



STATE OF NEW JERSEY

In the Matter of Joseph Connors
Camden County, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-912
OAL DKT. NO. CSV 14966-15

ISSUED: JANUARY 18, 2019 BW

The appeal of Joseph Connors, County Correction Lieutenant, Camden County, Department of Corrections, 30 calendar day suspension, on charges, was heard by Administrative Law Judge Elia A. Pelios, who rendered his initial decision on November 29, 2018. 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 January 16, 2019, 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 suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Joseph Connors.

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 16th DAY OF JANUARY, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 14966-15

AGENCY DKT. NO. 2016-912

**IN THE MATTER OF
JOSEPH CONNORS, CAMDEN COUNTY,
DEPARTMENT OF CORRECTIONS.**

Jacqueline M. Vigilante, Esq., for appellant (the Vigilante Law Firm, P.C., attorneys)

Antonietta P. Rinaldi, Assistant County Counsel, for respondent Camden County
Department of Corrections (Christopher A. Orlando, County Counsel)

Record Closed: June 2, 2017

Decided: November 29, 2018

BEFORE ELIA A. PELIOS, ALJ:

STATEMENT OF THE CASE

Appellant, Lieutenant Joseph Connors (Connors), appeals a thirty-day suspension from his position with the respondent Camden County, Department of Corrections (Camden) for violations of N.J.A.C. 54A:22.3(a)(6) Conduct unbecoming public employee; N.J.A.C. 4A2-2.3(a)(7) Neglect of duty; and N.J.A.C. 4A:2-2.3(a)(23) Other sufficient cause.

PROCEDURAL HISTORY

On February 6, 2015, the Appointing Authority issued a preliminary notice of disciplinary action setting forth the charges and specifications made against appellant. On or about August 18, 2015, a final notice of disciplinary action sustained the charges set forth in the preliminary notice of disciplinary action and imposed a thirty-day suspension. Appellant appealed, and the matter was filed at the Office of Administrative Law (OAL) on September 22, 2015, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on February 27, 2017. The record was held open to allow the parties to submit closing briefs and closed on June 2, 2017. Orders were entered in this matter to allow for an extension of time in which to file the initial decision.

FACTUAL DISCUSSION AND FINDINGS

On or about November 9, 2014, a routine shakedown was performed in 3 North C of the Camden County Correctional Facility (CCCF). Subsequent to the shakedown, several inmates complained that personal property was defaced. Respondent alleges that appellant was made aware of the situation and did not properly investigate and report on the matter as required by the rules governing the CCCF.

Respondent called Lieutenant John Jones (Jones), who at the time of testimony was with the facility for seventeen years and was a lieutenant for less than a month. He previously served as a sergeant for four years and corrections officer for thirteen years prior. At the time of the matter under review, Jones was a sergeant. He worked with internal affairs for ten years and would conduct criminal and administrative investigations. Jones completed a report in this matter (R-2). He stated that on December 1, 2014, the warden called him and gave him an incident report (R-3). The warden asked Jones to determine if Corrections Officer Carr's safety was in danger (R-5, R-3, R-4, R-5). Jones began his investigation regarding the 3 North "C" (3NC) shakedown. Several inmates complained that their personal property – photographs - were defaced. He reviewed documents generated in the aftermath of the incident. He also interviewed inmates who were involved in the incident. Jones noted that the

inmates all liked officer Carr and believed that he was not involved and there was no problem with him. He also reviewed pictures of Carr's name written on cell walls. The witness then met with the warden and told him that Carr was safe. The warden told Jones to interview officers involved in the shakedown to determine who defaced the personal photographs. He then reviewed the transcript of his interview with Sergeant James Pierce (Pierce) (R-7). The interview was conducted on December 11, 2014. Pierce had interviewed inmates and provided information to the appellant. He stated and admitted that he did not make a log. Pierce met with the appellant and briefed him. The appellant told him to assemble the officers in the dining room. Connors told Pierce to write a report. Jones also interviewed Corrections Officer Jason King (King) and reviewed the transcript (R-8) on December 11, 2014. King went to tell Connors, about a conversation he had had with Officer Bulzak, but Connors shooed him away, and said that it was out of his hands. Officer Matthew Bulzak (Bulzak) denied defacing photos and was not charged. King did not see Bulzak deface the photos but believe that he did. No officer's name was ever mentioned during his conversation before Connors, because Connors did not want to hear it.

