B-6

STATE OF NEW JERSEY

In the Matter of David Reedinger, Middlesex County

CSC Docket No. 2014-1491

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Request for Enforcement

ISSUED: JUL 30 2014 (SLD)

David Reedinger, a former County Correction Officer[1] with the Department of Corrections, Middlesex County, represented by Peter Paris, Esq., seeks enforcement of the attached Civil Service Commission (Commission) decision rendered on November 20, 2013, granting the appellant mitigated back pay and counsel fees.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) removing the appellant on charges of conduct unbecoming and other sufficient cause. Upon his appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. Following a hearing and the Commission's *de novo* review, the charges were dismissed and the Commission ordered that the appellant be reinstated and awarded mitigated back pay, benefits and seniority from December 20, 2012[2] to the date of his actual reinstatement. However, the parties were unable to agree on the amount of back pay or counsel fees due to the appellant, and the appellant requested Commission review.

In his request, the appellant argues that he is entitled to $60,588.59 for his mitigated back pay and COBRA costs, as determined by an "accounting service." Specifically, he asserts that his lost wages for the "last two weeks of 2012" and "for

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[1] Personnel records indicate that the petitioner retired, effective February 1, 2014.

[2] Although, the Commission's November 20, 2013 decision indicated that the appellant was removed, effective May 21, 2013, he was immediately suspended, effective December 20, 2012.

2013" were $81,843.53, which were calculated as follows: $65,673.22 (salary), plus $1,199.90 (longevity pay), plus $438 (clothing maintenance), plus $762.07 (second shift differential), plus $1,813.16 (holiday pay), plus $1,200 ("other"), plus $885.83 (personal time), plus $2,698.99 (sick time), plus $309.11 (personal time balance), plus $5,171.87 (vacation time), plus $84 (third shift differential), for a total of $81,843.53. The appellant also asserts that he paid out of pocket $990.66 for the continuation of COBRA benefits for his daughter; and he received $22,245.60 in unemployment benefits.

The appellant also seeks counsel fees and costs in the amount of $11,485.81. Specifically, Mr. Paris argues that he submitted a redacted invoice[3] and a certification of legal services to the appointing authority, however, the appointing authority "refused" to discuss the matter until he submitted an unredacted invoice. Mr. Paris maintains that the invoice included "legal strategies and mental impressions" which he declined to share with the appointing authority. However, Mr. Paris notes that he submitted an unredacted invoice to the Commission and would be happy to clarify any "unreasonable billings," but he "insist[s] on full reimbursement." Mr. Paris maintains that he spent 83 hours from December 26, 2012 through November 26, 2013, at his reduced hourly rate of $125, per a fee agreement with the appellant's union, for a total of $10,375.[4] He also maintains that he is entitled to costs in the amount of $1,110.81. Specifically he asserts that his costs were as follows: $52.36 (discovery fee); $20 (appeal filing fee); $497.70 ("Reedinger"); and $240.75 (UPS costs). The appellant maintains that the appointing authority continues to "create billable events with its recalcitrant conduct" and thus he expects full payment of all monies requested.

Subsequently, the appellant retired effective February 1, 2014. In this regard, the record indicates that the appellant was injured in the incident for which he was disciplined. On May 10, 2013, the appellant's treating physician indicated that he had reached maximum medical improvement (MMI), and he had a permanent lifting restriction. Consequently, after the Commission's prior decision, reinstating the appellant, the appointing authority indicated to him that since it did not have permanent light duty, the appellant could retire, or it would have to remove him from employment. The appointing authority noted that since the appellant had reached MMI on May 10, 2013, he would have been required to use his leave time, which would have been exhausted on September 11, 2013. Therefore, the appointing authority paid the appellant back pay from December 21, 2012 to May 10, 2013 and his accrued leave time for the period of time from May 10, 2013 to September 11, 2013.

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[3] It is noted that the invoice redacted most information except for date of service, time spent, hourly rate at $125 and amount for each date. For six of the 39 dates, he left some work performed unredacted, such as prep for and attend IA interview, hearing or trial; and conference calls with the court.

[4] The invoice included a duplicate entry for May 13, 2013 in the amount of $75.

