A-3

STATE OF NEW JERSEY

In the Matter of Frank Harkcom
Bayside State Prison,
Department of Corrections

CSC DKT. NO. 2016-2769
OAL DKT. NO. CSR 02881-16

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: FEB 10 2017 BW

The appeal of Frank Harkcom, Senior Correction Officer, Bayside State Prison, Department of Corrections, removal effective February 3, 2016, on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on December 22, 2016. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on February 8, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Frank Harkcom.

Re: Frank Harkcom

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
FEBRUARY 8, 2017

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant 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. CSR 02881-16
AGENCY DKT. NO. N/A 2016-2769

IN THE MATTER OF FRANK HARKCOM,
BAYSIDE STATE PRISON.

William G. Blaney, Esq., for appellant, Frank Harkcom (Blaney & Karavan, attorneys)

Adam K. Phelps, Deputy Attorney General, for respondent (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: November 10, 2016 Decided: December 22, 2016

BEFORE **JOHN S. KENNEDY,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Senior Corrections Officer, Frank Harkcom, (appellant) appeals the decision of the Department of Corrections (DOC), Bayside State Prison (respondent, Bayside) to remove him from employment. A Preliminary Notice of Disciplinary Action, (PNDA), dated November 17, 2015, seeks the removal of appellant based on the following charges: N.J.A.C. 4A:2.3(a)6, Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2.3(a)12, Other Sufficient Cause; HRB 84-17 (as amended): C8 Flasification: Intentional misstatement of material fact in conection with work, employment application,

attendance, or in any record, report, investigation; C-11 Conduct unbecoming an employee; D-23, Prohibited by law from possessing or using a fire arm; and E-1, Violation of a rule, regulation, policy, procedure, order or administrative decision.

After a departmental hearing held on January 12, 2016, charges of N.J.A.C. 4A:2.3(a)6, Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2.3(a)12, Other Sufficient Cause; Human Resources Bulletin (HRB) 84-17 (as amended): C8 Flasification: Intentional misstatement of material fact in conection with work, employment application, attendance, or in any record, report, investigation, were sustained and incorporated into a Final Notice of Disciplinary Action (FNDA) 31-C, dated February 1, 2016, with a proposed penalty of removal from employment. Appellant appealed his removal to the Office of Administrative Law (OAL), where it was received on February 24, 2016. The hearing in this matter was originally scheduled to be held on May 2, 2016, and May 3, 2016, but was adjourned at the request of the respondent due to unavailability of witnesses. The matter was then scheduled to be heard on June 16, 2016, but was again adjourned as a result of the departure of the Deputy Attorney General form the Division of Law originally assigned to represent the respondent. Appellant was suspended without pay on November 19, 2015, as a result of the PNDA and remained suspended until his removal. Based upon the appellant's assertion that he was entitled to receive his base pay pursuant to N.J.S.A. 40A:14-201(a) effective May 18, 2016, respondent unilaterally placed him back on pay status on that date. The hearing in this matter was held on July 25, 2016, and August 18, 2016. The parties electronically filed briefs with the court on November 4, 2016 and the record closed on November 10, 2016, after hard copies of the briefs were received.

FACTUAL DISCUSSION

In January 2015 appellant was arrested for suspicion of Driving Under the Influence (DUI) and reckless driving. As a result, respondent issued a PNDA removing him as an officer on February 9, 2015. (R-10.) Appellant was found guilty of reckless driving and his driver's license was suspended for six months. The respondent changed the removal to a ten-day suspension and required appellant to reapply for employment as a officer. On

October 29, 2015, appellant submitted and signed an application for employment with the DOC. (R-1.) Through the application appellant was directed to disclose all court dispositions relative to any charges, including criminal, civil, and family law actions and was required to disclose his arrests, summonses and all negative contact with police, including incidences of domestic violence including temporary restraining orders (TRO) and final restraining orders (FRO) whether active or dismissed. Appellant signed an acknowledgment certifying that the information on the application was complete and accurate to the best of his knowledge and acknowledgeged that any misleading, withheld or incorrect information may be cause for his immediate termination of employment.

On October 29, 2015, respondnet performed a routine investigation of appellant's application and determined that he failed to disclose an active domestice violence complaint, TRO and FRO entered against him in 1990 and well as two harassment charges filed against him in 2012 and 2013. Appellant also failed to disclose prior arrests and convictions he had previously disclosed on his original employment application which he submitted in 1997. Respondent asserted that appellant's failure to disclose the above stated incidents constituted falsification of records and determined not to rehire him. Thereafter, appellant was issued a PNDA on November 17, 2015, seeking his removal and was suspended without pay on November 19, 2015. After a hearing was held, a FNDA was issued on February 1, 2016, terminating appellant. The aforementioned is not in dispute and I therefore **FIND** them as **FACT**.

