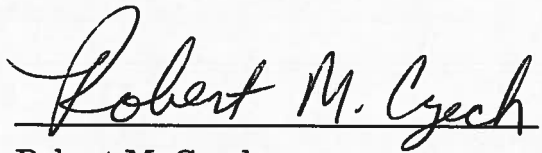


Re: Sabrina Minervini

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
NOVEMBER 6, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
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Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 03728-14

AGENCY DKT. NO. 2014-2295

SABRINA MINERVINI,

Appellant,

v.

HUDSON COUNTY DEPARTMENT

OF CORRECTIONS,

Respondent.

Merick H. Limsky, Esq., for appellant (Loccke, Correia, Limsky & Bukosky,
attorneys)

Daniel Sexton, Esq., for respondent (Hudson County Counsel, attorneys)

Record Closed: September 2, 2014

Decided: September 24, 2014

BEFORE CAROL I. COHEN, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Hudson County Department of Corrections, charged appellant, Sabrina Minervini, with violating N.J.A.C. 4A:2-2.3(1) incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(3) inability to perform duties, N.J.A.C. 4A:2-2.3(7) neglect of duty, and N.J.A.C. 2-2.3(11) other sufficient cause. The charges are

as a result of two alleged incidents that occurred during her 10 p.m.-to-6 a.m. shift on August 19, 2013. It was alleged that the officer relieved the prior officer on duty without conducting a physical head count. Additionally she was charged with engaging in conversation with one detainee on two occasions that evening for a total of over 1.35 hours, thereby failing to be attentive to anything going on in the dormitory. Her actions therefore put the security of the dorm at risk.

Respondent served appellant with a Preliminary Notice of Disciplinary Action dated October 2, 2013. A departmental hearing was conducted on October 16, 2013, and the charges were sustained. Respondent served appellant with a Final Notice of Disciplinary Action dated February 19, 2014. (R-1.) Appellant was suspended for ten days. The matter was appealed to the New Jersey Civil Service Commission on March 20, 2014. On March 28, 2014 the matter was referred to the Office of Administrative Law (OAL) as a contested case. The case was assigned to the undersigned on June 3, 2014. A prehearing conference was held on June 11, 2014, and a prehearing order was issued. The matter was scheduled for a hearing and heard on July 22, 2014. At the conclusion of the hearing the appellant requested written summations. The record remained open until September 2, 2014, when the summation briefs were submitted. Thereafter, the record was closed.

STATEMENT OF THE ISSUES

1. Whether respondent sustained the burden of proving the charges against appellant by a preponderance of the credible evidence.
2. What disciplinary action is appropriate if the charges against appellant are sustained.

FACTUAL DISCUSSION

Testimony

Lieutenant Burke testified that he has been on the job for twenty-three years, the last five as a lieutenant. He was the unit manager in an area that was designated for immigration detainees. He claimed that these detainees could include people suspected of being terrorists. Lieutenant Burke stated that Officer Minervini was assigned to work the 10 p.m.-to-6 a.m. shift on August 19, 2013, which was the date of the alleged incident. He testified that prior to that evening, he had received complaints from a detainee that another detainee named Coronel was always at Officer Minervini's desk. Lieutenant Burke was referred to R-1, the Final Notice of Disciplinary Action, which accused the appellant of incompetency and neglect of duties. He said that Officer Minervini was supposed to do a physical head count on the evening in question. Instead, she said that she visually scanned the area. In addition, he was told by two detainees that the officer spoke to one detainee, Ms. Coronel, for over an hour and the only time she got up from her desk was at the end of the shift to lock down the unit. As a result, Lieutenant Burke decided to investigate further and asked to have a disk made of the camera surveillance on that evening. Lieutenant Burke testified that a head count is supposed to be done by either having the detainees line up in the day area or to count them at their bunks. According to the video that he reviewed, the appellant did neither of these things.¹ Further, the video shows that Detainee Coronel was in front of Officer Minervini's desk from 9:50-11:05 p.m. Officer Minervini could not be properly observing the unit during this time when she was conversing with the detainee for one hour and 15 minutes. In addition, according to the video, Officer Minervini had another extended interaction with Detainee Coronel from 1:18-1:42 a.m.