Thereafter, the appellant argues that the appointing authority's "untenable and mean-spirited position" that he is not entitled to any additional back pay after he reached MMI and that it was under no obligation to notify him of the consequences of the MMI determination prior to his reinstatement, is without merit. In this regard, he argues that the MMI determination was dated 11 days prior to his actual removal on May 21, 2013, and therefore, the appointing authority should have notified him that if he was successful in the appeal of his removal on charges, that he would have to retire or again go through a disciplinary proceeding. Moreover, he maintains that it is patently unfair to "go back in time" and pretend the appointing authority "followed the rules" in May 2013 and notified him of the impact of the MMI decision, and cause him to bear the financial costs of the appointing authority's negligence. The appellant maintains that he was clearly prejudiced, since he would have made other financial arrangements if he had known that he was "fired no matter what." The appellant asserts that if the appointing authority had told him in May 2013, perhaps he would have submitted his retirement application then. Instead, the appointing authority chose to "keep it all secret until after the outcome of the termination appeal." Therefore, the appointing authority "denied him the ability to apply for retirement while still under salary." Thus, the appellant maintains that he should be reinstated with full back pay through the date of retirement application, at which time his three months of accrued time should be utilized.

In response, the appointing authority, represented by Benjamin D. Leibowitz, Senior Deputy County Counsel, maintains that it does not have permanent light duty, and therefore, since the appellant has a permanent lifting limitation, effective May 10, 2013, he cannot perform the essential functions of his position. Moreover, the appellant failed to present any medical documentation disputing the limitation, and he retired, effective February 1, 2014. Therefore, the appointing authority asserts that based on the foregoing, the appellant is only entitled to back pay from December 21, 2012 through September 11, 2013, the date on which all of his available paid leave expired, following the date he reached MMI. Consequently, the appointing authority remitted payment to the appellant for his back pay from December 21, 2012 through September 11, 2013. The appointing authority maintains that since the appellant was notified he had reached MMI on May 10, 2013, he had time, prior to the issuance of the FNDA on May 21, 2013, in which to apply for a disability retirement, and as such, it should not be liable for any back pay after September 11, 2013.

With regard to counsel fees, the appointing authority maintains that despite requests that Mr. Paris submit an unredacted invoice, he failed to do so. The appointing authority argues that the redacted invoice prohibits it from evaluating the invoice to determine whether or not the services rendered were appropriately included or if there were redundant or excessive charges. Finally, the appointing authority notes that if Mr. Paris believes that there is any privileged information

indicated on the invoice, he should draft the invoice in such a fashion as to avoid the privileged information.

Upon request of the Division of Appeals and Regulatory Affairs, Mr. Paris submitted an updated unredacted invoice to the appointing authority in the amount of $14,899.72. Specifically, he indicated that he was entitled to counsel fees in the amount of $10,300 from December 26, 2012 through November 26, 2013, the date he received the Commission's decision (82.4 hours at $125). He also indicated that he was entitled to an additional 27.4 hours at the $125 hourly rate for a total of $3,425. It is noted that he indicated that the additional 27.4 hours was spent pursuing restoration of benefits, reinstatement, back pay and attorney fees.[5] Mr. Paris also indicated that he was entitled to additional costs for UPS shipping in the amount of $63.91, accounting services in the amount of $1,000 and his previously requested $1,110.81 for costs, for a total of $2,174.72.

In response, the appointing authority indicates that it was prepared to "settle" and authorize the payment of the $11,485.81 in attorney fees and costs indicated in the initial invoice. The appointing authority maintains that the appellant is not entitled to the additional $3,413.91 in counsel fees for time after the Commission's decision, since he is not entitled to any back pay for that period of time.

CONCLUSION

Back Pay

Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain health insurance coverage during the period of improper suspension or removal. *N.J.A.C.* 4A:2-2.10(d)1 provides that back pay shall not include items such as overtime pay and holiday premium pay. Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line

[5] It is noted that only one entry during this time period indicated that the attorney worked, in part, on attorney fees.

job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. *See N.J.A.C.* 4A:2-2.10(d)4, *et seq*. Furthermore, *N.J.A.C.* 4A:2-2.10(d)9 states that an award of back pay is subject to reduction for any period of time during which the employee was disabled from working.