TESTIMONY

Sergeant James Russo

Sergeant Russo (Russo) testified that at the time of his testimony he was assigned to the DOC's Sergeant Custody Recruitment Unit and handled the backgrounds for custody applicants and other recruiting functions. Russo also conducted his own investigations into reinstatements of employees which included a review of an employee's criminal background, motor vehicle records, and urinalysis prior to returning to work. After reviewing the above material, Russo would make a

determination whether or not to move forward with the rehire. Russo was responsible for reviewing appellant's application for rehire. Upon receipt, he compared the applications against various printouts from the computer background check programs. To assist Russo in his investigation, he produced a Background Investigation Report, which bullet points what was reported on the application versus what was found. (R-2.)

Russo pointed out that appellant did report on his reapplication being charged with disorderly person offenses in 1981 and 1983, as well as a drinking and driving summons for which he was found not guilty. However, Russo testified that a check of appellant's records through the New Jersey Automated Complaint System revealed he was charged with harassment on October 16, 2012, and June 27, 2013. A review of the Family Automated Tracking System indicated that appellant was subject to a FRO from 1990 at the time of his reapplication. Russo relied upon these printouts to determine that appellant had knowledge of the two harassment charges and the FRO and therefore falsified his reapplication by omitting the same. As a result of these findings, Russo came to the decision that appellant should not move forward in the rehire process because he did not disclose his charges of 2012 and 2013 and falsified his reapplication related to the FRO. Russo believed the FRO was significant in the rehiring process because being subjected to an FRO precludes somebody from possession of a firearm due to the Lautenberg Rule, claiming if you have an order of protection against you, you are barred from the possession of firearms by federal law.

Russo indicated he was aware of a draft policy that required rehires to fill out an application prior to reinstatement but he is not aware of an approved policy and only completed appellant's background examination because he was instructed to do so. He did not know the status of appellant prior to the examination. Russo had no personal knowledge of whether appellant was aware of the harassment complaints but did indicate that they appeared to be signed by a citizen, not law enforcement. Upon review of the 2012 complaint, Russo determined the alleged perpetrator was a Mr. W, who resided at M. Avenue, Bridgeton, New Jersey, a location appellant did not reside at during that time frame. Russo had no personal knowledge of whether or not appellant reported these alleged complaints to his supervisors.

Russo reviewed a Certified Copy of the Restraining Order provided by petitioner's counsel and maintained the position that even though it lacked any indication that it was served on appellant that he believed appellant was served. He had no reason to doubt the accuracy of the Family Automated Case Tracking System. Russo did not personally search the system but instead relied upon the printouts made by another DOC employee. Russo was made aware that appellant's FRO was dismissed and that he had no restrictions on carrying a firearm.

Guy Cirillo

Guy Cirillo (Cirillo) is the Director of the Office of Training for the Department of Corrections and is in charge of the State Basic Academy, Recruitment Unit, and the hiring process for the DOC for custody staff. Cirillo outlined the four phases of the investigation process used to evaluate a recruit, once Human Resources (HR) process them. He noted the DOC Rules and Regulations prohibit anybody with a FRO to carry a gun and subsequently be unable to be a corrections officer because it is a condition of employment to be able to carry a weapon. Employees are required to have a valid driver's license in the instance they may have to operate a State vehicle. Upon review of appellant's application, Cirillo determined that appellant failed to identify information about being arrested and having a TRO or FRO however, he had no involvement in the decision to discipline appellant. The range of discipline associated with intentionally falsifying an application is written reprimand to removal. The recommendation for discipline is subject to review and if an applicant neglected to fill something out erroneously, they may receive an official written reprimand.

On cross-examination, Cirillo stated HRB 84-17 (as amended), C-8, states that in order to be charged with a falsification violation, the falsification of an application needs to be intentional. Cirillo is unaware if the policy regarding the rehiring process was ever officially adopted; however it is a policy that is followed. Cirillo admitted that there are corrections officers who are currently employed by DOC who do not have the ability to carry a firearm. Mr. Cirillo does not know if the information gained from the automated

reports is accurate, however they have no choice but to go by the information that they report.

William Saraceni

William Saraceni (Saraceni) is currently a Manager II of the Office of Human Resources, region three, Bayside State Prison. His prime responsibility is records custodian. Appellant's rehire application was necessary because appellant was removed from employment and reinstated. The basis for appellant's removal was a PNDA, dated February 10, 2015. This ultimately led to appellant being suspended from employment for a period of eight months, which Saraceni considered "removed" for HR purposes.