Lieutenant Burke was referred to R-5, Officer Minervini's report. He disputed her report that she visibly scanned the tier. He testified that by looking at the tape you see that she did not do even a visual headcount. In addition, it was impossible to do a visual because some of the bunks and the bathroom are obscured. Further, contrary to

¹ A review of the video confirms that Officer Minervini did not do a head count either by lining up the detainees or counting them at their bunks.

what Officer Minervini stated, the detainee was at the officer's desk from the moment she came on duty. Lieutenant Burke contradicted Officer Minervini's statement in R-5 in which she stated that: "officer noticed that the demeanor of the inmate was not as usual. The officer listened to the inmate in an effort of gathering any information that would insure that there was no threat or any sign that the inmate was trying to relay any message to the officer that could cause the need of action." He said that at no time was he informed that Officer Minervini was doing an investigation relating to a threat and she never let her immediate supervisor know that she had suspicions of some type of threat. Her claim that she did a final assessment of a threat by talking to Coronel at her bunk was equally unbelievable because, even if she found no reason for concern, she had an obligation to report the incident to her supervisor. She did not do this.

Lieutenant Burke then reviewed R-6, the log had no indication of a conversation with the detainee or an indication of a concern with the detainee or threat or that the detainee was trying to pass on a message or any concern that there might be a need to take action. If there were any concerns it would have been appropriate to put them in the logbook.

Lieutenant Burke was referred to R-7—the Custody Staff Rules and Regulations Manual. It was his position that Officer Minervini had violated a number of the Standards of Conduct, including A. 4, an officer was to remain alert, aware of, and responsive to their surroundings at all times; B. 5, which prohibits sleeping or inattentiveness while on duty; A. 15 requires the maintenance of appropriate demeanor at all times; B. 23 forbids engaging in insubordination; B. 28 prohibits failure to properly conduct security checks and/or inmate head counts; B. 25 forbids lying or giving false information; and B. 27 intentionally withholding information necessary for the completion of an investigation. Lieutenant Burke also referred to the Post Orders for the Housing Unit ECHO Pod, which was the area in which the incident occurred. Under III Procedures it states that "prior to relieving the previously assigned Dorm Officer, the incoming assigned Dorm Officer assume control of all inmates and equipment assigned to the post by physically counting all inmates in the dorm." Lieutenant Burke stated that Officer Minervini did not comply with this instruction because she did not physically

count the inmates. Lieutenant Burke said that she also failed to "monitor individual and collective inmate activity at all times in an effort to ensure that the inmates remain safe and secure" because, when she was talking to one inmate for 1.35 hours, she could not properly monitor the activities of the remaining inmates. She also failed to follow the Post Orders of "Making regular tours at least every half hour." Lieutenant Burke testified that Officer Minervini had been working in ECHO pod for about one-and-a-half years and the Policies were prominently posted in the jail for her review. Lieutenant Burke said that head counts were a number one concern in the jail to insure that no one was missing or had a medical problem.

As for progressive discipline, Lieutenant Burke testified he had disciplined her once before for using obscene language with an inmate. She was given a five-day suspension for that infraction.

Re-Direct

During re-direct Lieutenant Burke sketched a diagram of the day room area. (R-10.) He said that the area included a total of sixty-four bunks, with a row of bunks being approximately forty feet. He felt that it based on this configuration, it was impossible to see all the way down the rows of bunks and impossible to see into the shower area. He said that when Officer Minervini arrived, she should have done a physical count by either going to the beds or lining the detainees up at the wall or at the table. Lieutenant Burke said that the figure of the number of detainees (R-6) is supposed to come from the new officer coming on duty and is supposed to match the body count from the prior officer. Based on the video this was not done. It was his opinion that the body count number came from the prior officer's count. Lieutenant Burke testified that he believed that the 11:05 count was a proper count. However, since a physical count was not done when she initially entered, then the subsequent counts might not be correct. The appellant pointed out that Minervini was not charged with giving a wrong head count.

