



County Correction Lieutenant Michael Kownacki testified that on June 15, 2012 at approximately 5:00 a.m. he contacted the appellant by radio and told her that she was to relieve Officer Poli in Control Room 3 (CR-3) at 5:45 a.m. and that she telephoned back. Therefore, it was his impression that she understood the order. However, at approximately 6:05 a.m., Kownacki received a call from Poli informing that he had not yet been relieved and discovered that the appellant was in the CR-2 bathroom. Subsequently, the appellant called Kownacki and advised that she did not relieve Poli at 5:45 a.m. because she needed to use the bathroom. At approximately 6:25 a.m., Kownacki ordered the appellant to write a report as to why she failed to relieve Poli since at no time did she advise him that she would be late to relieve Poli. Kownacki stated that the appellant's incident report provided that at 6:00 a.m. she was asked to relieve Poli and that upon relieving Poli she had to use the bathroom due to "womanly issues." County Correction Captain Richard Bearden testified that on video, the appellant could be seen entering CR-2 at approximately 4:30 a.m. and leaving at approximately 6:00 a.m.

The appellant testified that she received a call from Kownacki at approximately 5:00 a.m. and was ordered to report to CR-3 to relieve Poli. However, she could not recall whether Kownacki gave her a specific time to relieve Poli. The appellant indicated that she stayed in CR-2 to use the bathroom for one hour due to problems with her menstrual cycle. The appellant stated that after she spoke with Kownacki at 6:00 a.m. she reported to CR-3 to relieve Poli. The appellant acknowledged that she made mistakes in her report and admitted that Kownacki originally called her at 5:00 a.m. and not 6:00 a.m. as stated in her report. She further testified that after receiving a copy of her incident report she realized that it was not accurate. However, the appellant acknowledged that she did not advise anyone that she made errors in her report nor did she submit an amended report.

The ALJ found that that Kownacki ordered the appellant to relieve Poli at approximately 5:45 a.m. but as of 6:05 a.m. she had not yet relieved Poli. Thereafter, the appellant submitted an inaccurate incident report which stated that Kownacki had contacted her at 6:00 a.m. to relieve Poli and that she first relieved Poli and then had gone into the bathroom. Further, although the appellant did not offer any documentation of a medical condition, the ALJ found that the appellant's assertion that she was experiencing physical issues that necessitated her to be in the bathroom for a considerable length of time and that this was the reason that she did not relieve Poli as ordered was credible. Based on the foregoing, the ALJ sustained the charge of conduct unbecoming of a public employee and other sufficient cause. However, the ALJ determined that the appointing authority did not sustain the charges of falsification and insubordination as her act did not reflect intentional disobedience or refusal to accept an order or that she intentionally misstated facts in her report. As such, the ALJ recommended modifying the 25

working day suspension and a \$152.23 fine to a five working day suspension and no fine.

In its exceptions, the appointing authority states that the ALJ erred in concluding that the appellant was not guilty of the charge of falsification as the appellant's incident report contained inaccurate statements, the appellant became aware of these inaccurate statements as soon as she received a copy of her incident report, and the appellant made no attempt to amend the report. Further, the appellant did not provide any medical documentation that she was having "womanly issues," she had access to a bathroom in the Officers' Dining Room which was in close proximity to the control room and an authorized break area, and although she had access to a radio and telephone, she did not ask for permission to remain in CR-2 for her break to use the bathroom due to an emergency. The appointing authority also argues that the ALJ erred in not concluding that the appellant was insubordinate as she failed to relieve another officer as ordered by a superior. In this regard, the appellant's actions caused another officer to be held over on mandatory overtime. Consequently, it argues that the appellant's conduct constituted a serious infraction and the original penalties were appropriate and justified.

In her cross exceptions, the appellant argues that falsification is defined as, "intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation or other proceeding" and the ALJ found her testimony credible that she was unaware that she could correct the report. Further, the ALJ found her testimony as to why she did not arrive as instructed as credible. The appellant asserts that mistakes are made and that they are not always the product of deceit as the appointing authority suggests. Therefore, the appellant argues that the Commission should accept the ALJ's determinations.

Upon its *de novo* review of the record, the Commission disagrees with the ALJ's determination regarding the falsification and insubordination charges and finds that those charges have been sustained. Further, the Commission does not adopt the ALJ's recommendation to modify the appellant's suspension to five working days and no fine. Instead, the Commission determines that a 15 working day suspension and a \$152.23 fine is the appropriate penalty.