Initially, the record evidences that the appointing authority remitted payment for back pay from December 21, 2012 to May 10, 2013, the date the appellant was deemed to have reached MMI. The appointing authority also remitted payment from May 10, 2013 through September 11, 2013, the date all of the appellant's accrued leave time was exhausted. The appellant maintains that he is entitled to additional back pay until February 1, 2014, the date of his retirement, since the appointing authority failed to notify him that he would not be able to return to work even if he was successful in his disciplinary appeal. The Commission does not agree. In this regard, *N.J.A.C.* 4A:2-2.10(d)9 specifically states that an award of back pay is subject to reduction for any period of time during which the employee was disabled from working. In the instant matter, the record evidences that the appellant had reached MMI on May 10, 2013 with a permanent lifting restriction. Since the appointing authority does not provide permanent light duty, the appellant would be considered disabled from work as of May 10, 2013. Consequently, he is not entitled to any additional back pay after that date.

With regard to the appellant's request for reimbursement of $990.66 for the continuation of COBRA benefits for his daughter, $438 for clothing maintenance, and $1,813.16 for holiday pay, it is unclear from the record whether the appointing authority has already remitted payment for these amounts. However, *N.J.A.C.* 4A:2-2.10(d) provides for reimbursement of payments made to maintain the employee's health insurance coverage. Therefore, although the appellant would be entitled to any monies he spent on COBRA to maintain his own health insurance, he would not be entitled to any monies that he spent to maintain his daughter's health insurance. *See In the Matter of Obianuju Okosa* (MSB, decided October 1, 2003) (Reimbursement of premiums paid by the appellant's husband to maintain his health insurance was not authorized under *N.J.A.C.* 4A:2-2.10(d)). Additionally, the amounts designated as the appellant's clothing allowance and

holiday pay are similarly excluded from the amount of back pay due. *See N.J.A.C.* 4A:2-2.10(d)1. *See also, In the Matter of Jeffrey Jusko* (MSB, decided March 13, 2002); *In the Matter of Shannon Stoneham-Gaetano and Maria Ciufo* (MSB, decided April 24, 2001). However, the appellant is entitled to any amounts for the shift differential and longevity pay. Therefore, if the appointing authority has already reimbursed the appellant for his clothing allowance, COBRA for his daughter and holiday pay, those amounts should be deducted from the counsel fees the appellant would be entitled to as discussed below.

Counsel Fees

N.J.S.A. 11A:2-22 provides that the Commission may award reasonable counsel fees to an employee as provided by rule. *N.J.A.C.* 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues in an appeal of major disciplinary action before the Commission. *N.J.A.C.* 4A:2-2.12(c) provides as follows: an associate in a law firm is to be awarded an hourly rate between \$100 and \$150; a partner in a law firm with fewer than 15 years of experience in the practice of law is to be awarded an hourly rate between \$150 and \$175; and a partner in a law firm with 15 or more years of experience practicing law, or notwithstanding the number of years of experience, with a practice concentrated in employment or labor law, is to be awarded an hourly rate between \$175 and \$200. *N.J.A.C.* 4A:2-2.12(d) provides that if an attorney has signed a specific fee agreement with the employee or the employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority and that the attorney shall not be entitled to a greater rate than that set forth in the fee agreement. *N.J.A.C.* 4A:2-2.12(e) provides that the fee amount or fee ranges may be adjusted based on the circumstances of the particular matter, and in consideration of the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly, the customary fee in the locality for similar services, the nature and length of the relationship between the attorney and client and the experience, reputation and ability of the attorney.

It is clear that appellant is entitled to counsel fees pursuant to the Commission's November 20, 2013 decision. As to the amount of counsel fees, the Commission finds that since there was a fee agreement, the appellant is entitled to counsel fees at the hourly rate of \$125. However, the appellant is not entitled to any counsel fees after November 26, 2013, the date he received the Commission's November 20, 2013 decision. Generally, an appellant is entitled to counsel fees regarding his enforcement request *for his counsel fee award* since New Jersey courts have recognized that attorneys should be reimbursed for the work performed in

support of any fee application. *See H.I.P. (Heightened Independence and Progress, Inc.) v. K. Hovnanian at Mahwah VI, Inc.*, 291 *N.J. Super*. 144, 163 (Law Div. 1996) [quoting *Robb v. Ridgewood Board of Education*, 269 *N.J. Super*. 394, 411 (Ch. Div. 1993)]. However, the appellant is not entitled to counsel fess for his enforcement request for his back pay award where the appointing authority did not unreasonably delay implementing the Commission's order and there was no evidence of any improper motivation on the part of the appointing authority. *See In the Matter of William Carroll* (MSB, decided November 8, 2001). There is no evidence in the record that the appointing authority unreasonably delayed implementing the Commission's order, nor has the appellant presented any evidence of any improper motivation of the part of the appointing authority. Therefore, since the entry for only one of the dates after November 26, 2013 indicates that Mr. Paris spent some time working on counsel fees, as well as back pay, it is impossible to determine the amount of time he spent solely working on the enforcement of counsel fees.[6] Therefore, the total counsel fees owed is $10,300.