Lieutenant Burke was questioned about how he came to investigate the matter in the first place. He said that he got complaints from other detainees that Minervini had

been verbally abusive and was not doing her job. As a result, he obtained a copy of the tape and reviewed it. The lieutenant stated that if there had been a proper count and the count did not match the prior count, then the facility would be placed on lock down and cards would be distributed to match the face card with the inmate. Lieutenant Burke asserted that the search form on contraband was not correct because Officer Minervini had not done a head count so she had not seen each prisoner to see if they had contraband on them. Lieutenant Burke was also asked questions about when Officer Minervini commenced her employment. The lieutenant said that before she went to the academy, right after the time she was hired, Officer Minervini worked in the main control area during the summer and before she went to the Academy.

Cross-Examination

Lieutenant Burke acknowledged that there was no audio to the tape that he reviewed, so he could not report what was said between Officers Presley and Minervini and Minervini and the detainee. He was referred to R-6, the log from Echo 3 South, which showed a headcount at the beginning of the shift of forty-nine detainees. Lieutenant Burke said that the 10:00 visual security check was an acceptable entry but it was necessary at some point for the officer to leave the desk. He asserted, contrary to the appellant's assertion, that the officer could not see into the entire bunk area from the desk where Officer Minervini was sitting. Lieutenant Burke said that, according to the tape, Officer Minervini did not do a visual security check at 11:00 p.m. He acknowledged that at 11:04 p.m., Officer Minervini did leave her desk and walked around the bunk area. There were three entries in the logbook between 10:00 and 11:00 p.m. According to the log there was a visual security check at 10:00 p.m., interaction with Officer Garrabito at 10:05 p.m. and a head count cleared with Central Control at 10:40 p.m. Therefore, the appellant asserted that she was doing something else during that time period besides talking to Detainee Coronel. Lieutenant Burke acknowledged that although Officer Minervini was hired for the job on Aug. 19, 2012, she first went for training and did not actually commence work until Dec. 29, 2012. Therefore, she was on the job for eight months before the incident occurred.

Lieutenant Burke agreed that it was a part of the job for officers to look out for fights and gangs. He said that it was not a negative when Officer Minervini said in her report that one of the inmates was acting odd and she decided to probe her about it to obtain more information. However, he felt that she was insubordinate because she withheld information from her superior by not advising him of what went on when she spoke to the inmate over an extended period of time. The insubordination was that she did not report her concerns to the supervisor. However, Lieutenant Burke acknowledged that he did not charge Minervini with submitting a false report. He said that he did not charge Minervini with fraternization because, since there was no audio, he did not have evidence of what actually occurred during the conversation with Coronel.

Re-Cross

On re-cross, the appellant pointed out that while the Post Orders (R-8) said that a physical inmate count had to be done, it did not prescribe the manner of doing the count. Lieutenant Burke said that there was supposed to be six head counts reported by radio each day. Central Office does not have a head count on each pod other than what is reported by each officer for the pod.

Sabrina Minervini

Officer Minervini said that she was employed by Hudson County Corrections since July 2012. She was first trained in the main control room until September 4, 2012. She did not work in a pod at that time. Then she went to the Bergen County Police Academy. She graduated on January 4, 2013. She then started working on ECHO 3 South. She was trained by a senior officer for three weeks. Where she trained was the same area where she was working at the time of the incident. She testified that at the time of the incident, she first came into the sally port and then visually scanned the ECHO section. She confirmed her count with the officer, who was leaving the post. She said that on the day in question, all of the detainees were in the front of the bunk (room), where she could see them and count them visually. She said

that if the detainees had been in the back of the bunk, she would have walked to the back. She claimed that she could see the shower and bathroom area from where she sat at the desk and she could count the number of inmates with her eyes.² Officer Minervini claimed that at the time of the first count all the women were watching the Spanish soap operas, doing bible study, or taking part in another activity in the front of the room. In answer to the charges that she was not paying attention to what was going on because she was talking to Coronel, she said that the detainees were not wandering around; they were watching TV or playing games. There was no sign of a threat. She said that when she was trained she was just told to do a head count, but was not told to do it in any particular way. She was never told that she was to line up the people and count them and she never saw any of the other officers doing this.

