEY

In the Matter of Hansel Moses, East Orange, Department of Data Processing CSC DKT. NO. 2019-3496 OAL DKT. NO. CSV 08480-19	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: FEBRUARY 28, 2024

The appeal of Hansel Moses, Supervisor Information Technology, Help Desk, East Orange, Department of Data Processing, removal, effective June 11, 2018, on charges, was heard by Administrative Law Judge Margaret M. Monaco (ALJ), who rendered her initial decision on January 26, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of February 28, 2024, accepted the Findings of Fact and Conclusions of the ALJ as well as her recommendation to uphold the removal.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Hansel Moses.

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 28TH DAY OF FEBRUARY, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
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Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 08480-19
AGENCY DKT. NO. 2019-3496

IN THE MATTER OF HANSEL MOSES, CITY OF EAST ORANGE, DEPARTMENT OF DATA PROCESSING.

Robert R. Cannan, Esq., for appellant Hansel Moses (Markman & Cannan, attorneys)

Steven S. Glickman, Esq., for respondent City of East Orange (Ruderman & Roth, attorneys)

Record Closed: January 17, 2024 Decided: January 26, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

Appellant Hansel Moses appeals his removal from employment as a supervisor of information technology with respondent, the City of East Orange (the City). The City took this action based upon the following charges: (1) violation of N.J.S.A. 40A:9-22.5 of the Local Government Ethics Law; (2) incompetency/failure to perform duties; (3) insubordination; (4) inability to perform duties; (5) unbecoming conduct; (6) neglect of

duty; (7) misuse of public property; (8) other sufficient cause; (9) violation of § 15 (Requisitions & Estimates), § 23 (Open Market Procedure), § 26 (Central Warehousing) and § 29 (Inspection & Testing of Items Purchased) of Chapter 68, Article IV, of the City Code; and (10) violation of Article 30, § 2 (Use of City Equipment), Article 31 (Use of City Cellular Phones), Article 42 (Code of Ethics) and Appendix B (IT Policies & Procedures) of the Employee Handbook.

PROCEDURAL HISTORY

The City issued a Preliminary Notice of Disciplinary Action (PNDA) dated June 8, 2018, informing appellant of the various charges against him. The charges were based on the following incidents set forth in the PNDA:

> In early 2018, the City's new administration uncovered several inconsistencies regarding expenditures by the Department of Information Technology & Telecommunications ("Department") under its equipment budget-line, which prompted an internal audit of the Department's equipment procurement activities. As a result of that audit, the City's administration learned that dating back, at least, to December 2016, without the knowledge of the City's administration and without following appropriate procedures, Hansel Moses ("Moses") engaged in the unauthorized procurement of mobile devices from Cellco Partnership, d/b/a Verizon Wireless ("VZW"), using city funds.

Specifically, the City discovered that:

> (a) Between December 2016 and March 2017, Moses ordered 1 Samsung Galaxy S6 smartphone, 99 Samsung Galaxy S7/S7 Edge smartphones, and 1 Kyocera DuraForce PRO smartphone, at a total approximate cost of $27,098.99;
> (b) Between April 2017 and October 2017, Moses ordered 71 Samsung Galaxy S8/S8+ smartphones, at a total approximate cost of $25,729.31;
> (c) Between September 2017 and January 2018, Moses ordered 68 Samsung Galaxy Note 8 smartphones, at a total approximate cost of $30,599.32; and

(d) In December 2017, Moses ordered 3 Apple iPhone X smartphones and 29 Apple iPad Pro tablets, at a total approximate cost of $25,569.68.

Each of the Samsung devices, and the Kyocera device, were purchased as upgrades on mobile phone lines that, prior to the upgrade, were not voice-capable lines (e.g., data-only devices such as tablets, mobile data modems for police vehicles, mobile "hotspots," etc.); however, it is currently unknown whether or not the Apple devices were purchased as upgrades or as new lines of service. All of the aforementioned devices are missing and unaccounted for; and because VZW has no record of the devices ever being activated on its wireless network, it is unable to locate them remotely. Furthermore, despite several requests, Moses has refused to provide the City with any information regarding the orders, the devices or their whereabouts; and as a result, the City has suffered estimated financial losses of at least $108,997.30.

Additionally, Moses failed to follow established procurement, storage and inspection requirements as set forth in the City Code.