Jones also interviewed Officer Michael Jacob (Jacob) on December 19, 2014 and reviewed the transcript (R-9). Jacob said that King wrote Connor's name on the photograph, but he never told Connors that he saw King do this. During an interview on December 30, 2014, King still denied writing on the photograph.

Jones also interviewed the appellant on December 30, 2014 (R-11) and reviewed the transcript. Connors told Jones that he met with the officers one-on-one but did not document his conversations. Connors met with the officers as a group, which indicates that the meeting was also undocumented. The appellant saw that Jacob was evasive. He did not write up King or Jacob. Jones obtained the same information as Connors but noted that Connors did nothing with it. Connors said that he only had hearsay and did not want to go on actual record with it. Jones noted that Connors should have had all shakedown officers' work and should have issued a general incident report. He further indicated that the appellant should have had Jacob write a report about what he saw and should have issued a staff sergeant complaint against King. After the interview Jones notified the warden and his supervisor. He issued a

supervisor staff complaint against the appellant. Jones does not determine the penalty—the warden does. His findings were included on pages forty-seven of his report (R-2). Jones stated that everything was fine until the moment Jacob told Connors that he had witnessed the defacing of the photographs. Connors did nothing with the information from Jacob and did not write a report. While Connors stated that he turned everything over to internal affairs, Jones noted that he did not receive anything until the warden summoned him after Officer Alfred Carr (Carr) complained. Jones only learned during his internal affairs interview with Connors what Jacob had said to him on December 30, 2014.

On cross-examination with regards to the transcript of Jones' interview (R-7), it was noted that Pierce said that he generated a report, collected pictures, and submitted them to Captain Christopher Foschini (Foschini) who was the head of internal affairs. Jones stated he would have been notified had this occurred. Since he was not, he believed that this incident did not happen. He further indicated that normally internal affairs is briefed when a report comes in. Jones noted that he read Pierce's report when he received it from the warden. Carr would not have had Pierce's report. Jones also had Pierce's photos. There is no evidence that Pierce lied. He stated that King was charged on the basis of Jacob's statement and Jacob said that he never told Connors, but Connors said that he did. Jacob was not charged. Jones further indicated that a second interview of King was conducted after Jones' interviewed Connors. The appellant did say in his interview that Jacob could have been telling the story. It was noted that Pierce acknowledged supervising the shakedown but said that he was doing something else at the time and was not in the block at the time. Pierce did not keep a log of who shook down what cell, which is usually done, but he forgot. Pierce did not ask the officers which cells they shook down. The officers admitted to the mistake of not keeping a log.

Jones did not advise Connors that he was the target when he interviewed him on December 30, 2014. This was because he was not a target at that time. Connors was not charged until February 6, 2015. Bulzak was not charged with anything as no case could be proven against him. Connors could have had the officers write a general incident report but could not require sworn statements. Jacob should have reported what he saw. Jones

indicated that internal affairs is responsible for all investigations of misconduct, if a written report was submitted, it would still go to internal affairs. Pierce's report was vague, but Jones did not write him up.

On redirect, Jones stated that the shift commander in this case, the appellant, was responsible for the written report. There is no proof anyone ever gave this information to internal affairs. Pierce did not say when he turned his information over to internal affairs. Jones stated that just because you do not believe what someone is telling you is not a reason not to write a report of what they referred to you. He did not know when internal affairs received Carr's report. Jones never heard from Connors that Carr's life was not in danger.