Officer Minervini was directed to R-6, the log. She said that the exhibit was not a complete copy of the logbook. It was missing the head count clear and other visual counts on the tour. That would have been on the first page, which was not attached to the exhibit. Officer Minervini referred to the 9:45 p.m. entry in the logbook and a count that she took. She said that she had a conversation with Officer Presley, who told her about any fights that may have occurred, any detainees who had medication, and anything else of importance. She would also have confirmed the headcount with Presley.

Officer Minervini described what was occurring in the tape. She said that detainee Coronel could be seen behind the desk. She was emptying the garbage and restocking the supply of feminine products and toilet paper, which were stored there. She conversed with the inmate who was supervising the chores to be done and who then gave assignments to detainee Coronel. Officer Minervini explained that at 10:00 p.m., after she made sure that everyone was safe, she had to start the logbook and do the roster sheet. At 11:04 p.m. she stood up to turn off the lights. The detainees who have cleaning responsibility do it after the detainees are in their bunks at 11:00 p.m.

² Officer Minervini said that there were no doors on the bathroom and the showers had only a partial door to cover the detainees' private parts.

The roster was picked up at 11:10 p.m. and handed to Central Control. The search sheet is also handed in at that time. She explained that the video showed that she was doing her work at the same time that Coronel was talking to her. She was able to do a visual check even though Coronel was talking to her. She said that when Coronel first came to the desk at the beginning of the shift, she asked to go down to medical. She said that she found out that she lost her case and was losing custody of her children. Officer Minervini said that it was part of her job to advise and counsel inmates. She assessed the situation and did not think that Coronel was a suicide threat and was not exhibiting signs that required medical attention. She told Coronel that she could only go to the infirmary if she was in pain or if she was going to hurt herself. The report said that she listened to the inmate in an attempt to gather information to insure that there was no threat or any sign that the inmate was trying to relay any message that could require action on the officer's part. Officer Minervini testified that she had had conversations with Coronel before. Coronel had told her who had problems earlier in the day. She thought that conversations with Coronel were important for the safety of the detainees and herself. She considered Coronel an informant.

Minervini said that inmates had made complaints against her. She said that it was motivated by the fact that they did not like that the officer did her job and made them do theirs. She made them put their games away when it was lights out. There was a group that hung out together and fought with Coronel. Officer Minervini denied that she had submitted a false or inaccurate report. She said that she was able to do an accurate head count by scanning the room with her eyes. She denied fraternizing with Coronel. Her understanding of fraternization was physical contact or the exchanging of personal information. She said that she did not exchange personal information with Coronel. She said that at the end of her shift, she spoke to Coronel to see if she was OK and she determined that she did not have to be sent to medical. She did not feel that what she did was improper or that it was any different from what she had been trained to do.

Re-Direct

Officer Minervini stated that she did not think that Coronel was trying to distract her when she talked with her for over an hour near the beginning of her shift. She said that everything was quiet at the time and except for a few females, all of the detainees were in her line of vision. Minervini also stated that the roster sheets that she filled out, while Coronel was talking to her, took about forty minutes to complete.

Cross-Examination

Officer Minervini described the scene on the tape at the beginning of the shift. She said that she entered from the area of the elevator; walked by the four tables; and did not know if the prior officer saw her when she came in the room. After she did her visual count, she saw the previous officer on duty. She did not know exactly when she got to her post, but she thought that it was approximately 9:52 p.m. Officer Presley told her that there was no problem with the inmates. The attorney for the respondent asked her to point out in her report where she mentioned that Coronel asked for medical assistance. Minervini said that she did not mention it in the report. Officer Minervini was asked how, in a minute and a half, she could scan the bunk and come up with a head count. She said that she counts by twos and confirmed it with the prior officer. She said that she can scan the shower area at that time also. She described the area as being about forty feet of bunk area and tables and showers. She described the table area as circular tables squished together and four rectangular tables. The desk area is about twenty feet and goes almost up to the recreation yard on one side. At the other end of the desk is where the bunk area begins. Officer Minervini claimed that from her desk she could see all the bunks, the showers, and the bathroom area, including the handicapped toilets. Officer Minervini was asked if she thought it was a problem with the other forty-eight inmates seeing her spend all of her time with one inmate. She responded that it was part of her job to counsel inmates and she did not think that it was a problem. She said that the inmates who reported her had victimized Coronel. She said that it did not occur to her that Coronel might have been talking to her to distract her so that inmates could do something while she was distracted, but she