During its investigation, the City also discovered that Mr. Moses had apparently assigned 35 activated devices under the City's VZW accounts to himself; however, he unilaterally cancelled service on 31 of those devices shortly after being confronted with concerns regarding the Department's procurement practices and history. The extent of any financial loss to the City for these cancellations, and the mobile equipment associated with those lines of service, is currently unknown.

Subsequently, the City issued a Final Notice of Disciplinary Action dated May 10, 2019, sustaining the charges, and providing for appellant's removal effective June 11, 2018. Appellant filed an appeal, and the matter was transmitted to the Office of Administrative Law, where it was filed for determination as a contested case. The hearing was held, via Zoom, on February 19, October 6, November 12, and December 10, 2020. After the conclusion of the testimony, the record remained open for the receipt of transcripts of the hearing and post-hearing submissions. The parties filed briefs in support of their respective positions and the record closed upon receipt of the last submission.

FACTUAL DISCUSSION

At the hearing, the City presented testimony by Solomon Steplight, Kim Fisher, Aaron Montgomery, James Barnes, Aaron Mizrahi, and Victor Fettes. Appellant testified on his own behalf. Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

Appellant commenced employment with the City in February 2012 as an information technology (IT) technician. He initially worked as an IT help desk technician and was promoted to supervisor of IT in 2015. Appellant's duties included purchasing devices or equipment from Verizon (e.g., cell phones, tablets).

Kim Fisher (Fisher) commenced employment with the City in or around 2000/2001. He served as the director of IT from approximately 2007 until December 31, 2017.

Solomon Steplight (Steplight) has served as the City's business administrator since January 1, 2018. Because the position of IT director was then vacant, Steplight assumed those duties as well.

Within approximately the first two weeks of becoming business administrator, Steplight reviewed the IT budget and observed an over expenditure for Verizon devices. After discovering the over expenditure, Steplight met with appellant, IT employee Yvette Salters (Salters), and a Government Account Manager for Verizon who was responsible for servicing the City, Aaron Montgomery (Montgomery), in mid to late January 2018. When Steplight asked appellant and Salters for a detailed inventory of the Verizon devices purchased, they could not tell him where the equipment was located. Steplight then requested a detailed accounting of every device purchased through the IT Department. The report of this undertaking showed a huge discrepancy between the number of devices purchased and the number of devices that were accounted for by the IT Department.

At a subsequent meeting with Verizon, Steplight, appellant, Salters, Montgomery, and another Verizon representative reviewed the purchasing process. Verizon provided a detailed list of devices purchased, shipped, and not activated on the Verizon network. Appellant indicated that he did not know what happened to the devices. Steplight reached out to Fisher and later requested the City's Law Department to investigate the matter.

James Barnes (Barnes), a senior sales manager in government public sector sales for Verizon, described that he received a "red flag" report generated by Verizon's reporting team that listed devices that were sold to the City but never activated on the Verizon network along with a request to find out why the City did not activate the listed equipment. After receiving the report, Barnes and Montgomery met with Steplight in or around March 2018. Steplight advised that he did not know why the devices on Verizon's lists had not been activated and asked Barnes and Montgomery for more information regarding the non-activated devices.

The IT department is generally responsible for the City's purchase of devices from Verizon. Montgomery provided undisputed testimony regarding the process that the City used for purchasing devices from Verizon. In order to purchase equipment, Verizon needed an e-mail request from an authorized representative of the entity, known as a "Single Point Of Contact" (SPOC). A SPOC is a person authorized to act on the agency's behalf to make changes to the account, order equipment, change plans, cancel lines and matters of that nature. Verizon would then generate an order approval form (e.g., R-11 at EO MOSES 00344), which would be sent back to the SPOC via e-mail. The order approval form has a link with two options; approve or reject/decline the order. The SPOC would have to click the "approve" button for the order to be processed and shipped. If approved, a confirmation of the order approval is sent via e-mail to the SPOC along with a shipping confirmation (e.g., R-11 at EO MOSES 00374, 00385). Verizon ships all wireless devices by Federal Express and a signature is required for proof of delivery.

During the relevant period, appellant was a SPOC with Verizon and Fisher had delegated to appellant the authority to order Verizon equipment. (See R-6.) On January 20, 2017, Montgomery sent an e-mail to Fisher and appellant in which he advised that he has "been working with [appellant] for close to 2 years . . . and no order goes through

unless it is directly from [appellant] or [Montgomery] speak[s] with him to gain approval." (R-6; see also R-7.) Montgomery also testified that he did not receive any order for equipment from any City employee other than appellant in 2017.