While the ALJ dismissed the charge of falsification regarding the appellant's report, the Commission has found in past cases that failure by a law enforcement officer to accurately write reports is a serious offense, and has upheld significant suspensions on that misconduct alone for other Correction employees. In this case, it is clear that the appellant did not accurately report the time she was ordered to relieve Poli and took no action to correct that error when she became aware that the incident report was inaccurate. The importance of providing full, accurate and

detailed reports in a prison setting cannot be overstated. See *In the Matters of Kenneth Bolton, Robert Knoblock and Michael Lubrano, Mercer County*, Docket No. A1457-10 (App. Div. February 4, 2013) *affirming* (CSC, decided September 15, 2010); *In the Matter of Michael Ogonowski* (CSC, decided June 1, 2011). Additionally, the appellant's failure to not advise anyone of her inability to promptly follow the order given, whether intentional or not, can be considered insubordination since the Commission's definition of insubordination is much more expansive than the one utilized by the ALJ. See *In the Matter of Fulvio Stanziale*, Docket No. A-3492-00T5 (App. Div. April 11, 2002).

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In assessing the penalty in relationship to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 N.J. 474 (2007).

In the instant matter, the ALJ failed to discuss the appellant's prior disciplinary history which, per Exhibit R-11, includes three written reprimands, a one working day suspension in 2003; a fine equal to two working days in 2010 and a five working day suspension in 2012. Further, the appellant was provided a direct order to relieve a fellow officer. However, the appellant failed to comply with the order and failed to notify her superior officer that she was unable to comply with the order although she had a radio. Moreover, her failure to follow the order caused another officer to be held over on mandatory overtime. Additionally, the appellant submitted a report with mistakes, and failed to amend the report after realizing that there were mistakes. Accordingly, based on the totality of the record, including the appellant's prior disciplinary record, the Commission concludes that a 15 working day suspension and a \$152.23 fine is the appropriate penalty.

Since the 25 working day suspension and \$152.23 fine has been modified to a 15 working day suspension and \$152.23 fine, the appellant is entitled to 10 days of back pay, benefits and seniority.

**ORDER**

The Civil Service Commission finds that the appointing authority's action in imposing a 25 working day suspension and \$152.23 fine was not justified. Therefore, the Commission orders that Ramona Carter be suspended for 15 working days and fined \$152.23. The Commission further orders that the appellant be granted 10 days of back pay, benefits, and seniority.

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 17<sup>th</sup> DAY OF DECEMBER, 2014**



**Robert M. Czech**  
Chairperson  
Civil Service Commission

**Inquiries  
and  
Correspondence**

**Henry Maurer**  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

**Attachment**



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 3352-13

AGENCY DKT. NO. 2013-2328

**IN THE MATTER OF RAMONA CARTER,  
MERCER COUNTY DEPARTMENT  
OF PUBLIC SAFETY.**

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**Mark W. Catanazaro, Esq.,** for appellant Ramona Carter

**Kristina E. Chubenko,** Assistant County Counsel, for respondent Mercer County  
(Arthur R. Sypek, Jr., County Counsel, attorney)

Record Closed: August 20, 2014

Decided: November 19, 2014

**BEFORE RONALD W. REBA, ALJ:**

**STATEMENT OF THE CASE**

Respondent, Mercer County Department of Public Safety, brings this disciplinary action against appellant, Ramona Carter. The appointing authority alleges that appellant, a Mercer County correction officer ("CO"), committed conduct unbecoming, insubordination, intentional disobedience to accept a reasonable order, and violation of departmental rules and/or regulations, for which she received a twenty-five-working-day suspension and a fine equivalent to one-half day's pay.

## PROCEDURAL HISTORY

On or about July 24, 2012, respondent served appellant with a Preliminary Notice of Disciplinary Action ("PNDA") dated July 22, 2012. (R-7.) The PNDA charged appellant with violations of:

- (1) N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee;
- (2) N.J.A.C. 4A:2-2.3(a)(11),<sup>1</sup> Other sufficient cause, specifically, violation of the following provisions of the Mercer County Public Safety Table of Offenses and Penalties:
  - a. C-9, Step 2—Insubordination: intentional disobedience or refusal to accept reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language;
  - b. C-8—Falsification: intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation or other proceeding;
  - c. D-15, Step 2—Violation of a rule, regulation, policy, procedure, order or administrative decision (SOP 004: Employee Handbook; SOP 007, Custody Break Periods; SOP 245, Post Orders—Relief Officer).