Saraceni was not involved in recommending or implementing disciplinary charges against employees. The first time he saw the TRO and the FRO in appellant's personnel file was a week before the hearing and could not testify as to whether they were part of his file since the beginning of his employment in 1997.

Frank Harkcom

Appellant is a Senior Correction Officer at Bayside State Prison. He has been employed there for nineteen (19) years. In or around 1990, appellant divorced his wife, M.C. Together they had one son. In 1990, he and M.C. had an arrangement for visitation with their son. On his scheduled day to have his son, M.C. gave appellant a problem picking up his son at her family home. Appellant knocked on the door and no one answered. He continued to knock on the door, presumably harder, and knocked an ornament off the door. He was angry and upset but left when nobody answered the door. The next day, M.C. spoke with appellant and indicated her father made her put a restraining order against him and she was working to calm her father down. M.C. advised appellant that her father would let her drop the restraining order if he paid restitution for the broken ornament; which he did. He was under the impression that the issue was resolved after he made restitution. Appellant recalled receiving something

from the Sheriff's office at or around the time of the 1990 incident at his parents' house; however, he does not recall whether or not he opened it. Appellant never took any steps with the court to determine if the TRO was dropped and did not appear in court as required on the TRO. (R-3a.) Sometime prior to him beginning employment with DOC in 1998, appellant had completed a background check. At no point after his background check did anyone ever tell him he had a FRO or a TRO against him. Additionally, appellant stated he has had three additional background checks while employed at DOC and no one had advised him of the restraining orders. Appellant recently took steps to have the FRO lifted and M.C. assisted as she wanted to do anything she could to get it taken care of

With regard to the alleged 2012 harassment incident, appellant testified that he went to his rental property and saw the neighbor yelling at him. The neighbor called the police, who left without issuing any tickets. The compliant filed against him was sent to the address of his rental property where he did not reside. (P-2.) He later received the court notice, but there was no indication of what it was for, so he went to court several times and the judge eventually dismissed the matter. The policy appellant was aware of at the time of the incident, required him only to report arrests and/or incarcerations. HRB 84-19 was amended in 2000 and required employees to report the receipt of summonses filed against them. (R-17.) Appellant asserts that he was unaware of the policy change.

The second alleged harassment incident in 2013, involved the same rental property and the same neighbor who made the first set of allegations in 2012. Appellant recalled that he was blowing leaves off of his property towards a park and some of them drifted onto his neighbor's yard. The neighbor confronted appellant and eventually called the police. The police did not press charges against appellant and advised him that if he wanted the neighbor to stop calling the police he needed to go down and sign a complaint against him. Appellant signed a complaint against his neighbor, which lead to him receiving a notice for neighborhood dispute resolution. The neighbor also signed a complaint against him but appellant alleges to have never received this complaint. (P-11.) He and his neighbor resolved the dispute through

mediation. He never really had an issue with the neighbor, the neighbor had a problem with appellant's renters. Appellant indicated that he did not report the 2012 and 2013 alleged incidents because he did not know he was charged, and he never intentionally misled the DOC.

FINDINGS OF FACT

After carefully reviewing the exhibits and documentary evidence presented and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the additional relevant and credible **FACTS** in this matter: Appellant was aware of his obligation to disclose his arrests and prior incidents and understood he was obligated to disclose all offenses and charges against him including domestic violence charges and restraining orders. Appellant also understood he had to disclose all misdemeanors, including disorderly persons offenses and harassment complaints and understood that his failure to disclose any offenses could result in his termination.

In his reapplication, appellant disclosed two disorderly persons offenses from 1981 and 1983, and his suspicion of DUI arrest from January 10, 2015. He also disclosed that he did not have a valid driver's license but disclosed no other offenses. He did not disclose his criminal mischief charge and conviction from 1981 on his reapplication or his 1989 disorderly conduct even though they were disclosed on his original application in 1997. Appellant signed the Acknowledgement and Affidavit attesting to the accuracy of the information contained in his reapplication.

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transportation Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive or bias should be considered. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I do not **FIND** appellant to be a credible witness and his testimony regarding his knowledge of the 1990 TRO and FRO,as well as the 2012 and 2013 harrassment complaints filed against him, is not believable. Appellant testified that he did not know about the 1990 TRO and FRO, or the 2012 and 2013 harassment complaints when he reapplied for employment in 2015. However, appellant was aware of the 1990 restraining orders even though he denies he was served with the TRO or FRO. Even if taken as true that he was not served the documents, appellant admitted his ex wife told him about the TRO, and that he knew the Salem Sheriff had delivered something to his parents' house. That appellant was not aware of or simply forgot about an incident serious enough to raise to the level of a TRO and FRO being entered against him is not credible.