acknowledged that this could happen. Officer Minervini was asked why she was smiling in the video where she was talking to Ms. Coronel. She said that she was smiling because Coronel was talking about her children and she was supposed to do counseling when necessary especially at night when there was no one else for the detainees to speak to. When questioned about how she could do a proper count while engaged in conversation with Coronel, she said that the detainees were not scattered around the bunk. From the start of her shift only four people were not sitting at the tables watching TV. Minervini claimed that she could do a head count without walking around the bunk. Officer Minervini was asked whether she thought what occurred on the evening of the incident was not fraternization. She said that she considered fraternization to be physical contact, touching, hugging, hi-fives, or exchanging love notes or contraband. She had done none of these things. She said that during her conversation with Coronel she learned about her family; that she had two children and had lost custody of them. When asked if she knew what country Coronel was from or the nature of her case, Minervini said that they did not discuss those topics. Minervini was asked why she went back to see Coronel in the middle of the nights. She said that was her last assessment she made to see if the detainee needed medical attention. Minervini also gave Coronel advice by telling her that she would have to fight her case from wherever she was going to be deported to. Officer Minervini responded to questioning about why Coronel was seen in the video letting down her hair; she said that she did not know why Coronel did that.

FINDINGS OF FACT

Based on the testimonial and documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and to assess their credibility, I make the following **FINDINGS of FACT**:

1. Officer Minervini was assigned to the work the 10 p.m.-to-6 a.m. shift on August 19, 2013, at the Hudson County Jail in E-300 South Pod, which held federal detainees.

2. These detainees were foreign nationals awaiting trial to be deported from the U.S. It was possible that some of the detainees had terrorist connections, though no specific detainees were mentioned as being in ECHO pod.
3. The pod area, where Officer Minervini was stationed, included sixty-four bunks configured in rows forty feet long. The shower and bathroom areas were in the rear of the room behind the bunks. Tables were located in front of the Officer's desk where detainees could watch TV and socialize.
4. Officer Minervini had been hired as a correction officer in August 2012. However in September of that year she went to train at the Bergen County Police Academy. She graduated and returned to Hudson County on January 4, 2013. From the time of her return, she had been assigned to a detainee pod. She was a correction officer for approximately eight months at the time of the incident.
5. Prior to August 19, 2013, she had received one disciplinary charge for using obscene language with an inmate, for which she received a five-day suspension.
6. At the beginning of her shift at 10:00 p.m., Officer Minervini was supposed to do a physical head count to make sure that all of the detainees were accounted for. This head count was to be done either by having the detainees line up in the day area or to count them at their bunks. Instead, Officer Minervini visually scanned the area. The head count showed forty-nine detainees.
7. Detainee Coronel stood in front of the desk where Officer Minervini was seated from 9:50–11:05 p.m. During part of that time Officer Minervini filled out a detainee roster and did other paperwork. She did not walk around the area at all during this period of time to check on the detainees. From the videotape it did not appear that the officer visually scanned the tier. From her vantage point at the desk the view of some of the bunks, the bathroom, and shower area were obscured.

8. During the majority of the time that detainee Coronel was conversing with Officer Minervini, most of the inmates were seated at the tables in front of the desk watching TV or interacting with each other.
9. While Officer Minervini claimed that she allowed the detainee to speak to her for an extended period of time in an effort to gather information about possible threats, she at no time informed her superiors of this.
10. According to her log she had interaction with Officer Garrabito at 10:05 p.m. and did a head count cleared with Central Control at 10:40 p.m.
11. At approximately 11:04 p.m. Officer Minervini left her desk and walked around the bunk area.
12. At 1:18 a.m. Officer Minervini walked back to Detainee Coronel's bunk and had another extended interaction with her from 1:18–1:42 a.m. She did not report this interaction to her superiors.
13. The log kept by Officer Minervini had no indication of a conversation with the detainee or any indication of a concern with the detainee or a threat or that the detainee was trying to pass on a message or any concern that there might be a need to take action, which would have been appropriate to put in the logbook.
14. According to the Rules and Regulations Manual of the jail, an Officer is to remain alert, aware of, and responsive to his surroundings at all times. He or she is also prohibited from sleeping or being inattentive while on duty. An Officer is also required to maintain an appropriate demeanor. In addition it is an infraction for an officer not to properly conduct security checks and/or inmate head counts. An officer is also forbidden from lying or giving false information or intentionally withholding information necessary for the completion of an investigation. Lieutenant Burke did not charge Officer Minervini with issuing a false report or fraternization.