Costs

With regard to costs associated with the representation of the appellant, it is noted that the costs associated with printing/copying, postage and delivery charges, are classified as normal office overhead, and are, therefore, non-reimbursable. *See N.J.A.C.* 4A:2-2.12(g); *See also, In the Matter of William Brennan* (MSB, decided January 29, 2002); *In the Matter of Monica Malone* (MSB, decided August 21, 2003). The appeal processing fee of $20 is also non-reimbursable. *See N.J.A.C.* 4A:2-1.8(f). With regard to the costs of $52.36 and $497.70 listed for "Discovery fee" and "Reedinger," respectively since there is no explanation as to what these costs were actually for, it is impossible to determine whether they were a reimbursable expense and therefore, they are also exempt from reimbursement. However, the remaining expense for transcripts is reimbursable pursuant to *N.J.A.C.* 4A:2-2.12(g). *See In the Matter of Tracey Andino* (MSB, decided August 21, 2003); *In the Matter of Gail Murray* (MSB, decided June 25, 2003). With regard to the $1,000 for the accounting service, the Commission is mystified as to how or why this service was sought, since the calculation of back pay in this matter was not in dispute, and thus was done by simple math. The only dispute was in regard to the time period.

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[6] Moreover, the Commission is perplexed at Mr. Paris' submission of a redacted invoice. It was incumbent upon the attorney to provide the appointing authority with a clear invoice which sufficiently described the work performed. The Commission's review of the redacted invoice shows it was, at best, difficult to ascertain whether the fees charged were appropriate. In this regard, it appears that, had the attorney submitted a clear invoice initially, the appointing authority would have paid it as it avers in its submission. Had this occurred, the necessity of the subject enforcement request regarding counsel fees and the counsel fees associated with the request could have been completely avoided. Moreover, based on the entry, at most, it would appear that the attorney spent less than one hour on the request for enforcement of his counsel fees.

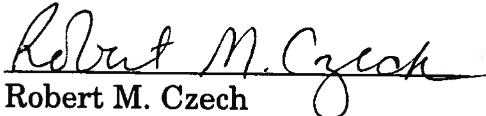
Therefore, since this appears to be an unnecessary expense, it is also unreimbursable. Thus, Mr. Paris is entitled to costs in the amount of $300.

ORDER

Therefore, it is ordered that the appointing authority pay counsel fees in the amount of $10,300 and costs in the amount of $300, within 30 days of the issuance of this decision.

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 30TH DAY OF JULY, 2014



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Attachment

c: David Reedinger
Peter Paris, Esq.
Benjamin D. Leibowitz, Senior Deputy County Counsel
Dennis J. Cerami
Beth Wood
Joseph Gambino
Kenneth Connolly

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STATE OF NEW JERSEY

In the Matter of David Reedinger Middlesex County Department of Adult Corrections CSC DKT. NO. 2013-3155 OAL DKT. NO. CSR 7892-13	:	DECISION OF THE CIVIL SERVICE COMMISSION

ISSUED: November 20, 2013 PM

The appeal of David Reedinger, a County Correction Officer with Middlesex County, Department of Adult Corrections, of his removal effective May 21, 2013, on charges, was heard by Administrative Law Judge Edward J. Delanoy, Jr., who rendered his initial decision on October 16, 2013, reversing the removal. Exceptions were filed on behalf of the appellant and cross exceptions were filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on November 20, 2013, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay and counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

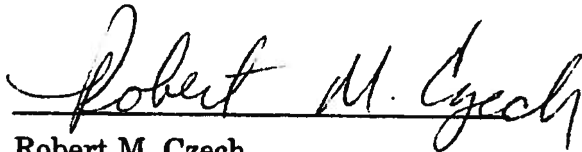
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of David Reedinger. The Commission further orders that appellant be granted back pay, benefits, and seniority for the period of separation, including the time he was suspended without pay prior to his removal, to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C.* 4A:2-2.12. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2.12, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
NOVEMBER 20, 2013



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attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 7892-13

AGENCY DKT. NO. N/A 2013-3155

IN THE MATTER OF DAVID REEDINGER, MIDDLESEX COUNTY CORRECTIONS CENTER.