Similarly, appellant testified that he did not purposely fail to disclose the 2012 and 2013 harassment complaints because he was never aware of them. By his own admission, however, appellant went to Court, and mediation, to have the harassment complaints dismissed. As a result, I **FIND** as **FACT** that appellant was aware of the 1990 TRO and the FRO and also the 2012 and 2013 harrassment charges filed against him and failied to disclose them on his 2015 reapplication.

LEGAL ANALYSIS AND CONCLUSION

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The authority must show 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, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

Respondent has sustained charges of violations of N.J.A.C. 4A:2.3(a)6, Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2.3(a)12, Other Sufficient Cause; Human Resources Bulletin (HRB) 84-17 (as amended): C8 Flasification: Intentional misstatement of material fact in conection with work, employment application, attendance, or in any record, report, investigation. Appellant argues that the charges against him can not be proven by credible, competent evidence and that his omissions on his 2015 reapplication were inadvertent and not done so knowingly. He asserts that respondent did not produce a witness to authenticate any of the alleged Court documents it submitted in support of its case and that the documents fail to indicate that they were ever served appellant. The automated reports generated related to appellant alleged 2012 and 2013 summonses were not presented by a custodian of record or supported by a certification. Had appellant's testimony been that none of the events had occurred and respondent were otherwise unable to cooberate any of the incidents, his argument would have some merit. The documents presented, however, were obtained during the course of Russo's background investigation. There has been no evidence that Russo or anyone else manufactured these documents or that Russo harbored any ill will toward appellant. Furthermore, appellant testified as to the events surrounding the documents in question which gives this tribunal the ability to more fully rely upon those documents.

As to the charge of violation of section C-8, "Falsification," the HRB at Page 8 defines Falsification as:

> . . . Intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report, investigation or other proceeding.

The actions of appellant fit directly within the definition of falsification as set forth in the HRB. It is clear based on the evidence presented that appellant intentionally

misstated facts on his 2015 reapplication. He clearly had knowledge of the 1990 TRO and the FRO and also the 2012 and 2013 arrassment charges. He did not disclose his criminal mischief charge and conviction from 1981 on his reapplication or his 1989 disorderly conduct even though they were disclosed on his original application in 1997. Therefore, I **CONCLUDE** that the appointing authority has met its burden of proof that appellant committed an act of Falsification pursuant to HRB section C-8. He clearly demonstrated an absence of judgment in a sensitive position requiring public trust in the agency's judgment.

Appellant was also charged with "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that 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)).

Appellant's status as a senior correction officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v.

Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

> The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become "tinderboxes."
>
> [Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).]

I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee when the aforementioned higher standard is applied. Appellant's conduct was such that it could adversely affect the morale or efficiency of a governmental unit or destroy public respect in the delivery of governmental services.

Appellant has further been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Appellant's conduct was such that he violated this standard of good behavior. As such, I **CONCLUDE** that appellant's actions fit this charge.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record"

includes "an employee's reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, supra, 38 N.J. 523-24.

As the Supreme Court explained in In re Herrmann, supra, 192 N.J. at 30, "[s]ince Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct." According to the Court:

> . . . First, principles of progressive discipline can support the imposition of a more severe penalty for a public employee who engages in habitual misconduct . . .
>
> The second use to which the principle of progressive discipline has been put is to mitigate the penalty for a current offense . . . for an employee who has a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions . . .
>
> . . . [T]hat is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that 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.
>
> [In re Hermann, supra, 192 N.J. at 30-33 (citations omitted).]

In the case of In re Carter, 191 N.J. 474 (2007), the Court decided that the principle of progressive discipline did not apply to the sanction of a police officer for sleeping on duty and, notwithstanding his unblemished record, it reversed the lower court and reinstated a removal imposed by the Board. The Court noted the factor of public-safety concerns in matters involving the discipline of correction officers and police officers, who must uphold the law and "present an image of personal integrity and dependability in order to have the respect of the public." In re Carter, supra, 191 N.J. at 486 (citation omitted).

In the matter of In re Stallworth, 208 N.J. 182 (2011), a Camden County pump-station operator was charged with falsifying records and abusing work hours, and the ALJ imposed removal. The Civil Service Commission (Commission) modified the penalty to a four-month suspension and the appellate court reversed. The Court re-examined the principle of progressive discipline. Acknowledging that progressive discipline has been bypassed where the conduct is sufficiently egregious, the Court noted that "there must be fairness and generally proportionate discipline imposed for similar offenses." In re Stallworth, supra, 208 N.J. at 193. Finding that the totality of an employee's work history, with emphasis on the "reasonably recent past," should be considered to assure proper progressive discipline, the Court modified and affirmed (as modified) the lower court and remanded the matter to the Commission for reconsideration.