Warden Karen Taylor (Warden) testified on behalf of respondent. Warden Taylor has been employed by the Department of Corrections for twenty years. She has served as warden for four months, had been a captain for four years, and previously a lieutenant for six years. At the time of the incident currently under review in these proceedings, she was serving in the rank of captain. Warden Taylor stated that when a captain or warden is not on-site, a lieutenant is in charge. Lieutenant is held to a higher standard. She stated that she received from internal affairs a supervisory staff complaint (R-12). She also received rebuttal from the appellant, and copies of the relevant policies. A recommendation of discipline was made at that time, and Warden Taylor believes that the rebuttal was very telling. She indicated that the rebuttal admitted the failure to act and noted that on page two, line twenty-four (R-13) that there was an apology. She questioned why one would apologize if they did not believe they did something wrong. The Warden recommended a thirty-day suspension, even though there were only a few minor incidents in the appellant's disciplinary history. Reviewing the unusual incident report, she felt that the appellant did not get the egregious nature of the incident.

The Warden stated that if inmates believe that their possessions are being defaced, they can feel that they are being dehumanized and disrespected. She felt that a report by the commander would have brought the potential problem to the

administration's attention that much sooner. She stated that the then-Warden concurred with her recommendation, and she acknowledged that she signed the document (R-1) but did not prepare it. Warden stated that it had been prepared by Sergeant Robert Leithead had who is now a lieutenant

The Warden stated that unusual incident reports document unusual incidents in an amount that she could have done a general incident report. She then referred to policies that she felt were violated, including the internal affairs order 001 (R-14), the rules of conduct (R-15), specifically, sections 1.1, and that he did not submit a report.

1.2. Conduct unbecoming because should have reported the charge.

1.3 Neglect because he failed to document the incident, notify his superiors.

3.1 Supervision due to a fail to exert his commanding authority.

3.5 He failed to conduct an investigation.

3.6 He failed to submit a report.

Warden stated that appellant did not comply with General Order, 169 which states that the shift commander is to prepare unusual incident reports.

On cross-examination, Warden stated that she did not know when she received the general incident report dated November 9, 2014 (R-4).

With regard to grievances dated November 9, 2014 and November 21, 2014 (R-5), The Warden noted that the Hodges grievance stated that it was given to Pierce on November 21. She believes that is when Pierce submitted exhibit R-4, although she stated that Pierce was not charged in these proceedings. The Warden further indicated that under the internal affairs order 001-3E, all complaints must be forwarded to internal affairs

immediately, and that it is not up to the appellant to determine what is credible and what is not. The course of action is to write it up and internal affairs investigates.

On redirect, the Warden stated that she is not as familiar with internal affairs policies. Internal affairs will investigate based on the information that they have. She states that Foschini never mentioned to her any photographs 4 before December 1, 2014.

The appellant called Sergeant Pierce on his behalf. Pierce indicated that he was testifying under subpoena. He recalled the incident in question, at which time he was the floor supervisor for the third floor. He was responsible for the shakedown, and he became aware of inmate complaints. Pierce noted that King brought the complaints to his attention. He met with the inmates and they showed him the photographs that had been defaced. He then met with all the officers, who all denied being a part of defacing the photographs. Pierce reported this, and it went up the chain. They called all involved to the supervising officer's dining room, and they were asked to own-up. None of the officers would own-up to this incident. He did the most talking during the session. Pierce had initially reported to the appellant, who then reported to the floor. Officers were given to the end of the shift to come forward, but no one came forward. The matter was being turned over to internal affairs. Appellant told Pierce to write the report and identified his report as exhibit R-4. He stated that he wrote the report on the day of the incident, and he gave it to the appellant. The appellant signed-off and told him to put it in the internal affairs' box. Pierce did so that day. He believed it was Foschini's mailbox. There was no follow-up from internal affairs to Pierce.

On cross-examination, Pierce stated that he did not know at what time the incident occurred other than it was in the afternoon. He believed the incident happened on a weekend but was not sure whether it was a Saturday or Sunday. He did not keep a copy of his report and did not follow-up. Pierce stated that he believes that he attached photographs to the report, but he cannot be certain. He remembered being annoyed about the situation. He did not describe the dining room meeting. In his report, Pierce stated that the inmates' items were collected by the appellant, and he spoke with the appellant, and together they did not believe that Jacob was credible. They knew that Jacob and King had issues. He was referred to his

internal affairs report (R-7 at page 4, lines 169 through 171), and stated that he generated the report and collected the pictures, and we submitted them to Feeney. He stated again that he believes the photographs were attached to the report and submitted but was not 100 percent sure. Pierce stated that he did not see the grievances.