Peter B. Paris, Esq., for David Reedinger, appellant (Mets, Schiro & McGovern, LLP, attorneys)

Lawrence J. Bullard, Esq., for Middlesex County Corrections Center, respondent (Thomas F. Kelso, County Counsel)

Record Closed: September 12, 2013 Decided: October 16, 2013

BEFORE **EDWARD J. DELANOY, JR.**, ALJ:

STATEMENT OF THE CASE

Appellant David Reedinger was removed from his position as Corrections Officer at Middlesex County Corrections Center (MCCC) after charges pertaining to a physical altercation with an inmate on December 7, 2012, were sustained. Personnel in command at MCCC charged appellant with negligence in performing his duties, in violation of N.J.A.C. 4A:2-2.3(a)(7); unbecoming conduct, in violation of N.J.A.C. 4A:2-

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2.3(a)(6); and other sufficient cause, for unauthorized use of force, in violation of N.J.A.C. 4A:2-2.3(a)(11).

PROCEDURAL HISTORY

On December 19, 2012, appellant was charged in a Preliminary Notice of Disciplinary Action (PNDA). (R-5B.) On December 20, 2012, appellant was suspended with pay from his position. A departmental hearing was held on April 2, 2013, and all charges were sustained. A Final Notice of Disciplinary Action (FNDA) was filed on May 21, 2013, removing appellant from his position. (T-1.) Appellant appealed on May 28, 2013, and on May 29, 2013, the matter was filed at the Office of Administrative Law (OAL), as a contested case pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. The hearing was held on August 7, 2013. Transcripts were ordered and received, and thereafter summation briefs were submitted on September 12, 2013. The record was closed on that date.

FACTUAL DISCUSSION

The following matters are not in dispute and I **FIND** them as **FACT**:

On December 7, 2012, at approximately 2:30 p.m., inmate Alan Clayton became involved in an altercation with another inmate over the use of the MCCC telephones. Corrections officers interceded, and Clayton was escorted back to his cell by appellant, Joseph Graffagnino, and Michael Williams. Upon arrival at his cell, Clayton entered. Subsequently, the three officers had a physical confrontation with Clayton inside his MCCC cell, resulting in injury and medical treatment for Clayton and appellant, and the request for assistance from other officers, who responded to Clayton's cell. The manner in which appellant acted during the in cell confrontation constitute the material facts in dispute.

Testimony

Sergeant Paul DeAmicis has been employed by MCCC in special investigations and internal affairs for eight years. After receiving officers' reports concerning the Clayton matter, DeAmicis was charged with investigating the incident. DeAmicis began by attempting to speak with Clayton, who did not want to be involved, stating only that he did not deserve the beating he received.

DeAmicis viewed a video recording of the common area outside of Clayton's cell. (R-1.) The video begins with appellant, Joseph Graffagnino, and Michael Williams escorting Clayton from the telephone area back to his cell. (R-1 at 14:32.14.) Clayton is compliant, and goes into his cell followed by the three officers. The three officers subsequently exit the cell. (R-1 at 14:33.38.) Appellant and Joseph Graffagnino re-enter the cell. (R-1 at 14:33.44.) Williams then also re-enters the cell. (R-1 at 14:33.50.) Williams then again exits the cell, and begins to lock down some of the other approximately seventy inmates on the lower tier pod. (R-1 at 14:34.08.) Other officers subsequently begin to enter the cell. (R-1 at 14:34.25.) Inmate Clayton is then brought out of the cell. He is not compliant at this time. (R-1 at 14:36.) Finally, Clayton is taken off the unit towards medical. (R-1 at 14:36.27.)

DeAmicis reviewed appellant's report (R-2) against what was seen in the video. Because the two did not match, DeAmicis became concerned. In his report, appellant stated that the cell door "popped" open and that inmate Clayton aggressively charged toward the cell door. (R-2.) DeAmicis did not see that occur on the video. (R-1.)

