

A-8



STATE OF NEW JERSEY

In the Matter of Kile Johnson  
Mercer County  
Department of Public Safety

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2014-1214  
OAL DKT. NO. CSV 16283-13

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**ISSUED: October 1, 2014PM**

The appeal of Kile Johnson, a County Correction Officer with Mercer County, Department of Public Safety, 10 working day suspension, on charges, was heard by Administrative Law Judge Linda M. Kassekert, who rendered her initial decision on August 18, 2014. No exceptions were filed.

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 October 1, 2014 accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

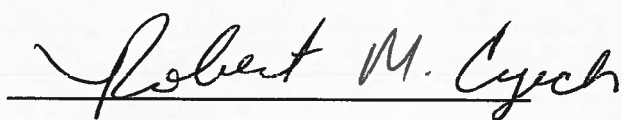
ORDER

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 Kile Johnson.

Re: Kile Johnson

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  
OCTOBER 1, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
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. CSV 16283-13

AGENCY DKT. NO. 2014-1214

**IN THE MATTER OF KILE JOHNSON,  
MERCER COUNTY DEPARTMENT OF  
PUBLIC SAFETY.**

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**Mark Catanzaro, Esq.,** for appellant, Kile Johnson

**Kristina Chubenko,** Assistant County Counsel, appearing for respondent,  
Mercer County Department of Public Safety (Arthur R. Sypek, Jr., County  
Counsel, attorney)

Record Closed: July 8, 2014

Decided: August 18, 2014

**BEFORE LINDA M. KASSEKERT, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Kile Johnson, appeals his ten-day suspension as a Correction Officer, by respondent, Mercer County Department of Public Safety (County). The respondent contends that it suspended appellant pursuant to N.J.A.C. 4A:2-2.3(a) 6, Conduct Unbecoming a Public Employee and N.J.A.C. 4A:2-2.3(a) 12, Other Sufficient Cause for insubordination. Appellant argues that he was following orders and was only asking a question.

## PROCEDURAL HISTORY

By Preliminary Notice of Disciplinary Action (PNDA), dated December 12, 2011, respondent proposed to suspend appellant from employment from the Mercer County Correctional Facility. Appellant requested a departmental hearing which was held on September 16, 2013. On October 21, 2013, appellant was served with a Final Notice of Disciplinary Action (FNDA), sustaining all charges and suspending him for ten working days. On November 5, 2013, appellant filed a timely appeal to the Civil Service Commission.

This matter was transmitted to the Office of Administrative Law for determination as a contested case on November 12, 2013. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing was held on July 8, 2014, and the record closed on that date.

## TESTIMONY

### **For Respondent:**

#### Lieutenant Asa Paris

Lieutenant Paris (Paris) has worked for the Mercer County Correctional Facility for twenty-three years and has been a lieutenant since November 2, 2012. On December 8, 2011, he was the area sergeant. On that day, the appellant was assigned to the Relief 1 Post as the relief officer working the 11:00 p.m. to 7:00 a.m. shift. At 5:40 a.m., Paris contacted the appellant via radio and ordered him to relieve the B-Pod Top officer who was assuming a hospital post for the following shift. The appellant responded to Paris "that is Relief 4's area." Paris again ordered the appellant to relieve the B-Pod Top Officer. The appellant responded by saying "what..." The rest of the response was not audible. A few seconds later, the appellant contacted Master Control and questioned the Shift Commander, Lieutenant Barber (Barber), by phone about the assignment. The appellant was told by Barber to "follow the order." Paris indicated that the appellant eventually followed the order, however he does not know at what time. As a result, Paris wrote an

incident report (R-1) which stated that the appellant did not comply with the order until the third time it was given. He stated in his report that the petitioner's actions demonstrated a clear disregard for the orders given by his immediate supervisor, Paris.

On cross-examination, Paris stated that there were typically four standard Relief officers and two "floats" assigned on the shifts to relieve officers on breaks and other assignments. When the appellant called Barber in Master Control, he did not know that Paris was there with Barber. Paris did not tell the appellant why he wanted him to relieve the B-Pod Top officer.

### Captain Richard Bearden

Captain Bearden (Bearden) has worked at the Mercer County Correctional Facility since September 1990, and was promoted to captain in November of 2004. He assists the Warden with various matters including discipline. He identified R-2, the FNDA, dated October 21, 2013, charging the appellant with conduct unbecoming a public employee and other sufficient cause. He also identified R-3; the PNDA, dated December 12, 2011. He drafted R-3. He stated that petitioner had already been charged with a step 1 violation for insubordination for an incident that occurred earlier in the shift. As a result, this incident was a step 2 violation.

Bearden identified R-4, the Mercer County Public Safety Table of Offenses and Penalties. He used this table to draft the charges. He also identified R-5, which is the appellant's disciplinary record.