15. The Post Orders for the Housing Unit ECHO Pod state that prior to relieving the previously assigned dorm officer, the incoming officer assumes control of the inmates and equipment by physically counting all inmates in the dorm. The Orders do not describe how the physical count is to be conducted. The Orders also require that the officer monitor individual and collective inmate activity at all times to insure that inmates remain safe and secure. The officer is also required to make regular tours at least every half hour. The Post Orders were posted in the jail for review.

ARGUMENTS OF THE PARTIES

Hudson County argued first that it was physically impossible to conduct the head count as Officer Minervini asserted. She would not have been able to do an accurate count by scanning the room "with 49 bunk beds, a bathroom and shower, and recreation area and make a nearly instantaneous count." Further, according to the testimony of Lieutenant Burke, officers are trained to physically conduct a head count by either lining the inmates up or counting them at their bunks. Neither of these methods was followed. In addition, even if there was "some claimed medical emergency or reason for suspicion, an officer does not then engage in to [sic] lengthy intimate conversations with that inmate." The failure to have an accurate head count "is one of the bright line violations in a jail inimical to the pressing need to keep an absolutely accurate and up to date count of the prisoners." Also having long personal conversations with an inmate prevented the correction officer from being attentive to her job and gave the impression of favoritism and lack of professionalism. In addition, the officer's contradictions as to the reason she had extended conversations with the detainee and her failure to report the purported suspicions to her superiors demonstrated her lack of credibility and proved the charges of neglect of duty and failure to perform her duties. The appointing authority also argued that the penalty should be enhanced: instead of the ten-day suspension that was ordered in the Final Notice of Disciplinary Action, the penalty should be increased to thirty days. "C.O. Minervini, in her denial that there had been anything amiss in her conduct and because

of her bizarre assertion that her first priority is to act as a therapist for prisoners, should have her penalty enhanced.” Hudson County also asserted that I would be within my discretion to find the officer guilty of issuing a false report and fraternization, even though those charges were not brought in the Preliminary or Final Notice. The appointing authority also claimed that an increase in penalty was warranted because this misconduct followed from two five-day suspensions for fraternization.³

Officer Minervini argued that while the rules stated that a physical head count had to be done, nowhere did it state that the count had to be done by either standing the inmates up and doing a line count or putting the inmates in their bunks and doing a count. In addition, she asserted that she was never trained to do a count in that fashion. She claimed that when she entered the pod, she could visually count the inmates quickly because she was familiar with the inmates and the housing unit and almost all of the inmates were watching one of the two televisions. There were only a few inmates in the bunk area, which she was able to quickly see. She compared her count with the on duty officer’s count and they matched. Officer Minervini asserted that there was no evidence presented that a head count was not performed; the duty officer was not interviewed and no video was presented as to where the inmates were located when Minervini entered the housing unit. Since the appointing authority had the burden of proof, they had not met their burden.

As to the second allegation relating to speaking to the inmate for over one hour, Officer Minervini argued that during this time she completed the administrative duties that were required of her, i.e., filling out the logbook and roster sheet. While detainee Coronel was behind the desk doing her cleaning duties, Minervini was talking to other officers and reviewing documents on the desk. After that the officer proceeded to complete the paperwork while Coronel talked to her about her personal problems. She allowed Coronel to talk for this extended time in order to assess her. Coronel was a known “informant” and often provided information about what was going on in the unit.