On redirect, Pierce stated that Jacob and King both wanted to date the same officer which caused animosity in the work environment. He believed that Jacob would try to set-up King.

On recross-examination, Pierce indicated that the Jacob and King relationship is well known. It was noted that Jones had indicated that Jacob alleged that King had defaced the photographs.

Next, to testify was Corrections Officer King. He testified under subpoena. King was aware of the November 9, 2014, allegations of defacing personal property. Pierce sent him down to find out what happened. He could not get any information and went back to Pierce. King noted that he had no further direct discussions with Pierce on the matter, but he was addressed as part of a group by Pierce and the appellant. He stated that the appellant told everyone to come clean and that there would be discipline, but that would be better than internal affairs. Nobody came forward. He did not remember a lot of details because this happened at the end of his shift. King stated that he did not remember the details, but if no one came forth by the end of the shift, the matter would go to internal affairs. He had a brief discussion with the appellate in private. The appellant reiterated his position, but he gave no mention that King was under suspicion. He stated that the appellant took the matter seriously and did not "shoo him off."

King recalled giving a statement. (R-8.) He had a gut feeling that Correction Officer Bulzak did it and mentioned that to the appellant. But appellant did not want to hear it. King did not see the incident happen. He took the appellant's demeanor to mean that internal affairs would figure it out. He did not remember the exact conversation. King stated that he and Jacobs are not friends and just colleagues. They did not get along and tolerate each

other for work. He reiterated that he did not deface the photographs, even though he knows that Jacobs said that he did.

On cross-examination, King acknowledged that he was charged with regard to his report (R-8). On page ten of the report, King stated what information he had given the Conner's, and that he started to tell Connors that he was in possession of the pictures. Connors made a point of it going to internal affairs and stated he did not want more details of the incident. King told him that he could tell him who had the pictures. Appellant indicated that it was up to internal affairs, and that it was out of his hands. Connors did not ask King for a report, even though he said that he knew who did it. King reiterated that he thought he knew who did it.

On redirect, King again reiterated that it was understood if nobody came forward by the end of their shifts, and at 3:00 p.m. the matter was going to internal affairs. It was after 3:00 p.m. when he spoke to the appellant, and that is when Connors' said it was out of his hands. King assumed that meant the matter had already been sent to internal affairs.

Appellant Connors testified on his own behalf. He stated that he was hired September 28, 1998. On November 9, 2014, he was serving in the rank of lieutenant. He was a shift commander from the 7:00 a.m. to 3:00 p.m. shift and was the highest rank on-site at the time. He never had formal training on when he was to make out complaint forms. He indicated that when you get promoted, you shadow someone else in the position, and learn from others. His next scheduled day was to be November 12, 2014. Connors did not order the shakedown and was working off of the laundry schedule. The inmates are taken out of the cells, the linens are then stripped, and the shakedown for contraband is performed. Officers are to look through all of the items. Appellant was aware that something was going on, and that Pierce was trying to handle the matter. Pierce called the appellant back and filled him in on what was going on. The appellant then went to see the inmates to obtain the photographs for investigation. One inmate, S.M., gave him a picture that did not match the defacing of other pictures. The appellant secured the pictures in the shift commander's office. He asked Pierce to assemble the officers in the dining room because that was the most private setting