The legal department undertook an investigation. Assistant Corporation Counsel Aaron Mizrahi (Mizrahi) was assigned to handle the investigation and received a spreadsheet from Verizon detailing the non-activated devices. Mizrahi consolidated the spreadsheet by eliminating columns irrelevant to his investigation. He also divided the Verizon spreadsheet into three documents, each including the same information but covering different time periods. (See R-14 to R-16.) As part of the investigation, Mizrahi performed an e-mail "dump" of appellant's e-mails on the City's computer network during the relevant period looking for devices ordered by appellant from Verizon. Mizrahi located appellant's e-mails that ordered devices from Verizon (see R-11 to R-13; R-17 to R-19), and then matched the orders and confirmations to the orders on Verizon's spreadsheet of non-activated devices. (See e-mails at R-11 to R-14; e-mails at R-12 to R-15; e-mails at R-13 to R-16.) As part of the investigation, all City employees were required to bring their devices to Steplight's office to be tagged and tracked. Steplight oversaw that process and reported to Mizrahi that none of the identified non-activated devices (see R-14; R-15; R-16) surfaced during that process.

The testimony and appellant's e-mails establish that in December 2016 appellant ordered forty devices from Verizon on four separate dates at a cost to the City of approximately $3,900 that were never activated on the Verizon network and never located in the City. (See R-11; R-14.)[1] In 2017, appellant ordered 197 devices from Verizon on thirty-one separate dates at a cost to the City of approximately over $65,000 that were never activated on the Verizon network and never located in the City. (See R-11 to R-13; R-14 to R-16.)[2] In January 2018, appellant ordered three devices from Verizon on one date at a cost to the City of approximately $1,350 that were never activated on the Verizon network and never located in the City. (See R-13; R-16.) Accordingly, over an approximate fourteen-month period, appellant ordered 240 devices from Verizon on thirty-six separate dates at a total cost to the City of approximately over $70,000 that were

[1] The larger cost in the City's brief does not reflect the promotion prices in the invoices.
[2] The larger cost in the City's brief does not reflect the promotion prices in some of the invoices.

never activated on the Verizon network and never located in the City. The record includes e-mails to appellant from Verizon regarding these devices (with the exception of three devices) consisting of the order approval form, the approval confirmation, and the shipping confirmation. (See R-11 to R-14.)[3]

Fisher testified that appellant was responsible for distributing, securing, and documenting the receipt of Verizon equipment that was delivered to the City. The IT basement office had access to a vault maintained by the purchasing division for storage of Verizon equipment. Similarly, Mizrahi described that his investigation revealed that appellant was responsible for warehousing, storing, and keeping secure the Verizon equipment ordered by him, delivered to his attention, and nowhere to be found on the City premises. He further testified that "[appellant] was responsible for storing the equipment in the vault and making sure that it was there and secured and . . . there's no indication that it ever was." It is undisputed that appellant did not keep an inventory or record of the devices that were delivered to the City or a record of the City employees who were issued the devices. The investigation further disclosed that, according to Verizon's records, appellant had assigned several of the non-activated devices to himself.

Although the record indicates that during various periods of time other City employees were designated as SPOCs and authorized to order devices from Verizon (e.g., Fisher, Salters, an individual in the Clerk's Office), the documentation and testimony establish that the non-activated devices in issue were ordered by appellant, approved by appellant and shipped to appellant's attention. (See R-11 to R-13.) Indeed, appellant never denied that he placed the orders and acknowledged that he was not aware of any issues with Verizon's Federal Express deliveries.

Appellant's attempt to rationalize why devices appeared as not activated is unavailing and overborne by the testimony of Victor Fettes (Fettes). Fettes is the director of risk management and compliance for the Verizon consumer group, a position he has

[3] The undersigned's binders do not include the confirmation of approval and the confirmation for shipping for two devices on February 10, 2027 (invoice 235093), and the order, the confirmation of approval and the confirmation of shipping for one device on May 8, 2017 (invoice 263412). By letter dated January 17, 2024, counsel for the City advised that his office could not locate these documents.

held since January 2019. He previously worked in a similar position with Verizon's wireless group and was responsible for business and consumer risk management and compliance. Fettes has worked in the wireless industry with Verizon or one of its legacy companies since 1996.

