

## ***Fire Dep't v. Butscher***

OATH Index No. 1798/20 (Oct. 15, 2020), *modified on penalty*, Comm'r Dec. (Nov. 30, 2020), **appended**, *aff'd*, NYC Civ. Serv. Comm'n Case No. 2020-0815 (Apr. 7, 2021), **appended**

Petitioner proved that respondent, in the performance of his job as an emergency medical technician, used vulgar language while responding to a work-related question posed by a hospital triage nurse. ALJ recommends that respondent be suspended from his employment without pay for 45 days.

Commissioner imposed penalty of termination.

Civil Service Commission affirmed Commissioner's penalty of termination of employment.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**FIRE DEPARTMENT**  
*Petitioner*  
*- against -*  
**JASON BUTSCHER**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**INGRID M. ADDISON**, *Administrative Law Judge*

Petitioner, the Fire Department ("Department"), brought this employee disciplinary proceeding against respondent Jason Butscher, an emergency medical technician ("EMT"). Petitioner alleges that after he transported a patient to the North Shore Hospital in Queens, New York, on June 10, 2019, respondent used a vulgarity in response to the triage nurse's inquiry into respondent's unit number, and that respondent's behavior was in violation sections 4.1.1, 4.1.3, 4.1.10, 4.2.1, 4.2.48 and 4.2.49 of petitioner's Emergency Medical Services Operating Guide Procedures ("OGP") No. 101-01. Petitioner charged respondent with violating of section 4.1.3 of OGP 101-01 because it alleged that his conduct violated the Department's Equal Employment Policy by creating a hostile work environment ("EEO") (ALJ Ex. 1).

At a two-day trial which concluded on September 28, 2020, petitioner relied on documentary evidence and the testimony of respondent's co-worker and a nurse from the

emergency room (“ER”) at the North Shore Hospital, who overheard respondent and who was subpoenaed to testify before this tribunal.

Respondent, who was represented by counsel, testified that he did not recall the incident. But he did not challenge the charge in light of the testimony of petitioner’s witnesses.

For the following reasons, I find that petitioner proved that respondent’s conduct violated five of the six OGP rules that he is charged with violating. Because said conduct is based on a single incident, a single penalty is appropriate. I therefore recommend that respondent be suspended from his job without pay for 45 days.

### **ANALYSIS**

Petitioner charged respondent with violating the following sections of OGP No. 101-01: (1) 4.1.1 (which requires EMTs to perform all duties as directed by the Fire Commissioner or designee); (2) 4.1.3 (which requires EMTs to comply with all FDNY rules, regulations, policies, procedures and protocol. Petitioner noted that there was a violation of the Department’s EEO Policy); (3) 4.1.10, (which requires EMT workers to be courteous, polite, respectful and helpful to fellow members, hospital staff and the public); (4) 4.2.1 (which prohibits conduct that would bring the City of New York, the Fire Department or any other City agency into disrepute); (5) 4.2.48 (which prohibits conduct prejudicial to the good order, efficiency and discipline of the Department); and (6) 4.2.49 (which prohibits conduct unbecoming of an FDNY member).

Joseph Siciliano has been an EMT with the Department for 11 years. Before that, he was a volunteer firefighter and also worked with a private ambulance service for a short period of time (Tr. 15-16). Mr. Siciliano first met respondent in 2010 or 2011 when respondent was working as an EMT at a hospital in Queens. He testified that they had common interests in challenge coins<sup>1</sup> and patches and were friendly, but they never socialized. In or around 2014, he ran into respondent at Station 4 in Manhattan, and learned that respondent had become an EMT. At the beginning of 2019, Mr. Siciliano moved to EMS Station 46 and was partnered with respondent. They had 12-hour tours and worked together two days in one week and five days in another (Tr. 17-20, 44).

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<sup>1</sup> Mr. Siciliano explained that challenge coins are coins that EMS stations, firehouses and the military have made, to symbolize a specific location or unit. Similarly, patches are from different units and different stations.

Mr. Siciliano testified that when EMTs are dispatched to transport a patient in need of medical services, one EMT drives the ambulance while the other operates as the technician and sits in the back with the patient. But together, they share the medical responsibility of assessing the patient's medical condition before transporting him/her to a hospital (Tr. 21-22).