available. He explained the severity of immature actions and gave a deadline of 5:00 p.m. or else the matter would go to internal affairs. Connors left the meeting to deal with a disturbance in another area of the jail and decided to interview the inmates. He determined that there was no threat to Carr from the inmates. The inmates defended Carr and indicated that they believe that he was set-up. He was not aware until the internal affairs interview on December 30, 2014, that Carr was concerned for his safety. Jacob told him that he saw King write on a picture but did not say what he wrote. The appellant took that into consideration and spoke to King to get his reaction. Jacob was up for promotion but had a lot of discipline issues. Appellant just felt that he did not have enough information upon which to write-up King, and possibly jeopardize his promotion. Appellant was aware of the issues between Jacob and King, which also made him feel that he did not have enough information. He stated that King did not try to tell him anything at 5 o'clock. He reviewed Pierce's report, and felt it was intentionally vague. Connors attached the pictures to Pierce's report and ordered him to place it in Foschini's mailbox. The appellant asked if any follow-up came, and he never got a straight answer. He was not aware of any investigation until he saw Carr meeting with the warden. He heard through the grapevine that Carr was upset that nothing happened yet. Even if someone confessed, it still goes to internal affairs as official misconduct. Connors expected internal affairs to address Pierce's report immediately and was surprised when he came in on Wednesday and nothing had happened. Connors did not generate his own report because he had no credible evidence. Connors believed he was a witness to the matter, not a target of the investigation. He was not offered counsel.

On cross-examination, Connors stated that he was employed since 1998. He was a lieutenant for two years before the demotion and is familiar with procedures as much as anyone in the room. In his words, appellant indicated that if someone said that they saw someone do something wrong, it is not his responsibility to write it up. He met with the officers between 1:00 and 2:00 p.m. Appellant told Pierce to start a report once they obtained the photographs, which was at about 12:30 p.m., and was turned in at 5:00 p.m. as noted on the time stamp of the document (R-4). At 12:50:6 Connors called the warden at home regarding another matter which involved sending an officer to urgent care. Appellant did not mention this matter because he did not see it as emergent.

Connors stated that what he did was not investigate. It was an inquiry, an informal questioning. Appellant indicated that he could have investigated, and he could have had the officers write statements, but he did not.

With regard to King's testimony, Connors stated that he did not recall King coming to see him. As far as he is concerned, this never happened. He stated that King was lying. Appellant indicated that Jacob came to see him, and he said he knew everyone wanted to point the finger at him. The appellant stated that if he believed Jacob, he would have charged King. Connors further indicated that he did not think that the incident needed to be in the report because he was going to go in person. When asked why he apologized in his statements, appellant stated that he thought he was doing the right thing.

Connors stated that he called the warden only about the urgent care matter, not the unusual incident. He did know he was a target, if he had known he may have not used casual language at his internal affairs interview.

On rebuttal, Camden recalled Jones. He stated that he did not feel that the appellant, when he inquired about the follow-up, was asking about the photograph defacing incident.

Much of the dispute in this matter is not about what did or did not occur, but about why certain actions were or were not taken and whether or not there was responsibility to act differently. It is not in dispute that the shakedown occurred, that inmates' personal property was damaged or that several filed inmates complaints in the aftermath.

Based on the evidence and testimony submitted in this matter, I **FIND** that on or about November 9, 2014, Sergeant Pierce made appellant aware that numerous inmates in 3NC had filed complaints stating their photographs were defaced after a shakedown in that area. I further **FIND** that appellant questioned the officers assigned to the shakedown, both as a group and individually, to ascertain who was responsible for defacing the inmate's photographs. I further **FIND** that during an individual interview, Corrections Officer Jacob told appellant that he witnessed Corrections Officer King deface one of the photographs in

question. I finally **FIND** that appellant did not document the incident or the allegation on a general incident report and did not complete to finality an investigation in this matter or issue a Supervisory Staff Complaint to Corrections Officer King.

LEGAL ANALYSIS AND CONCLUSIONS

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).

The respondent has sustained charges of violations of N.J.A.C. 4A:2-2.3(a)6 (conduct unbecoming a public employee); N.J.A.C. 4A:2-2.3(a)7 (neglect of duty); and N.J.A.C. 4A:2-2.3(a)12 (other sufficient cause), specifically, violations of the Camden County Corrections Facility's Rules of Conduct 1.1. (violations in general); 1.2 (conduct unbecoming); 1.3 (neglect of duty); 3.1 (supervision); 3.5 (investigations); 3.6 (departmental reports); and Internal Affairs Order #001, et al.

Respondent also sustained charges against appellant for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6). To the extent that appellant is charged with violation of Rule of Conduct 1.2, which addresses unbecoming conduct, consideration of such violation will be addressed in concert with the current analysis.