Appellant testified that, when he switched the SIM card from an old device to a new device, the new device shows up as active under the telephone number of the old device and the new device would appear as not active. He further testified that some devices were not active because they were purchased on promotion and kept as overstock; the City had to keep the devices active for thirty days because the devices were purchased on promotion; the devices may not look active because they had been deactivated; and once a device is deactivated it registers as non-active. Appellant also testified that sometimes when a SIM card is inserted into a new device the serial number of the new device changes.

Fettes explained that each device has an electronic serial number (ESN), like a VIN. He further credibly explained that if a SIM card from an old device is put into a new device, the new device would have the same telephone number as the old device and Verizon would associate that SIM card to the ESN of the new device. The new device would show as "active," and the old device would show as "inactive" in Verizon's system. Fettes testified that if a SIM card is placed in a new device and then removed, the new device would not show up as "non-activated" on Verizon's lists. Verizon's lists did not include deactivated devices and only included devices that had never been activated on Verizon's system.

Appellant also testified that a number of the listed non-activated devices could not have been delivered to him under a promotion because the same device had been used ten months earlier to support an upgrade and upgrades are only available every two years. However, Fettes credibly explained that typically government customers purchase devices on one year contract cycle, and on a one year contract cycle Verizon makes a device eligible for upgrade two months prior to the contract end date, so the device would be eligible for an upgrade every ten months. Similarly, Montgomery testified that an

upgrade is an existing number that has been in service for at least ten months and can now receive a promotional upgrade offer.

Chapter 68 of the City Code addresses "Purchasing and Contracting." (R-3.) Section 15 of Article IV, entitled "Requisitions and estimates," states in pertinent part that "[a]ll using agencies, either by or with the authorization of the head of the department under which the using agency operates, shall file with the City Purchasing Agent detailed requisitions or estimates of their requirements in goods and services in such manner, at such time and for such future periods as the Purchasing Agent shall prescribe." Mazrahi offered undisputed testimony that the City's investigation revealed that there were no detailed requisitions filed for any of the non-activated devices that appellant ordered from Verizon.

Section 23 of that Article, entitled "Open market procedure," provides in pertinent part that "[t]he City Purchasing Agent shall keep a record of all open market orders[.]"

Section 26 of Article IV, entitled "Central warehousing," requires the City's Purchasing Agent to "maintain a perpetual inventory record of all materials, goods and services or equipment stored in storerooms and warehouses of the City."

Section 29 of that Article, entitled "Inspection and testing of items purchased," requires the City's Purchasing Agent to "inspect or supervise the inspection" of deliveries "to determine their conformance with the specifications set forth in the order[.]"

LEGAL DISCUSSION AND CONCLUSIONS

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the employee is guilty of the charges brought against him and,

if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

The City bears the burden of proving the charges against appellant by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); see In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, and according to a reasonable probability of truth. Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). 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). Precisely what is needed to satisfy this burden necessarily must be judged on a case-by-case basis.

An appointing authority may discipline an employee for various causes as set forth in N.J.A.C. 4A:2-2.3. In this matter, the City charged appellant with incompetency/failure to perform duties; insubordination; inability to perform duties; unbecoming conduct; neglect of duty; misuse of public property; and other sufficient cause. The City further charged appellant with violation of N.J.S.A. 40A:9-22.5 of the Local Government Ethics Law; violation of § 15 (Requisitions & Estimates), § 23 (Open Market Procedure), § 26 (Central Warehousing) and § 29 (Inspection & Testing of Items Purchased) of Chapter 68, Article IV, of the City Code; and violation of Article 30, § 2 (Use of City Equipment), Article 31 (Use of City Cellular Phones), Article 42 (Code of Ethics) and Appendix B (IT Policies & Procedures) of the Employee Handbook.

Insubordination encompasses an employee's refusal to follow a directive or order of a supervisor. City of Newark v. Massey, 93 N.J. Super. 317, 322-23 (App. Div. 1967). 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. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). Neglect of duty is predicated on an employee's omission to perform, or failure to perform or discharge, a duty required by the employee's position and includes

official misconduct or misdoing as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div.), aff'd on other grounds, 99 N.J. 1 (1985). Conduct unbecoming a public employee has been described as an "elastic" phrase that includes "'conduct which adversely affects the morale or efficiency'" of the public entity or "'which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services.'" In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); see Karins v. City of Atl. City, 152 N.J. 532 (1998). Unbecoming conduct need not be predicated upon a violation of the employer's rules or policies and may be based merely upon a violation of the implicit standard of good behavior. See City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955); In re Tuch, 159 N.J. Super. 219, 224 (App. Div. 1978).