³ Lt. Burke testified that he had disciplined C.O. Minervini once before for using obscene language with an inmate. Exhibit R-9 shows a five-day suspension for failure to maintain appropriate demeanor and engaging in abusive or obscene language with inmates. There is no charge of fraternization and the within charge appears to be the only charge referred to by Lieutenant Burke in his testimony.

“By letting her talk, Minervini was trying to see how distraught she was as well as determining if she was trying to give some sign of distress. The inmate had requested to go to medical because she was upset she was getting deported.” Minervini claimed that she went to Coronel’s bunk a couple of hours later to insure that there was no problem. The appellant also argued that the suggestion that Minervini was guilty of fraternizing with an inmate was inappropriate where there was no charge to that effect and no evidence to prove the charge. Despite the fact that Coronel was at the desk for an extended period of time, she was able to monitor the inmates because almost all of them were right in front of her watching TV. Also she claimed that she was able to see the whole unit including the area of the bathroom stalls and showers from her desk and there was no evidence to the contrary.

Finally, Officer Minervini asserted that the appointing agency did not present any proof that she had engaged in insubordinate behavior. There was no showing that she used inappropriate demeanor with a supervisor, which would be necessary to prove insubordination. The appellant argued that she had only been working in the housing unit for eight months. “She had little to no training other than ‘on the job’ training and knowing the general rules. The employer has used its collective imagination to make allegations against Minervini that are not supported by any credible evidence.”

LEGAL DISCUSSION

Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Determinations often turn on credibility. Credibility is the value that a finder of the facts gives to the testimony of a witness. The process of evaluating the credibility of

witnesses entails: (a) observing demeanor; (b) evaluating the ability to recall specific details; (c) considering the consistency of the testimony under direct and cross-examination; (d) determining the significance of any inconsistent statements or evidence; and (e) otherwise developing a sense of the witness's candor. This requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. See Carbo v. U.S., 314 F.2d 718 (9th Cir. 1963), cert. denied sub. nom., Palermo v. U.S., 377 U.S. 953, 84 S. Ct. 1625, 12 L. Ed. 2d 498 (1964).

In evaluating the weight, trustworthiness and reliability of the evidence, factors such as motive, bias, confirming witnesses or statements, corroborative evidence, and common sense must be considered. Frequently, the trier of fact relies on the innate sense of whether the testimony has the ring of truth.

The only witness against the appellant was Lieutenant Burke. He had a long history with the Corrections Department and there was no evidence that he was biased in any way against Officer Minervini. While the rules do not specifically define what a physical count consists of, given the importance of having an accurate count of inmates in a jail, the description given by Lieutenant Burke of a proper headcount is more convincing than the one presented by Officer Minervini. Merely scanning the pod, with bunks partially obscured and bathrooms and showers in the rear of the facility, does not appear to be a sufficient method to get an accurate headcount. Based on the need for absolute accuracy, Officer Minervini's testimony that she was never trained to do a count by lining detainees up or counting them at their bunks, does not seem plausible. The fact that her head count matched that of the prior officer on duty appears to have had more to do with the accuracy of the prior count than with her own efforts to get an accurate count.

Officer Minervini's testimony regarding her encounter with Ms. Coronel also does not ring true. In her report, Officer Minervini stated that she conversed with the detainee for an extended period of time because she

noticed that the demeanor of the Inmate was not as usual. The u/s ofc listened to the Inmate in an effort of gathering any information that would insure that there was no threat or any sign that the Inmate was trying to relay any message to the u/s ofc that could cause the need of action on the behalf of the u/s ofc. Later that night as u/s ofc conducted security check the u/s ofc approached the Inmates sleeping area and the Inmate was awake. Therefore the u/s ofc sees the opportunity to make a final assessment of the Inmate but did not find reason for concern.