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that "adversely affects the morale or efficiency of a governmental unit or that has a

tendency to destroy public respect in the delivery of governmental services.” Karins v. City of Atlantic 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, 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)]. Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

In the present matter, the record reflects that appellant failed to perform duties required of him in the aftermath of the “shakedown” and the subsequent investigation of allegations of defacing inmates’ property. An officer disclosed to him an allegation of an understanding as to who initiated the matter, and appellant did not relay that information or file a Supervisor’s Staff Complaint Report. Appellant admitted to concern that the allegation was hearsay and that the individual was up for a promotion. This is not a reason to deprive internal affairs of pertinent information which they could investigate and determine if it was accurate or not. Appellant indicated several times that internal affairs was already investigating the matter and he felt it was in their hands. All the more reason to give them potentially pertinent information. This course of action could potentially have a chilling effect on employees in his chain of command coming forward if they did not believe their reporting of wrongdoing would be appropriately followed-up or investigated. This clearly constitutes behavior which could adversely affect the morale of the facility. Accordingly, I **CONCLUDE** that the appointing authority has proven, by a preponderance of credible evidence, that the charge of N.J.A.C. 4A:2-2.3(a)6 (conduct unbecoming a public employee), and Rule of Conduct 1.2, should be and are hereby **SUSTAINED**.

Respondent also sustained charges against appellant for neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). To the extent that appellant is charged with violation of Rule of

Conduct 1.3, which addresses neglect of duty, consideration of such violation will be addressed in concert with the current analysis. "Neglect of duty" has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the present matter, the duties implicated are spelled out in Rule of Conduct 3.1, 3.5, and 3.6.

Rule of conduct 3.1 provides:

Personnel in a supervisory capacity are expected to exercise authority commensurate with their responsibility. A supervisor is ultimately responsible for the actions of his subordinates and will be held accountable when circumstances indicate that he/she has failed to properly supervise.

Supervisors are expected to prefer disciplinary charges or to take other appropriate disciplinary action when indicated.

Rule of conduct 3.5 provides:

When ordered by a supervisor or when circumstances so indicate (as directed by the duties and responsibilities of assignment) personnel shall conduct proper, thorough and complete investigations.

Rule of conduct 3.6 provides:

Personnel shall submit all necessary reports, whether at the direction of a supervisor or upon the occurrence of circumstances requiring a report, prior to going off duty after the request by the supervisor or of an incident necessitating a report.

Daily reports, logs, etc., shall be submitted by personnel at the end of a normal tour of duty. Reports submitted by personnel shall be truthful and complete.

Personnel shall not knowingly enter or cause to be entered any inaccurate, false or improper information in any departmental report.

In the present matter, the record reflects that appellant did not conduct a proper, thorough, and complete investigation in the aftermath of circumstances so indicating as a result of his supervisory position. Connors did not submit necessary reports upon the occurrence of circumstances requiring such. His actions constitute a failure to take appropriate disciplinary action required by his supervisory position. I **CONCLUDE** that his failure to do so constituted omissions of required duties, as enumerated in Rules of Conduct 3.1, 3.5, and 3.6.

The record reflects appellant's objection to General Order 169, which was reserved upon at hearing. General Order 169 represents policy governing how unusual incidents are to be handled and documented by the shift commander when an unusual incident occurs. The specifications on the Final Notice of Disciplinary Action make clear that appellant was charged with not properly handling the aftermath of an incident and the internal affairs report of Sergeant Jones (R-2), which appellant rebutted (R-13) makes it clear that the appointing authority was concerned with the unusual incident policy. Accordingly, I **CONCLUDE** that consideration of the policy does not duly prejudice appellant in these proceedings and that R-16 is to be admitted into evidence and made part of the record of the proceedings. I further conclude, that to the extent that General Order 169 requires that a shift commander create an unusual incident report when an employee engages in conduct which is detrimental to the facility's best interest. While the policy allows that not all