Appellant requested a departmental hearing, which was held on January 29, 2013. On or about February 7, 2013, the hearing officer issued a decision finding appellant guilty of the charges set forth in the PNDA, with the exception of violation of SOP 245: Post Orders—Relief Officer, and imposed a suspension of twenty-five working days and a fine of one-half day's pay. The County issued a Final Notice of Disciplinary Action ("FNDA") dated February 19, 2013. (R-8.) Appellant timely appealed the FNDA with the Civil Service Commission, and the appeal was transmitted

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<sup>1</sup> Amended by R.2012 d.056, effective March 5, 2012; recodified former (a)(11) as (a)(12).

to the Office of Administrative Law (OAL), where it was filed on March 8, 2013. The matter was heard on July 28, 2014, and the record remained open for receipt of post-hearing submissions. The record closed on August 20, 2014.

### **SPECIFICATIONS**

The specifications of the charges are as follows:

As reported by Lt. Kownacki, on 6/15/12, CO Carter did fail to follow his order to relieve the CR3 officer (CO Poli) in order that CO Poli could report to his overtime position in a timely fashion. Additionally, CO Carter did fail to follow established break schedules and when directed by Lt. Kownacki to submit a report on this incident did falsify that report.

[R-7.]

### **TESTIMONY**

#### **Lieutenant Michael Kownacki**

Michael Kownacki is employed as a lieutenant at the Mercer County Correction Center. He testified on behalf of the County. Lieutenant Kownacki referred to his report of the incident in question (R-1) during testimony. On June 15, 2012, he was working A-tour, with hours of 11:00 p.m. to 7:00 a.m., as shift commander. On that day and shift appellant was working as the relief officer 4; the duty of a relief officer is to relieve other officers for their breaks. Lieutenant Kownacki testified that appellant bid for the relief-officer assignment. Appellant's assignments are shown on the A-Tour break schedule. (R-2.) Due to a code called in the early part of the shift, the relief times were off by about one hour. Lieutenant Kownacki testified that at approximately 5:00 a.m. he contacted Carter by radio and told her that she was to relieve Officer Poli in Control Room 3 (CR-3) at 5:45 a.m. She telephoned back, and it was his impression that she understood the order. Lieutenant Kownacki later explained that he needed Officer Poli relieved at that specific time so that Officer Poli would be able to make it to Providence



Nursing Home for his overtime assignment as relief for Officer Lane, who had to be back at the Correction Center at 6:00 a.m. to begin his regularly scheduled shift as transportation officer. The witness testified that at approximately 6:05 a.m. he received a call from Officer Poli, who stated that he had not yet been relieved. Lieutenant Kownacki called for appellant over the radio. He received a call from the CR-2 officer, Officer Palmer, stating that appellant was in the CR-2 bathroom. Lieutenant Kownacki advised Officer Palmer to have appellant call him as soon as she got out of the bathroom. Lieutenant Kownacki then contacted Officer Jiovany to relieve Officer Poli, and Jiovany complied as directed.<sup>2</sup> Lieutenant Kownacki then received a call from appellant. He asked appellant why she had not relieved Officer Poli at 5:45 a.m. Appellant responded that she had needed to use the bathroom. Lieutenant Kownacki then ordered appellant to relieve Officer Poli in CR-3, and stated that he would call appellant in CR-3. Appellant and Officer Jiovany reported to CR-3, as recorded by Officer Jiovany in the CR-3 logbook. (R-5.) Lieutenant Kownacki testified that he contacted appellant at approximately 6:25 a.m. and ordered her to write a report as to why she had failed to relieve Officer Poli at 5:45 a.m. as previously ordered. Lieutenant Kownacki testified that at no time did appellant or anyone else on appellant's behalf contact him to advise him that she would be late in reporting to relieve Officer Poli at 5:45 a.m.

Lieutenant Kownacki testified that appellant submitted her incident report, which provided that on June 15, 2012, at 6:00 a.m. Kownacki had asked appellant to relieve Officer Poli. Appellant reported that upon relieving Officer Poli, she had to use the bathroom, stating, "my monthly cycle is on[,] have womanly issues." (R-3.) Lieutenant Kownacki testified that he found the incident report to be false and inaccurate because appellant wrote that she was not asked to relieve Officer Poli until 6:00 a.m., and that she relieved Officer Poli and then used the bathroom. Lieutenant Kownacki reported that appellant violated Standard Operating Procedure ("SOP") 004, "Employee Handbook," and SOP 007, "Custody Break Periods." (R-6; R-10.) He stated that he gave this information to Captain Bearden, and that he himself did not prepare the

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<sup>2</sup> Lieutenant Kownacki first testified that he spoke to appellant before contacting Officer Jiovany to relieve Officer Poli; after reviewing his report and refreshing his recollection, he testified that his report was accurate, and that he spoke with Officer Jiovany before speaking with appellant.

charges against appellant. On cross-examination, he confirmed that there were no bathrooms in CR-3, and that he did not recommend that a violation of SOP 007 be charged.