### **For Appellant:**

#### Kile Johnson

The appellant testified that he has been a corrections officer at the Mercer County Correctional Facility since February 5, 2001. He was working the 11:00 p.m. to 7:00 a.m. shift on December 8, 2011. He received a radio communication from then-

Sergeant Paris to relieve the B-Pod area. He knew that this was Relief 4's area, that he was not the relief for that area. His regular relief is in the "old" jail, this relief would have been in the "new" jail. He had been doing Relief 1, in the old jail for about ten years. He called his lieutenant, Barber, on the phone because the radios are not good. Barber informed him that an officer got reassigned, so he followed the order to go to B-top. He never disobeyed an order. He only asked a question. The entire interaction only lasted two to three minutes.

On cross-examination, he agreed he went over his chain of command when he contacted Barber. He agreed that he could have filed a grievance but stated that a grievance would not have been heard for several months. He believes he was not insubordinate and was not guilty of conduct unbecoming a public employee.

### **FINDINGS OF FACT**

Based on the exhibits and testimony presented, the following is found as **FACT**:

1. Since February 5, 2001, appellant as been employed as a Correction Officer for the Mercer County Correctional Facility.
2. On December 8, 2011, he was ordered twice by his supervisor, Sgt. Paris to relieve the B-Top Officer. The appellant failed to obey this order and instead called the Shift Commander, Lt. Barber in Master Control. Lt. Barber told him to obey the order and he complied.

### **LEGAL DISCUSSION**

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Service Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583

(App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Delaware, Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933).

The county charged the appellant with violations of N.J.A.C. 4A:2-2.3(a)6, Conduct Unbecoming a Public Employee and N.J.A.C. 4A:2-2.3(a)12, Other Sufficient Cause.

### **Unbecoming Conduct**

One of the grounds for discipline of public employees is "[c]onduct unbecoming a public employee." N.J.A.C. 4A:2-2.3(a)(6). "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, 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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

In this matter, appellant was charged with conduct unbecoming a public employee for twice refusing to report to B-Pod to relieve the B-Pod Officer when ordered to do so, and not reporting there until he was ordered by the Shift Commander. The appellant argues that he was only asking a question.

Law enforcement officers are held to the highest standards of personnel integrity and dependability. In re Phillips, 117 N.J. 567, 577 (1990). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Bowden v. Bayside State Prison, 268 N.J. Super. 301 (App. Div. 1993), certif. denied 135 N.J. 469 (1994); Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64 (App. Div. 1971, certif. denied 59 N.J. 269 (1971)). The following of direct orders is important in maintaining this discipline. The order to report to B-Pod was not unreasonable and not unlawful. There was no need to question the order; if there was the appellant could have followed protocol and simply file a grievance.

As a result, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant's behavior constituted a violation of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee.



**Other Sufficient Cause**

In addition to the charges previously discussed, appellant was also charged with a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant was charged under R-4 with a C9 violation: insubordination. Insubordination is defined in R-4 as: intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority and disrespect or use of insulting or abuse language to a supervisor. In this matter, appellant twice refused to follow Sgt. Paris' direct order to relieve the officer in B-Pod. He did not follow the order until after he called Lt. Barber and she again ordered him to relieve the B-Pod officer; therefore, he meets the definition of insubordination. There was no evidence that he was intentionally disobedient, assaulting or resisting authority, disrespectful or using insulting or abusive language to a supervisor.

As a result, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant's behavior constituted insubordination and a violation of N.J.A.C. 4A:2-2.3(a)12, other sufficient cause.

**PENALTY**

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's 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. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). The question to be resolved is whether the discipline imposed in this case is appropriate.

Appellant has been found guilty of unbecoming conduct, in violation of N.J.A.C. 4A:2-2.3(a)(6); other sufficient cause, insubordination, in violation of N.J.A.C. 4A:2-2.3(a)(12). As a result, respondent suspended the appellant for ten working days. Appellant was charged with a step 1 violation for insubordination earlier on the

December 8, 2011, shift. His prior disciplinary record shows a November 26, 2011, charge of conduct unbecoming a public employee where he was suspended for seven days. There are other infractions but these all deal with absenteeism and lateness. Given that this was a step 2 violation based on the R-4 table, the penalty for a second infraction is fifteen days. As a result, I **CONCLUDE** that the ten-day suspension imposed by the respondent was appropriate.

**ORDER**

It is hereby **ORDERED** that the charges of conduct unbecoming a public employee and other sufficient cause, against the appellant, Kile Johnson, are hereby **SUSTAINED**.

The decision by respondent to suspend the appellant from his position as a Corrections Officer for ten working days was appropriate and I **ORDER** that the action of the Appointing Authority is **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. 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.

8/17/14  
DATE

Linda M. Kassekert  
LINDA M. KASSEKERT, ALJ

Date Received at Agency: 8/18/14

Date Mailed to Parties: 8/18/14

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**LIST OF WITNESSES**

For Appellant:

Kile Johnson

For Respondent:

Lieutenant Asa Paris

Captain Richard Bearden

**LIST OF EXHIBITS**

For Appellant:

None

For Respondent:

R-1 Report, dated December 8, 2011

R-2 Final Notice of Disciplinary Action, dated October 21, 2013

R-3 Preliminary Notice of Disciplinary Action, dated December 12, 2011

R-4 Mercer County Public Safety Table of Offenses and Penalties

R-5 Mercer County, New Jersey Miscellaneous Information, dated September 16, 2013