employee discipline constitutes an unusual incident, a circumstance where one employee alleges that a second employee defaced the personal property of an inmate in such a way so as to attempt to falsely convince the owner of the property that a third employee had in fact defaced it, such situation is fraught with potential peril. I **CONCLUDE** that General Order 169 required an unusual incident report and that appellant did not comply with that policy. I further **CONCLUDE** that the appointing authority has proven, by a preponderance of credible evidence, that the charge of N.J.A.C. 4A:2-2.3(a)7 (neglect of duty), and of Rule of Conduct 1.3 should be and is hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause). Specifically, appellant is charged with violations of the Camden County Corrections Facility's Rules of Conduct 1.1. (violations in general); 1.2 (conduct unbecoming); 1.3 (neglect of duty); 3.1 (supervision); 3.5 (investigations); 3.6 (departmental reports); and Internal Affairs Order #001, et al.

It is noted that the preliminary and final notices of disciplinary action (R-1) indicate, in the sustained charges section at the conclusion of identifying regulations and general orders allegedly violated by appellant, the words "et al." Such amorphous terminology taken literally would constitute insufficient notice to appellant of the charges faced and would be impossible to prepare to defend. Accordingly, I **CONCLUDE** that the consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a)(11) (other sufficient cause) will be limited to the specific regulations, rules and general orders specifically enumerated in the Final Notice of Disciplinary Action (R-1). Additionally, Rules of Conduct 1.2 1.3, 3.1, 3.5 and 3.6 have been addressed within the discussion of violations of N.J.A.C. 4A:2-2.3(a)(6) and (7).

Appellant is charged with violating Rule of Conduct 1.1 violations in general, which is a charge of "Failure to comply with regulations, orders, directives or practices of the department, whether verbal or written by the Warden or his designee." (R-12.) The Rule provides that:

Any employee who violates any rule, regulation, procedure, order or directive, either by an act of commission or omission, whether stated in this manual or elsewhere, or who violates the standard operating procedure as dictated by departmental practice, is subject to disciplinary action in accordance with the New Jersey Department of Personnel (Civil Service) rules and regulations. Disciplinary actions shall be based on the nature of the rule, regulation, procedure, order, or directive violated, the severity and circumstances of the infraction and the individual's record of conduct.

Violation of this rule would seem to be implicated by the appointing authority's allegations of violations of Internal Affairs Order #001.

Internal Affairs Order #001, covers Internal Affairs Procedures. This Order does not appear to be implicated as it appears to govern how internal affairs is to handle an investigation or how a shift commander should if a minor matter is referred back to him. That was not the case here. Accordingly, I **CONCLUDE** that the appointing authority has not demonstrated by a preponderance of credible evidence, that appellant violated Internal Affairs Order #001.

Having determined that appellant has not violated Internal Affairs Order #001, but has violated Rules of Conduct 1.2, 1.3, 3.1, 3.5, and 3.6, I **CONCLUDE** that the appointing authority has demonstrated by a preponderance of credible evidence, that appellant violated Section 1.1 of the Rules of Conduct. Accordingly, I further **CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) must be and is hereby **SUSTAINED**.

PENALTY

The Civil Service Commission's review of penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority.

General principles of progressive discipline apply. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990).

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197–98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also, In re Hermann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty 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.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

The Commission has authority to increase the penalty beyond that established by the appointing authority's Final Notice of Disciplinary Action, but not to removal from suspension. N.J.S.A. 11A:2-19. The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, but removal shall not be substituted for a lesser penalty. See, Sabia v. City of Elizabeth, 132 N.J. Super. 6, 15–16 (App. Div. 1974), certif. denied, Elizabeth v. Sabia, 67 N.J. 97 (1975).

In the present matter, appellant's chronology of discipline was entered into evidence in a sealed envelope (R-17). Having determine that the charges were to be sustained I have opened and reviewed the history, which does not appear to be in dispute. While it may not be entirely fair to characterize it as unremarkable, it is not particularly noteworthy either.

The chronology identifies five prior instances of written reprimands, and one one-day fine. None of the actions resulted in a major disciplinary action or even a suspension of any sort. Several more instances which resulted in counselling were identified, though no identified incidents have occurred since 2009.

Of the five written reprimands, three reference neglect of duty. One references Rule of Conduct 3.1 (Supervision) and one references unbecoming conduct, though in the context of a chronic lateness issue. The one day fine also references unbecoming conduct in the context of a chronic lateness issue.