Although appellant's past employment disciplinary record is relatively short for an employee of nineteen years, he has been disciplined five times since 2010 and has received one commendation in that same time period.

The OAL, Merit System Board, and Appellate Division have consistently maintained that removal is the appropriate penalty for a corrections employee who falsifies a document related to employment. See Warfield v. New Jersey State Prison, OAL Dkt. No. CSV2706-04, at 1-12 (decided September 21, 2005), available a thttp://njlaw.rutgers.edu/collections/oal. (Where the OAL determined that removal was the appropriate discipline for a corrections officer who misrepresented the existence of a wife and child on a benefit application).

For example, in Carter v. South Woods State Prison, OAL Dkt. No. CSV6415-00, (Decided September 11, 2003), the OAL assessed a six-month suspension against Officer Carter, who falsified his application by omitting a prior offense that would have disqualified him from employment. The DOC filed exceptions, and the Merit System Board (MSB) determined that, given the blatant nature of Carter's falsification, removal was the appropriate discipline. Carter appealed, and the appellate division affirmed the board's determination, concluding that Carter's arguments were meritless and did not warrant discussion in a written opinion. See In re Carter, No. A-2599-03T2 (App. Div.

March 2, 2005) (slip op. at 4). The Supreme Court denied certification. In re Carter, 184 N.J. 211, 876 A.2d 284 (2005).

Here, appellant falsified his 2015 reapplication for employment by failing to disclose five separate incidents in which he had been charged or convicted of a violation of the law. He signed an acknowledgment certifying that the information on the application was complete and accurate to the best of his knowledge and acknowledgeged that any misleading, withheld or incorrect information may be cause for his immediate termination of employment. Accordingly, I **CONCLUDE** that the respondent's action in removing the appellant from his position was justified.

DECISION AND ORDER

The appointing authority has proven by a preponderance of credible evidence the charges against appellant with violations of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, and Human Resources Bulletin (HRB) 84-17 (as amended): C8 Flasification: Intentional misstatement of material fact in conection with work, employment application, attendance, or in any record, report, investigation and I **ORDER** that these charges be and are hereby **SUSTAINED**. Furthermore, I **ORDER** that the penalty of removal is hereby **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. 40A:14-204.

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.

12/22/16
DATE

JOHN S. KENNEDY, ALJ

Date Received at Agency: December 22, 2016

Date Mailed to Parties: December 22, 2016.

JSK/dm

APPENDIX

WITNESSES

For appellant:

Frank Harcom, appellant

For respondent:

Sergeant James Russo
Guy Cirillo
William Saraceni

EXHIBITS

For appellant:

P-1 DOC HRB 35
P-2 DOC HRB 39-40
P-3 DOC HRB 41-42
P-4 FNDA, dated October 16, 2015
P-5 Notice of Informal Pretermination Hearing, dated April 17, 2015
P-6 Disciplinary Appeal Proceeding, dated September 2, 2015
P-7 DOC HRB 84-19, dated May 18, 1994
P-8 Decision of Informal Pretermination Hearing, dated April 23, 2015
P-9 Order of Dismissal of Final Restraining Order, dated December 17, 2015
P-10 Harassment Complaint, filed October 9, 2012
P-11 Harassment Complaint, filed April 20, 2013

For respondent:

R-1 Harkcom 2015 Reapplication
R-2 Applicants Investigation Report
R-3 Harkcom 1990 TRO/FRO
R-4 Harkcom Harassment Complaint, dated October 9, 2012
R-5 Harkcom Harassment Complaint, dated April 8, 2013
R-6 PNDA
R-7 Appeal of Major Disciplinary
R-8 Notification of Major Disciplinary
R-9 Decision of Internal Pre-Term Hearing
R-10 DUI PNDA
R-11 Special Custody Report on DUI
R-12 Appeal of DUI
R-13 Disciplinary Appeal (DUI)
R-14 Harkcom Work History
R-15 Harkcom 1997 Application
R-16 1997 Receipt of H.R. Materials
R-17 H.R. Bulletin 94-19
R-18 IMP: Processing of Re-Hires
R-19 DOC Rules
R-20 FRO Order of Dismissal, dated December 17, 2015
R-21 H.R. Bulletin 84-17
R-22 Falsification Discipline Appeal Proceeding