Captain Richard Bearden

Richard Bearden has been employed as a captain with the appointing authority since November 2004, having begun working as a correction officer in September 1990. His duties include assisting the warden in administrative and disciplinary matters. Captain Bearden testified that he issued the charges contained in the PNDA. (R-7.) He testified that the discipline sought was in accordance with the penalties set forth in the Mercer County Public Safety Table of Offenses and Penalties. (R-9.) Captain Bearden said that he reviewed the incident reports and viewed video footage of the hallway outside of CR-2 prior to drafting the charges. On the video, appellant could be seen entering CR-2 at approximately 4:30 a.m. and leaving CR-2 at approximately 6:00 a.m. Therefore, he presumed that appellant stayed in CR-2 for the entire length of her thirty-minute break from 5:00 a.m. to 5:30 a.m., and an additional thirty minutes after her break ended, 5:30 a.m. to 6:00 a.m.

Captain Bearden testified that R-11 reflected appellant's disciplinary history while employed at the Mercer County Correction Center.

Officer Ramona Carter

Appellant testified on her own behalf. She acknowledged receiving a call from Lieutenant Kownacki at approximately 5:00 a.m. on June 15, 2012, ordering her to report to CR-3 to relieve Officer Poli. Appellant testified that she could not recall whether Lieutenant Kownacki gave her a specific time to report to CR-3 to relieve Officer Poli. She said that she did stay in CR-2 to use the bathroom during her thirty-minute break and for an additional thirty minutes thereafter. Appellant testified that she stayed in CR-2 to use the bathroom because she was having problems with her menstrual cycle that necessitated that she be in a bathroom or near a bathroom for a

protracted period of time. She has bleeding fibroids that can cause clots, and her clothes were soiled. She said that she could not leave CR-2 in light of her condition.

Appellant testified that after she spoke to Lieutenant Kownacki at 6:00 a.m. she reported to CR-3 to relieve Officer Poli. Her sergeant thereafter ordered her to submit an incident report. (R-3.) Officer Carter testified that she made mistakes in her report. She acknowledged in testimony that Lieutenant Kownacki originally called her at 5:00 a.m., not 6:00 a.m. as stated in her report, and instructed her to relieve Officer Poli. She could not recall the time he directed her to appear. Carter said that it was typical, however, that when an officer was relieving another officer that had to go on the hospital detail where Officer Poli was expected, the relief officer would arrive by 6:00 a.m. Officer Carter also testified that she made a mistake in her report when she stated, "Upon relieving Officer Poli, I, C/O R. Carter, had to use the bathroom." Her report should have indicated that she used the bathroom before going to CR-3, not after reporting to CR-3.

On cross-examination, appellant testified that she was aware that control rooms are not break areas. She said she understood that break areas are confined to the Officers' Dining Room, the Muster Room and the Locker Room. She explained that the Officers' Dining Room was close to CR-2, approximately a thirty-second walk, and that there is a bathroom in the Officers' Dining Room. However, she stated that at the time, she was not sure she would be able to make it from CR-2 to the Officers' Dining Room without having a problem related to her medical issues. Appellant did not offer any medical documentation into evidence to support her assertions of medical issues, nor has she provided the County or the Correction Center with any medical documentation. She was able to work her entire shift on June 15, 2012.

Appellant further testified on cross-examination that she typically receives a copy of an incident report prepared by her immediately upon handing it in, and if not immediately, then within a short time after submitting the report. She stated that she was not sure when she received a copy of her incident report in the instant matter. However, she said that after receiving the copy of her incident report she reviewed it and immediately realized that her report was not accurate. She did not advise anyone

that she had made errors in her report, and she did not submit an amended report. When asked why she failed to advise anyone that her report was not accurate or why she failed to submit an amended incident report, appellant simply stated that she was unsure whether that were permitted.