On the other hand, in her testimony she talked about the fact that Coronel approached her because she was upset about losing custody of her children and wanted to go to medical. Officer Minervini explained that she let Coronel continue talking because she was acting as a counselor to the inmate. This story does not jive with her report. In addition, as Lieutenant Burke pointed out, Officer Minervini failed to report either version of the story to her supervisor, prior to being asked to furnish a statement to Lieutenant Burke. Even if Officer Minervini thought that she had handled the matter, a possible security threat (if there was one) or threat of attempted suicide (if that did occur) should have caused the officer to make mention to her superiors. Further, the length of the encounter at the desk puts into question whether Officer Minervini could pay proper attention to what was going on in the pod. It is true that she was able to complete her paperwork at the same time that Ms. Coronel was at the desk, but it certainly kept Minervini from scanning the pod area. While it may be true that correction officers have some responsibility to counsel detainees, Officer Minervini is not a social worker, nor a trained counselor. According to the video recording, the encounter went on for an extended period of time, longer than it should have to allow Officer Minervini to attend to her duties of observing the actions of the other detainees.

In its summation brief the appointing authority has urged that I increase the amount of the penalty beyond what was asked for initially by Corrections and decreed in the Final Notice of Disciplinary Action and to add additional charges not outlined in the Initial Notice of Disciplinary Action. The reason for increasing the penalty was that

C.O. Minervini, in her denial that there had been anything amiss in her conduct and because of her bizarre assertion that her first priority is to act as a therapist for prisoner,

should have her penalty enhanced. Discipline, after all, is derived from the Latin word, to teach, and this is an opportunity for the court to react to her misconduct and her denial of it—even when faced with the video clearly supporting the charges.

I do not find this argument persuasive. While I find that Officer Minervini neglected her duty and failed to perform certain of her duties by not doing a proper head count and by spending an excessive amount of time with one detainee, I do not believe that her actions were so egregious that an enhanced penalty is required. To determine the proper penalty, not only the action itself, but the prior history of discipline must be examined. In West New York v. Bock, 38 N.J. 500, 523-24 (1962), the New Jersey Supreme Court held that evidence of a past disciplinary record, including the nature, number and proximity of prior instances of misconduct, can be considered in determining the appropriate penalty. The penalty imposed must not be so disproportionate to the offense and the mitigating circumstances that the decision is arbitrary and unreasonable. Contrary to what Corrections asserted in its summation brief, the evidence presented showed one prior disciplinary action for use of abusive or disrespectful language with an inmate, not two incidents and not for fraternization. In addition, I do not believe that it is appropriate, as the appointing agency argued, that I find Correction Officer Minervini guilty of issuing a false report and fraternization. In the first place, the appellant was not given notice of any additional charges that the appointing authority now asserts in its summation brief. Under these circumstances, Officer Minervini was not given time to prepare for a defense of these issues. Her whole case might have been handled differently if she had been made aware of these charges prior to trial. In addition, Lieutenant Burke was asked why he did not charge Officer Minervini with fraternization and he responded that there was no audio on the C.D. and therefore he did not know what was said between the parties. I cannot second guess what was said between the correction officer and the inmate, and therefore, it would be inappropriate to charge the officer with fraternization. In addition, Lieutenant Burke, Officer Minervini's superior officer, did not choose to charge the appellant with filing a false report, and I do not choose to bring that charge sua sponte.

CONCLUSIONS OF LAW

Based on the testimony of the witnesses and the exhibits submitted, I **CONCLUDE** that the appellant is guilty of the charges lodged against her. I further **CONCLUDE** that, based on the nature of the infractions and prior disciplinary action, that a suspension of ten days is a proper penalty.

ORDER

I **ORDER** that appellant's appeal from the Final Notice of Disciplinary Action be **DISMISSED**.

I further **ORDER** that the appellant shall be suspended from duty for a period of ten days without pay.

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, P.O. 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.

9/24/14
DATE

Carol I. Cohen
CAROL I. COHEN, ALJ

Date Received at Agency:

September 24, 2014 (db)

Date Mailed to Parties:

September 24, 2014 (db)

db

APPENDIX

Witnesses

For Appellant:

Sabrina Minervini

For Respondent:

Thomas Burke

Exhibits

For Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action
- R-2 DVD - 2 Videos
- R-3 Request for Disciplinary Action
- R-4 Request for Report
- R-5 Minervini's Report
- R-6 Logbook from pages of housing unit
- R-7 From Rules and Regulations Manual
- R-8 H.C. Post Orders
- R-9 Print-out from Personnel
- R-10 Sketch of area