On June 10, 2019, Mr. Siciliano and respondent were assigned to a mobile Emergency Medical Services ("EMS") unit number 46-Charlie, Tour 2 ("46C2") in Elmhurst, Queens, when they were dispatched to a call. They had the 6:30 a.m. to 6:30 p.m. shift and Mr. Siciliano was the assigned driver (Tr. 17, 20-21). Petitioner presented the unit history for unit number 46C2, which Mr. Siciliano explained in detail. It displayed information such as the names of the EMTs assigned to the unit, the time the ambulance received the call, the time it arrived at the facility, and the nature of the emergency (Pet. Ex. 1). The history reflected that unit 46C2 transported a patient to Hospital number 77, which Mr. Siciliano identified as Forest Hills Hospital. He denied that he and respondent had any disagreements along the way, but testified that when they got to the hospital, they entered via the ambulance area and took the patient, who was on the ambulance stretcher, to the ER to be triaged. This meant that a triage nurse would take the patient's vitals and make a determination where the patient needed to be directed. Mr. Siciliano testified that after being triaged, the patient is moved to a hospital stretcher and the linens on the ambulance stretcher are changed (Tr. 22-30, 46).

A male triage nurse was on duty on the day in question. Mr. Siciliano did not know the nurse's name, but he testified that a female nurse, whom he identified as Nurse Kingston, was also at the triage desk. He knew her name because she was not new to the triage area and he had previously interacted with her (Tr. 32-33, 48, 52). After respondent provided the patient history and vitals to the triage nurse, the patient was moved to a hospital stretcher and respondent remained at the triage desk while the nurse completed necessary paperwork before respondent and Mr. Siciliano could leave. Meanwhile, Mr. Siciliano proceeded to change the linens on the ambulance stretcher. He stated that only about six feet separated him and respondent. The ER was not very busy and the background sounds were not loud, so Mr. Siciliano could hear what respondent was saying to the triage nurse. He was paying attention because they were both responsible for the patient and he wanted to make sure that nothing was overlooked. Mr. Siciliano testified that he heard the male nurse ask respondent for their unit number and respondent replied "46 cunt" (Tr. 30-33, 47-51). At that, Mr. Siciliano turned around and made

eye contact with Nurse Kingston, who had a look of consternation on her face and said, "I'm sorry. What unit was that?" at which respondent replied, "I'm sorry, do you resemble (sic) that remark?" Mr. Siciliano stated that respondent was smiling as if it was a joke. Nurse Kingston looked shocked and turned back to her computer. The male nurse said nothing (Tr. 33-35, 52).

Mr. Siciliano testified that he went out to the ambulance, found the number for the Department's EEO office and called and reported verbatim, respondent's statement. He denied any possibility that he had misheard respondent. He was concerned that he would get in trouble if he said nothing because he was certain that respondent's statement was overheard by others (Tr. 36-37). Mr. Siciliano never addressed the incident with respondent because as far as he was concerned, the damage had already been done. After calling in the report, he was instructed not to speak with respondent about it (Tr. 37-38, 53, 62).

One week later, Commanding Officer Lieutenant Rayberger asked Mr. Siciliano what was going on between him and respondent because another issue had arisen. Mr. Siciliano told the lieutenant about the June 10, 2019 incident. Mr. Siciliano claimed that by then he was becoming increasingly uncomfortable as he began to conjure what would happen if it became known that he had filed a complaint against respondent (Tr. 38-40).

The EEO office interviewed Mr. Siciliano by telephone about one month after he reported the incident. Mr. Siciliano, who no longer works with the same unit, acknowledged seeing Nurse Kingston in the ER one more time. He said that she approached him and asked if he had filed a complaint because she had been contacted by her supervisor for confirmation (Tr. 16-17, 40-42, 55-57).

Sandra Kingston has been a registered nurse for 30 years. She works in the ER at North Shore Hospital in Forest Hills. On June 10, 2019, she worked the 7:00 a.m. to 7:00 p.m. shift as the charge nurse and the ambulance triage nurse. She testified that while triaging, respondent and his partner brought a patient into the ER. Nurse Kingston inquired of respondent the number of his "Bus," which is the unit number for the ambulance. She corroborated Mr. Siciliano's testimony that respondent replied "46 Cunt," and that she asked "Excuse me?" and respondent replied, "you heard me. I said 46 cunt" (Tr. 74-76, 86).