Based upon the aforesaid Findings of Fact, I **CONCLUDE** that the City has shouldered its burden of proving, by a preponderance of the credible evidence, that appellant's actions amount to neglect of duty; incompetency/failure to perform duties; unbecoming conduct; and misuse of public property. Although the City also charges appellant with insubordination, inability to perform duties, other sufficient cause, and violation of N.J.S.A. 40A:9-22.5 of the Local Government Ethics Law, I **CONCLUDE** that the facts more appropriately fit the above charges, warranting dismissal of these charges. I **CONCLUDE** that the City failed to prove, by a preponderance of competent evidence, such as a signed receipt form, that appellant received a copy of the City of East Orange Personnel Policy (referenced in the FNDA as the Employee Handbook), warranting the dismissal of the charges alleging violation of sections of that policy, which appellant denied that he received.

Regarding the charges alleging violations of Chapter 68, Article IV, of the City Code, I **CONCLUDE** that the City has shouldered its burden of proving, by a preponderance of the credible evidence, that appellant violated Section 15 governing requisitions. Although I **CONCLUDE** that appellant's actions do not technically constitute a violation of Sections 23 (Open Market Procedure), 26 (Central Warehousing) and 29 (Inspection & Testing of Items Purchased), which address responsibilities of the City's

Purchasing Agent, appellant's actions and/or omissions essentially prevented the City's Purchasing Agent from performing his/her duties.

Succinctly stated, the record undisputedly establishes that appellant was responsible for ordering and receiving devices from Verizon, the devices in issue were ordered by appellant and shipped to his attention at City Hall, no detailed requisitions were filed, and appellant failed to maintain any inventory of the devices. Equally undisputed is that appellant never activated the devices on Verizon's network and the devices could not be located in the City. Although the evidence fails to demonstrate that appellant intentionally misappropriated the devices for his own personal gain, appellant's dereliction in failing to inventory and securely store the devices allowed the devices to be stolen, misplaced or unable to be located. In short, appellant's conduct was unprofessional, unreasonable, grossly negligent and unbecoming a public employee. His actions fall significantly short of the type of conduct that the public has the right to expect from a public employee. By engaging in the conduct he did, appellant failed to exercise good judgment and to act in a responsible manner. Appellant's conduct has the likelihood of eroding the public's perception, respect, and confidence in public employees and the operation of the City. And appellant's conduct adversely impacted the efficient operation of the City and created a financial hardship to the City.

I place no weight on appellant's testimony that he was simply following the directives of Fisher when he failed to keep an inventory of the devices that were delivered or swapped out to City employees since no inventory system was in place and that the safe where the devices were to be stored was never locked. Indeed, appellant acknowledged that the safe in basement procurement room was approximately 10-15 feet from his office in City Hall. And the provisions of the City Code put appellant on notice of the City's purchasing procedures. Likewise, I am unpersuaded by appellant's apparent defense that since he had been "moved" as of mid-September 2017 to the municipal court building, which is located one to two blocks from City Hall, he was no longer responsible for monitoring Verizon's shipments. Plainly, appellant's location does not absolve him from the responsibility of receiving, maintaining an inventory, and securing the devices that he ordered from Verizon. Appellant further acknowledged that he provided service at City Hall when needed after he moved, and he continued to be responsible for

swapping out devices for City employees. And at least 160 of the 240 devices in issue were ordered and approved by appellant, and shipped to his attention, before appellant was moved to the municipal court building.