### **FACTUAL DISCUSSION**

After reviewing all of the documentary and testimonial evidence, I **FIND** the following as **FACT**:

On June 15, 2012, the appellant was employed at the Mercer County Correction Center as a correction officer. At approximately 5:00 a.m., she was given an order by her immediate supervisor, Lt. Michael Kownacki, to relieve Officer Poli in CR-3 so that he could relieve an officer who was on duty at a location outside the institution. Appellant should have relieved Officer Poli by approximately 5:45 a.m. so that he could make it on time to his next post. At approximately 6:05 a.m., Lieutenant Kownacki received a telephone call from Officer Poli, who stated that his relief had not yet arrived. Lieutenant Kownacki called for appellant over the radio, and was informed by another officer that she was in CR-2 in the bathroom. Lieutenant Kownacki left orders for the appellant to contact him, and he then ordered Officer Jiovany to relieve Officer Poli. Appellant contacted the lieutenant by telephone from CR-2, where, according to the video, she had been for some time. She explained to Lieutenant Kownacki that she had been in the bathroom, ill, and she subsequently reported almost simultaneously with Officer Jiovany to CR-3 to relieve Officer Poli.

Appellant submitted an incident report, as directed by Lieutenant Kownacki, to explain why she had not relieved Officer Poli as ordered. In the report she stated that at 6:00 a.m. Lieutenant Kownacki ordered her to relieve Poli, and that she had first relieved Poli in CR-3 and then gone into the bathroom. Both of these statements were inaccurate. Appellant acknowledged in testimony that the order from Lieutenant Kownacki to relieve Officer Poli was received at approximately 5:00 a.m., not 6:00 a.m. as stated in her report. Further, Captain Bearden's credible testimony established that the video of the hallway outside CR-2 shows appellant leaving CR-2 at approximately

6:00 a.m. She used the bathroom in CR-2, not CR-3, and she did not relieve Officer Poli before going into the bathroom.

Lieutenant Kownacki made a mistake in his testimony when he said that he spoke to appellant first, a little after 6:00 a.m., before contacting Officer Jiovany to relieve Officer Poli. After reviewing his report and refreshing his recollection, he testified that his report was accurate, and that he spoke with Officer Jiovany before speaking with appellant.

Although no documentation of a medical condition was offered by appellant, appellant was credible in her assertion that on the morning of June 15, 2012, she was experiencing physical issues that necessitated that she be in the bathroom for a considerable length of time, and that it was for this reason that she did not report on time to relieve Officer Poli as ordered. Appellant made two errors in the incident report that she subsequently was directed to submit. The first was that she did not receive Lieutenant Kownacki's order at 6:00 a.m., but rather at approximately 5:00 a.m., and the second was that she went to the bathroom before she reported to CR-3 to relieve Officer Poli, not after. She noticed these errors upon receipt of a copy of the report, but made no attempt to amend the report. She did not correct her statements until she testified at the hearing. Further, appellant spent her break time on the morning of June 15, 2012, in an area that is not a designated break area.

### **CONCLUSIONS OF LAW**

Appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated thereunder. A civil service employee who commits a wrongful act related to his employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2.

The appointing authority shoulders the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable

probability of the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, 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); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Here, appellant has been charged 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)(11), other sufficient cause, specifically, violation of the following provisions of the Mercer County Public Safety Table of Offenses and Penalties:

- a. C-9, Step 2—Insubordination: intentional disobedience or refusal to accept reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language;
- b. C-8—Falsification: intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation or other proceeding;
- c. D-15, Step 2—Violation of a rule, regulation, policy, procedure, order or administrative decision (SOP 004: Employee Handbook; SOP 007, Custody Break Periods; SOP 245, Post Orders—Relief Officer).

As to the charge of conduct unbecoming a public employee, the law is well established. “Conduct unbecoming a public employee” is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit

standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

Regarding the charge of conduct unbecoming a public employee, appellant has been employed by the appointing authority for several years and she certainly understood the high standard of conduct expected of her. If she were having a medical problem then she should have let someone know. She had sufficient notice of the order to relieve Officer Poli, and she could have called from CR-2 to inform someone of her distress in time to have someone else take the relief assignment, but did not. This constitutes conduct unbecoming.

The charge of other sufficient cause encompasses three violations of the Mercer County Public Safety Table of Offenses and Penalties: insubordination (C-9, step 2), falsification (C-8), and violation of a rule, regulation, procedure, order or administrative decision (D-15, step 2).

