



BenchNOTES Newsletter

January 2024

Trials Division

Personnel

Termination recommended.

ALJ Charlotte E. Davidson recommended termination of employment for a correction officer charged with conduct unbecoming of a member of service and of a nature to bring discredit upon the Department, and undue familiarity with a person in custody. *Dep't of Correction v. Parson*, OATH Index No. 315/24, mem. dec. (Dec. 29, 2023).

[Read more about *Dep't of Correction v. Parson* and other Personnel cases.](#)

Contracts

\$499,860.49 awarded to contractor.

The Contract Dispute Resolution Board, chaired by ALJ Faye Lewis, awarded \$499,860.49 to a contractor for costs it incurred in implementing a forced air cooling system for line reactors at a wastewater treatment plant, plus overhead and profit. *Yonkers Contracting Co. v. Dep't of Environmental Protection*, OATH Index No. 2972/22, mem. dec. (December 27, 2023).

[Read more about *Yonkers Contracting Co. v. Dep't of Environmental Protection*.](#)

Appeals from the Hearings Division

An appeal decision reversed a hearing decision sustaining a violation against a property owner for failing to store trash receptacles. The issuing officer issued a summons after observing cardboard boxes on the public sidewalk. At the hearing, respondent asserted that cited boxes were placed out on collection day, but petitioner had yet to make the collection when the summons was issued. The hearing officer did not credit respondent's statement. The appeal decision reversed, finding respondent refuted the charge because there was still time for

collection to occur when the summons was issued and because the hearing officer gave no reason for discrediting respondent's assertions. [*DSNY v. Remko DeJong*](#), Appeal No. 2301082 (December 21, 2023).

An appeal decision affirmed a hearing decision on different grounds dismissing a charge for failing to plate an excavation in a driving lane or intersection. At the hearing, respondent testified that it had been conducting emergency repairs and could not immediately plate the excavation, and that petitioner should have issued a corrective action request before issuing the summons. The hearing officer dismissed the charge, finding no violating conditions existed. The appeal decision affirmed the dismissal on other grounds, finding that the relevant rule required an unattended excavation to be plated and because the issuing officer did not allege that the excavation was unattended, petitioner failed to establish its prima facie case. [*DOT v. Liberty Water and Sewer LLC*](#), Appeal No. 2301094 (December 21, 2023).

An appeal decision reversed a hearing decision sustaining a violation for failing to install a pedestrian ramp according to petitioner's drawings. In the summons, the issuing officer affirmed that the landing of pedestrian ramp exceeded the 2.0% slope limitation set by petitioner's drawing. At the hearing, respondent argued that a prior summons alleging the same violating condition was dismissed on the ground that the specified drawing did not reference any slope percentage. The hearing officer sustained the charge because he disagreed with the prior dismissal and found that the drawing specified the slope grade. The appeal decision reversed, finding that a defense of res judicata had been established because the prior summons charged the respondent with the same provision of law based on the same violating condition, the parties had a full opportunity to litigate the prior summons, and the prior summons was dismissed on the merits. [*DOT v. Karapanjo's Construction*](#), Appeal No. 2301207 (December 21, 2023).

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