Nurse Kingston stated that she was shocked because where she is from, the word that respondent used "is a bad word" and she found it to be disrespectful. She noted that she had worked with respondent a couple of times before and he had been respectful but added that when

he said what he did on June 10, 2019, she lost all respect for him. Nurse Kingston did not report the incident and had no explanation for why she did not. Nor did she call anyone at the Fire Department. But she stated that a few weeks later, respondent's partner, whom she did not identify by name, came to the hospital. She asked him what had happened and he told her that he had reported the incident. Then petitioner's counsel started calling and sending her e-mails which she ignored (Tr. 77, 80-82). Only after she was subpoenaed to testify did she tell her manager about the incident (Tr. 79). She noted that following the incident, she saw respondent about a couple of times (Tr. 82).

Respondent has been an EMT for approximately 15 years, initially working at the old Booth Memorial Hospital in Queens for about 10 years, but when his old employer merged with New York Presbyterian Hospital, there were significant layoffs. He started working with the FDNY six years ago. Respondent holds a Bachelor's degree in Entertainment Technology but later took one semester of college credits to become an EMT. When he started working for petitioner, he underwent further training. Respondent is currently assigned to Station 46 in Elmhurst, Queens, but he is on restricted status, which means that he reports for work but is not permitted to work (Tr. 88-91).

Respondent testified that he does not recall the incident on June 10, 2019. He knew that he worked the 6:30 a.m. to 6:30 p.m. shift and was partnered with Mr. Siciliano. They had worked together before and he did not consider Siciliano to be a very good partner. Respondent had made multiple requests to change partners because of Mr. Siciliano's personality and the manner in which he worked. Respondent acknowledged that on the date in question, he was in charge of patient care while Siciliano was the driver. He was only able to recall to which hospital they had transported a patient because of the CAD history. He stated that he had seen Nurse Kingston in triage before and assumes that, based on Siciliano's and her testimony, that she was present in triage on June 10, 2019. He does not recall her asking him for his unit number. Nor does he recall replying "46 Cunt." But he did not deny that he did. Respondent stated that if he did, he is very remorseful as it is not his normal behavior. He had never used such language in his work setting before. He conceded that such a reply was vile and inappropriate and would bring disrepute to the Department. He insisted that he would never say such a thing again. He could not recall anyone at the hospital or his partner saying anything to him. As a possible reason for his conduct, respondent maintained that because of his stressful

job in which he sees death and destruction every single day, he sometimes jokes around to relieve stress, and on that occasion, “it sounds like I slipped something that I should not have” (Tr. 92-94, 96-99, 101).

Respondent testified that he was interviewed at some point either by the Department’s EEO unit or by its Bureau of Trials and Investigations, which is the first time that he had heard of the allegation against him (Tr. 94-95).

I found it entirely plausible that respondent may have been operating under stress that day when he reacted the way that he did to the triage nurse. But I was not convinced that he did not recall the incident. If this was indeed an aberration, then it was more likely than not that he would have recalled such untoward behavior and would have been able to advance some credible and mitigating reason for his behavior.

I must note some troubling inconsistencies and foibles between Mr. Siciliano’s and Nurse Kingston’s testimony. First, Mr. Siciliano stated that even though Nurse Kingston was present at the triage desk, it was a male triage nurse who requested respondent’s unit number and to whom respondent gave his answer, and that the male nurse never reacted to respondent’s reply. It was not evident to me that petitioner made any effort to contact that male nurse even though it pursued Nurse Kingston with a subpoena. At the same time, Nurse Kingston testified that it was she who asked respondent for his “Bus” number. She made no mention of another nurse. Second, Mr. Siciliano testified that following the incident, he saw Nurse Kingston one more time and she approached him and inquired whether he had reported the incident because she had been approached by her supervisor about it. However, Nurse Kingston testified that after being pursued by petitioner’s counsel and she realized that she would have to testify, it was she who told her manager about the incident. There was no testimony that her supervisor had contacted her before that time. Third, Mr. Siciliano claimed that after Nurse Kingston’s reply of “Excuse me,” respondent asked her “Do you resemble that remark?” Nurse Kingston corroborated that she said “Excuse me,” but she testified that in reply, respondent repeated what he had initially said. This left me questioning whether or not Mr. Siciliano heard respondent repeat his initial remark or, not having heard respondent’s repetition, decided to embellish with a statement which did not entirely make sense.