The only remaining issue concerns the penalty that should be imposed. It is beyond debate that appellant's past disciplinary record may be considered for guidance in determining the appropriate penalty, and the principle of progressive discipline is applied in this state. See Bock, 38 N.J. at 522. The seriousness of appellant's infraction must also be balanced in the equation of whether removal or something less is appropriate under the circumstances. See Henry, 81 N.J. at 580. The New Jersey Supreme Court has recognized that the principle of progressive or incremental discipline is not a "fixed and immutable rule" that must be applied in every disciplinary setting. In re Herrmann, 192 N.J. 19, 33 (2007); In re Carter, 191 N.J. 474, 484 (2007). Rather, "some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Carter, 191 N.J. at 484. Progressive discipline is not a necessary consideration "when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." Herrmann, 192 N.J. at 33. In this regard, "progressive discipline has been bypassed when an employee engages in severe misconduct, especially when . . . the misconduct causes risk of harm to persons or property." Ibid.; see, e.g., Henry, 81 N.J. at 580; Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The courts have also upheld the dismissal of employees for engaging in conduct unbecoming to their position without regard to whether the employee had a substantial past disciplinary record. Herrmann, 192 N.J. at 34; see Div. of State Police v. Jiras, 305 N.J. Super. 476 (App. Div. 1997). Further, public-safety concerns may bear upon the propriety of an employee's removal from employment. See Carter, 191 N.J. at 485.

Although the record is bereft of evidence of any prior disciplinary record, the seriousness of appellant's infraction is a critical consideration in this case. Appellant's grossly negligent misconduct was not a one-time indiscretion. Rather, over an approximate fourteen-month period, appellant ordered on thirty-six separate dates 240

devices that were never activated on the Verizon network and never located in the City. Appellant's actions were antithetical to the proper functioning of the City and cannot be countenanced. Appellant's failure to acknowledge or appreciate the inappropriateness and severity of his misconduct serves as further support for the conclusion that appellant is unsuitable for his continued employment with the City. Based upon the totality of the circumstances, I **CONCLUDE** that appellant's conduct is of a sufficiently egregious nature to warrant his termination.

ORDER

I **ORDER** that the charges of neglect of duty, incompetency/failure to perform duties, unbecoming conduct , misuse of public property, and violation of Chapter 68, Article IV, Section 15, of the City Code be and hereby are **SUSTAINED**. I further **ORDER** that the charges of insubordination, inability to perform duties, other sufficient cause, violation of N.J.S.A. 40A:9-22.5 of the Local Government Ethics Law, violation of Chapter 68, Article IV, Sections 23, 26 and 29 of the City Code, and violation of Article 30, § 2, Article 31, Article 42 and Appendix B of the City of East Orange Personnel Policy (referenced in the FNDA as the Employee Handbook) be and hereby are **DISMISSED**. I further **ORDER** that, based upon the aforesaid sustained charges, appellant be and hereby is removed from his employment effective June 11, 2018.

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.

January 26, 2024
DATE

Margaret M Monaco
MARGARET M. MONACO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Witnesses

For Appellant:

Hansel Moses

For Respondent:

Solomon Steplight

Kim Fisher

Aaron Montgomery

James Barnes

Aaron Mizrahi

Victor Fettes

List of Exhibits in Evidence

For Appellant:

A-1 E-mail from Steven Glickman, Esq., to Leigh Schachter and Victor Fettes dated December 10, 2020

A-2 E-mail from Victor Fettes to Steven Glickman, Esq., dated December 10, 2020

For Respondent:

R-1 Final Notice of Disciplinary Action dated May 10, 2019

R-2 Preliminary Notice of Disciplinary Action dated June 8, 2018

R-3 Chapter 68 of City of East Orange Code

R-4 City of East Orange Personnel Policy

R-5 E-mails dated February 20, 2018

R-6 E-mails dated January 20, 2017 and February 7, 2017

R-7 E-mails dated January 8 and 20, 2017

R-8 No exhibit admitted

R-9 No exhibit admitted

R-10 No exhibit admitted

R-11 City of East Orange equipment purchases from Verizon related to specification (a) of the Final Notice of Disciplinary Action

R-12 City of East Orange equipment purchases from Verizon related to specification (b) of the Final Notice of Disciplinary Action

R-13 City of East Orange equipment purchases from Verizon related to specification (c) of the Final Notice of Disciplinary Action

R-14 Non-Activated Devices & Order Information (Order dates December 1, 2016 to March 31, 2017)

R-15 Non-Activated Devices & Order Information (Order dates April 1, 2017 to October 31, 2017)

R-16 Non-Activated Devices & Order Information (Order dates September 1, 2017 to January 31, 2018)

R-17 Verizon Wireless Order Invoice, Approval & Shipping Confirmation e-mails

R-18 Verizon Wireless Order Invoice, Approval & Shipping Confirmation e-mails

R-19 Verizon Wireless Order Invoice, Approval & Shipping Confirmation e-mails