“Insubordination” is defined in the Table of Offenses as “intentional disobedience or refusal to accept reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language.” Appellant admittedly did not report to her relief post in CR-3 by 6:00 a.m. as ordered by Lieutenant Kownacki. It appears from appellant’s credible, unrefuted testimony that she was physically unable to report at the time directed, and she exercised poor judgment in not informing her supervisor or anyone else that she was indisposed and would not be able to provide relief as ordered. Her actions did not reflect intentional disobedience or refusal to accept an order.

“Falsification” involves “intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation or other proceeding.” Appellant admitted that upon receiving a copy of the incident report she submitted, she realized that she had made errors in the report, which she did not correct until the hearing. However, I cannot conclude that she intentionally misstated facts in her report.

Finally, appellant is charged with violation of a rule, regulation, policy, procedure, order or administrative decision, specifically, SOP 004: Employee Handbook, and SOP 007, Custody Break Periods. SOP 004, section 1.04.4, provides:

Officers/Correctional Employees shall submit all necessary reports, on time, and in accordance with established departmental procedures. All reports must be signed by the Officer, AND their name must be printed. Reports submitted by all employees, verbal or written, shall be truthful and complete. No Officers/Correctional Employees shall knowingly enter, or cause to be entered, any inaccurate, false, or improper information.

[R-6.]

SOP 007 provides:

Break Periods are confined to the Officers' Dining Room, the Muster Room, and the Locker Room. Living Units and Control Rooms are NOT break areas.

[R-10 at paragraph B(5).]

Appellant admits that the report that she submitted at the direction of Lieutenant Kownacki was inaccurate, and that she did not seek to correct the inaccuracies until the instant hearing. Although I have concluded that the inaccuracies did not amount to falsification, they are still technical violations of SOP 004.

Appellant admits that on the morning of June 15, 2012, she spent her thirty-minute break in an area that is not included among permissible break areas. However, appellant credibly testified that she was unable to stray far from the bathroom, and she was not sure that she could make it to the bathroom in the Officers' Dining Room without having a problem. The County did not contest appellant's assertion that she was having medical issues that morning. Lieutenant Kownacki acknowledged that there were no bathrooms in CR-3, where appellant was next headed for her relief assignment. Further, Lieutenant Kownacki said that he did not recommend that a violation of SOP



007 be charged. Under the circumstances, it is reasonable that appellant stayed in CR-2 during her break.

As such, I **CONCLUDE** that appellant's conduct on June 15, 2012, constitutes conduct unbecoming a public employee and other sufficient cause, specifically, violation of a rule, regulation, policy, procedure, order or administrative decision, D-15, SOP 004: Employee Handbook.

### **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). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007).

Captain Bearden testified that R-11 is an accurate recitation of appellant's disciplinary history. The only prior discipline relevant to the instant case is a written reprimand for violation of a rule, regulation, policy, procedure, order or administrative decision. This was apparently appellant's Step 1 violation of section D-15 of the Mercer County Public Safety Table of Offenses and Penalties. The discipline imposed by the appointing authority for the current charges is a twenty-five-working-day suspension and a fine of one-half day's pay.

I **CONCLUDE** that the discipline imposed by the appointing authority is too harsh under the circumstances, and believe that a five-day suspension and no fine is more appropriate.

**ORDER**

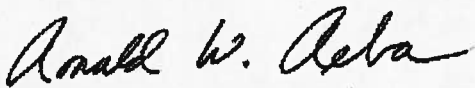
Based on the above findings and conclusions, I hereby **ORDER** that the action of the appointing authority imposing a twenty-five-working-day suspension and a fine of one-half day's pay is modified to a five-day suspension and no fine.

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 19, 2014  
DATE

  
\_\_\_\_\_  
RONALD W. REBA, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

/cad

**WITNESSES**

**For Appellant:**

Ramona Carter

**For Respondent:**

Richard Bearden  
Michael Kownacki

**EXHIBITS**

**For Appellant:**

None

**For Respondent:**

- R-1 Report of Lieutenant M. Kownacki, dated June 15, 2012
- R-2 A-Tour Break Schedule
- R-3 Report of R. Carter, dated June 15, 2012
- R-4 Activity Log of June 15, 2012
- R-5 Activity Log of June 15, 2012
- R-6 SOP 004, Employee Handbook
- R-7 Preliminary Notice of Disciplinary Action, dated July 22, 2012
- R-8 Final Notice of Disciplinary Action, dated February 19, 2013
- R-9 Mercer County Public Safety Table of Offenses and Penalties
- R-10 SOP 007, Custody Break Periods
- R-11 Disciplinary history