In spite of the foregoing, what is not in dispute is that respondent, in the performance of his duties as an EMT worker, used a vulgar term in response to a question from a triage nurse at

a hospital where he had taken a patient. Such conduct violated sections 4.1.1, 4.1.10, 4.2.1, 4.2.48 and 4.2.49 of OGP No. 101-01, in that respondent was disrespectful and discourteous to hospital staff, his conduct was prejudicial to good order and discipline, was unbecoming of a member of the FDNY, and was likely to bring disrepute to the FDNY and to the City of New York.

Petitioner also alleged that respondent's behavior was in violation of section 4.1.3 of OGP No. 101-01, which requires EMT workers to comply with FDNY rules, regulations, policies, procedures and protocol, and that respondent did so by violating the Department's EEO Policy in that he created a hostile work environment. Petitioner failed to develop an argument in support of this particular allegation. It did not identify a victim and did not refer to the specific section of the policy that was allegedly violated. Indeed, all that petitioner did in regard to this allegation was to submit its EEO policy. That is insufficient for me to find that it sustained this particular allegation against respondent.

Moreover, in an administrative disciplinary proceeding, where the employer seeks to discipline an employee for disparaging remarks which can be characterized as sexual harassment, it needs to show that the conduct complained of was sexually motivated. *See Law Dep't v. Cooper*, OATH Index No. 1394/10 at 7-8 (Mar 16, 2010); *Human Resources Admin. v. Allen*, OATH Index No. 212/06 at 14 (June 28, 2006); *Fire Dep't v. McFarland*, OATH Index No. 230/86 at 15 (Aug. 21, 1986). *Accord Dep't of Correction v. Andino*, OATH Index No. 492/95 at 7-8 (Dec. 13, 1994); *Dep't of Personnel v. Rago*, OATH Index No. 471/92 at 8 (Apr. 22, 1992); *Dep't of Parks & Recreation v. Aronoff*, OATH Index No. 366/87 at 33 (Mar. 24, 1988). I did not find that to be the case here. Respondent's vile utterance, for which he expressed remorse, appeared to have been made without any underlying motive.

In sum, petitioner established that respondent's conduct violated five of the six OGP rules that he is charged with violating.

### **FINDINGS AND CONCLUSIONS**

1. Petitioner proved that respondent was vulgar in his response to a hospital triage nurse while in the performance of his work, in violation of sections 4.1.1, 4.1.10, 4.2.1, 4.2.48 and 4.2.49 of petitioner's OGP No. 101-01.

2. Petitioner did not prove that respondent created a hostile work environment in violation of the Department's EEO Policy and by extension, a violation of section 4.1.3 of OGP No. 101-01.

### **RECOMMENDATION**

Upon making the above findings, I obtained and reviewed an abstract of respondent's personnel record in order to make an appropriate penalty recommendation. Respondent was appointed as an EMT on October 6, 2014. Between his start date and October 2018, he was reassigned five times. In his second quarter performance appraisal for the period January 6 to April 6, 2015, respondent received an overall rating of "Conditional." As part of the justification for his overall rating, his supervisor expressed concerns about how respondent interacted with colleagues and the public. In his fourth quarter appraisal for the period August 9 to November 9, 2015, respondent received an overall rating of "Good." His first annual appraisal was for the period January 1 to December 31, 2016. Respondent received an overall rating of "Conditional." The justification notes alluded to respondent's bedside manner and behavior and their negative effect on patients and the Department. For the year ended December 31, 2018, respondent received an overall rating of "Good," and for the period January 1 through June 19, 2019, he received an overall rating of "Very Good."

During his six years with the Department, respondent has been disciplined on four occasions. In 2016, he received a penalty of five vacation days and a one-year probation for an EEO violation. In 2017, he received a penalty of five days' pay for assault on a patient. In 2018, he received a penalty of 13 days' pay and a one-year probation for discourteous and disrespectful behavior to a patient. Later the same year, he received a two-day pay fine for discourtesy to a member of the public.

Respondent has been found guilty of using obscene, vulgar language to a triage nurse while in the performance of his job for the Department. Petitioner seeks respondent's termination predicated upon the assumption that its six charges against respondent would be sustained. However, even though five of them have been sustained, they are cumulative as they are based on the same conduct. Therefore, only a single penalty may be exacted. *See Dep't of Transportation v. Dhar*, OATH Index No, 2024/14 at 7 (July 3, 2014), *aff'd*, NYC Civ. Serv.