While appellant's history did not prevent respondent from promoting appellant, it also cannot be ignored that neglect of duty and supervision appear to be recurring themes, leading one to consider whether appellant appreciates the importance of following through on required duties, even when one individual so charged may question the need. This is especially true in the setting of a paramilitary environment such as CCCF and given appellant's role in the supervisory structure of that facility.

A breakdown of communication or thorough performance of duties, especially in the chain of supervision, could lead to situations where leadership is not aware of certain information or circumstances that could be dangerous to the security and safety of those working at or residing in the facility, and not be fully equipped to address or deal with those circumstances. It cannot be accepted. The potential for catastrophic consequences worse than what was realized in this situation must be kept in check as much as possible. That requires that duties and supervisory responsibilities are followed through on and that those residing in and working at the facility, up and down the chain of command, and ultimately the public, can rely on it. Accordingly, I **CONCLUDE** that the thirty-day suspension sought by respondent in this matter is appropriate and should be **AFFIRMED**.

ORDER

I **ORDER** that the charges of violations of N.J.A.C. 54A:22.3(a)(6) Conduct unbecoming public employee; N.J.A.C. 4A2-2.3(a)(7) Neglect of duty; and N.J.A.C. 4A:2-2.3(a)(23) Other sufficient cause be and are hereby **SUSTAINED**.

I finally **ORDER** that appellant's thirty-day suspension also be **SUSTAINED**.

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.

November 29, 2018

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

November 29, 2018
November 29, 2018

Date Mailed to Parties:

EAP/nd

APPENDIX

WITNESSES

For Appellant:

Joseph Connors
James Pierce
Jason King

For Respondent:

John Jones
Karen Taylor

EXHIBITS

For Appellant:

A-1 Camden County Department of Corrections, Office of Internal Affairs, Witness Acknowledgement Form, Joseph Connors, dated December 30, 2014

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action (31-A), Civil Service Commission, State of New Jersey, dated February 6, 2015; Final Notice of Disciplinary Action (31-B), Civil Service Commission, State of New Jersey, dated August 18, 2015
- R-2 Camden County Office of the Warden, Correctional Facility, Investigative Report, Failure to Supervise Incident, dated November 9, 2014
- R-3 Camden County Department of Corrections, General Incident Report, dated December 1, 2014
- R-4 Camden County Department of Corrections, General Incident Report, dated November 9, 2014
- R-5 Camden County Department of Corrections, Inmate Grievance Forms by T.R., K.H., J.C., S.M., S.B., dated November 9, 2014

- R-6 Photographs of Cell Walls with "CARR" Written on Them
- R-7 Interview with Sergeant James Pierce by Sergeant John Jones, dated December 11, 2014
- R-8 Interview with Officer Jason King by Sergeant John Jones, dated December 11, 2014
- R-9 Interview with Officer Michael Jacob by Sergeant John Jones, dated December 19, 2014
- R-10 Interview with Officer Jason King by Sergeant John Jones, dated December 30, 2014
- R-11 Interview with Lieutenant Joseph Connors by Sergeant John Jones, dated December 30, 2014
- R-12 Camden County Department of Corrections, Supervisor's Staff Complaint Report, dated November 9, 2014
- R-13 Camden County Department of Corrections, General Incident Report, dated January 7, 2015
- R-14 Camden County, Department of Corrections, Internal Affairs Section, Approved by the Warden and the Camden County Board of Chosen Freeholders, Adopted November 1, 2006, Revised September 1, 2011, January 11, 2008
- R-15 Camden County, Department of Corrections, Rules of Conduct, Approved by the Warden and the Camden County Board of Chosen Freeholders, Adopted January 1, 1995, Revised September 1, 2011, December 12, 1996, May 3, 1996
- R-16 Camden County, Department of Corrections, Unusual Incidents, Approved by the Warden and the Camden County Board of Chosen Freeholders, Adopted May 19, 2004, Revised September 1, 2011
- R-17 Appellant, Lieutenant Joseph Connors, Chronology of Discipline