Comm'n Item No. 2014-0757 (Nov. 25, 2014); *Fire Dep't v. Feret*, OATH Index No. 885/00 at 37 (Mar. 10, 2000).

I turn now to a discussion of what penalty is appropriate. "It is a well-established principle in employment law that employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employer views their misconduct and to give them a chance to correct it." *Dep't of Transportation v. Jackson*, OATH Index No. 299/90 at 14 (Feb. 6, 1990). The theory of progressive discipline is to modify employee behavior through increasing penalties for repeated same or similar misconduct. See *Dep't of Sanitation v. Parker*, OATH Index No. 1049/04 at 9 (Aug. 3, 2004); *Police Dep't v. Schaefer & McGrath*, OATH Index Nos. 1114 and 1169/99 at 14 (July 2, 1999), *aff'd*, 181 A.D.2d 163 (1<sup>st</sup> Dep't 2001). A fair penalty must take into account the particular circumstances of the incident and individual mitigating factors, as appropriate. *Transit Auth. v. Madsen*, OATH Index No. 121/98 (Sept. 5, 1997); see also *Admin. for Children's Services v. Goodman*, OATH Index Nos. 986/05 and 1082/05 at 14 (Aug. 12, 2005) (respondent's lack of a prior disciplinary record is a mitigating factor). *Dep't of Correction v. Passe*, OATH Index No. 1917/02 at 10 (Jun. 4, 2003) (respondent's 13-year tenure and clean record are mitigating factors which must be taken into account in assessing penalty).

Where an employee's use of unprofessional language has been found to be isolated, this tribunal has generally recommended a penalty of three to ten days' suspension, depending on the employee's disciplinary record and the nature of the offending remarks. See, e.g., *Dep't of Sanitation v. Branch*, OATH Index No. 169/01 at 8 (Dec. 6, 2000) (three-day suspension for using profanity, "go fuck yourself," to a member of the public); *Human Resources Admin. v. Bichai*, OATH Index No. 211/90 at 14 (Nov. 21, 1989), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 90-54 (June 15, 1990) (three-day suspension for worker who disobeyed several orders and called supervisor a "motherfucker"); *Dep't of Buildings v. Cortes*, OATH Index No. 577/90 at 21-22 (Feb. 9, 1990) (four-day suspension for building inspector who called his supervisor a "fucking a-hole" and was insubordinate); *Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. McMillan*, OATH Index No. 1402/06 at 9 (July 24, 2006) (five-day suspension for long-term employee, with no prior disciplinary record, who engaged in loud, disrespectful, and disruptive confrontation with supervisor); *Admin. for Children's Services v. Goldman*, OATH Index No. 985/12 at 8 (July 3, 2012), *adopted*, Comm'r Dec. (July 13, 2012)

(ten-day suspension imposed on case worker, with serious disciplinary record, for asking a supervisor, “what the fuck is your problem?”).

Here, respondent has a significant disciplinary history for his relatively short stint with the Department. Not only that, but the conduct for which he was previously penalized was along the same lines as the conduct which is the subject of this proceeding. Thus, it is evident that his behavior on June 10, 2019, cannot be considered to be isolated or an aberration. The maximum penalty that respondent has previously received is a 13-day pay fine plus a one-year probation.

The Civil Service Commission has found that termination of employment violates the principle of progressive discipline where, as here, only short-term penalties have been imposed on prior occasions. *See Transit Auth. v. Anderson*, NYC Civ. Serv. Comm’n Item No. CD 92-94 (Aug. 5, 1992) (penalty of dismissal violates the principle of progressive discipline where the greatest penalty imposed was a fifteen-day suspension). This does not mean, however, that the concept of progressive discipline precludes termination in every instance where prior discipline has been relatively light. In fact, this tribunal has recommended termination where an employee’s prior discipline was minimal but his conduct was so extreme as to warrant termination. *See Human Resources Admin. v. Jordan*, OATH Index No. 453/97 (Apr. 7, 1997), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 98-58-SA (May 12, 1998) (15-year employee with minor disciplinary record terminated for displaying knife in argument with co-worker).

Here, while respondent’s disciplinary history is troubling, his performance appraisals establish that respondent has demonstrated some improvement in his work ethos. Indeed, his most recent appraisal which covered the period during which his latest misconduct occurred, rated him as “very good.” That, plus the minimal sentences previously imposed make termination an excessive penalty. At the same time, it is painfully apparent that the prior discipline imposed against respondent has not helped him to modify his behavior.

Accordingly, I find a more severe penalty to be appropriate and recommend that respondent be suspended from his employment without pay for 45 days. Respondent is cautioned that unless he makes a concerted effort to control himself, further similar misconduct could soon result in his termination.

Ingrid M. Addison  
Administrative Law Judge

October 15, 2020

**DANIEL A. NIGRO**

*Commissioner*

APPEARANCES:

**JOSEPH T. PALAZZOLO II, ESQ.**

*Attorney for Petitioner*

**THE LAW OFFICE OF RICHARD J. WASHINGTON**

**BY: RICHARD J. WASHINGTON, ESQ.**

*Attorney for Respondent*

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In the Matter of Disciplinary Charges by the  
**NEW YORK CITY FIRE DEPARTMENT**

Petitioner

**COMMISSIONER'S DECISION**

-against-

OATH Index No. 1798/20  
FDNY No. 294/19D

**JASON BUTSCHER**  
EMT  
EMS Station 08

Respondent

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I have had an opportunity to review and consider the Report and Recommendation issued by Administrative Law Judge Ingrid M. Addison, the transcript of the OATH trial, and exhibits introduced at the trial. Additionally, I have had an opportunity to review the submissions from Respondent, his counsel and the Department's attorneys. In her Report and Recommendation dated October 19, 2018, ALJ Addison held that the Department submitted sufficient evidence to establish that you used a vulgar term in response to a question from a triage nurse at a hospital where you had taken a patient and that such conduct violated sections 4.1.1, 4.1.10, 4.2.1, 4.2.48 and 4.2.49 of the Department's Operating Guide Procedure No. 101-01, in that you were disrespectful and discourteous to hospital staff, your conduct was prejudicial to good order and discipline of the Department, and your conduct was unbecoming of a member of the FDNY. ALJ Addison sustained five out of six Department charges brought against you and I concur with ALJ Addison's findings of fact and of guilt.

In her Report and Recommendation ALJ Addison found that the Department's allegations were supported by substantial evidence and recommended a penalty of a 45-day suspension without pay, and after careful consideration I disagree with her recommendation as to penalty.

A review of your disciplinary history reveals that in your relatively short six-year tenure with the Department, you have been disciplined on four occasions. In 2016 you violated the Department's EEO Policy, in 2017 you were physically aggressive with a patient, in 2018 you were discourteous and disrespectful to a patient and later that same year you were again discourteous to a member of the public. The Department has given you the opportunity to correct your negative behavior but you have been unable to do so.

THEREFORE, for your misconduct, I am imposing a penalty of the termination of your employment, which will be effective immediately.

By order of, /

  
Daniel A. Nigro  
Fire Commissioner

Date: 11.30.2020

**THE CITY OF NEW YORK  
CITY CIVIL SERVICE COMMISSION**

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*In the Matter of the Appeal of*

**JASON BUTSCHER**

*Appellant*

*-against-*

**FIRE DEPARTMENT**

*Respondent*

*Pursuant to Section 76 of the New York  
State Civil Service Law*

CSC Index No: 2020-0815

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**DECISION**

**JASON BUTSCHER** (“Appellant”) appealed from a determination of the Fire Department (“FDNY”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of Termination following disciplinary proceedings conducted pursuant to Civil Service Law (“CSL”) Section 75.

The Civil Service Commission (“Commission”) requested written arguments from the parties on January 12, 2021. Appellant’s brief was received on February 11, 2021, and FDNY’s brief was received on March 1, 2021.<sup>1</sup>

The Commission has reviewed the record below, which we incorporate by reference into this decision, as well as arguments submitted on appeal, and find that there is sufficient evidence to support the final determination and that the penalty imposed is appropriate.

Therefore, the final decision and penalty imposed are hereby affirmed.

**SO ORDERED.**

Dated: April 7, 2021

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<sup>1</sup> The Commission notes that its case processing timeframes for 2020 and 2021 have been impacted by Covid-19 related executive orders.