On February 14, 2013, DeAmicis took an oral statement from appellant. (R-22b.) In the oral statement, appellant states that Clayton stepped toward the cell door after it popped. Appellant also told DeAmicis that three officers returned Clayton into his cell. Clayton was told to sit on his bunk. Clayton complied and the three officers exited the cell. Graffagnino attempted to secure the door with his hand. The cell door "popped" open approximately six inches, whereupon Clayton approached the cell door with a clenched fist. Rather than attempt to close the cell door again, Graffagnino re-opened the cell door and entered the cell in an attempt to restrain Clayton, and appellant

followed him into the cell behind Graffagnino. Clayton was swinging his arms when Graffagnino met him in the cell. Graffagnino and Clayton became engaged in a physical confrontation. As Clayton was falling, appellant hit Clayton in the back of his head with a clenched fist. Appellant then activated his officer assistance button. Because appellant broke his hand when striking Clayton, he exited the cell. At that time, other officers came in to take over the subduing of Clayton. All other responding officers were required to use force to subdue Clayton. Appellant proceeded to medical for an x-ray of his hand. During the time of the confrontation with Clayton, other inmates were left alone in the cell block. Clayton was also taken to medical where he remained non-compliant and was forcibly strip searched. He was eventually medically cleared. Clayton was taken to the high visibility unit where he was put on psychiatric watch.

The cell doors in the area of Clayton's cell do occasionally pop open. No maintenance report had been filed for Clayton's cell door. Photographs of the injuries to Clayton, taken on December 7, 2012, showed injuries to the back of his head, a contusion on the left side of his face, and a bruise on the upper right side of his face. (R-22a.) Subsequent photographs taken on December 12, 2012, reveal additional injuries to Clayton's wrist, and a complaint by the inmate of pain in his ribs. (R-22c.) DeAmicis agreed that he did not know how or when those injuries occurred.

Appellant received annual training in the use of force, which training complied with the Attorney General's Guideline from June 2000. (R-25.) The Use of Force policy sets forth that:

> In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. The use of force should never be considered routine. In determining to use force, the law enforcement officer shall be guided by the principle that the degree of force employed in any situation should be only that reasonably necessary. Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

> This policy reinforces the responsibility of law enforcement officers to take those steps to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law. (R-25 at 1.)

The Use of Force policy continues that:

> Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. It is a decision which can be irrevocable. It is a decision which must be made quickly and under difficult, often unpredictable and unique circumstances. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions.

Appellant signed receipts acknowledging that he was instructed on the use of force, the last instruction coming on September 10, 2012, only several months before the incident with inmate Clayton. (R-26.) Middlesex County also had its own use of force policy (R-24), as well as an intake unit policy (R-23). The intake unit policy required officers to call a supervisor when unusual circumstances arose. (R-23 at 3.) The appellant did not notify his supervisor when the cell door did not lock and when inmate Clayton became belligerent. The supervising officer was not notified of this event until the officer assistance button was activated.

Prior to the incident, inmate Clayton, a diabetic, had stopped eating, and he had not had his medication for three days. He was seen several times at medical on the day in question prior to the incident. Clayton was agitated and frustrated, and he became easily angered. During the 8:20 a.m. visit to medical, he walked out of the office. (R-17.)

In the opinion of DeAmicis, the use of force was not necessary by the officers. DeAmicis did not see Clayton charging the cell door in the video. In any event, the cell door could simply have been closed and the crisis averted. DeAmicis did agree that if

Clayton did charge at the officers, the use of force was justified and authorized. An officer is under no obligation to retreat or desist when resistance is encountered or threatened. (R-24 at 5.) DeAmicis stated that officers can use force one step higher than that being used by an inmate against them. Officers can strike an inmate to get their compliance and a closed hand strike is permitted in that circumstance. DeAmicis stated that inmate Clayton submitted to the officers only when he was being walked across the cell block area after being removed from his cell. DeAmicis stated that appellant should have notified his superior officer prior to putting Clayton in his cell. DeAmicis agreed that appellant did not open the cell door, and that the improper latching of the cell door was common, and did not require a report to a supervisor.

Administrative Lieutenant Robert Grover is in charge of discipline at MCCC. The charge of unauthorized use of force was based upon a decision that the force used by appellant was not justified. The appellant was charged with neglect of duty based upon other inmates being left unsupervised while appellant was in the cell trying to restrain inmate Clayton. In addition, appellant should have notified a sergeant of the incident with Clayton by the telephone. The charge of conduct unbecoming was based upon an erroneous police report being submitted by appellant. However, Grover was unsure whether appellant had been trained on when to contact a supervisor, and he agreed that he did not know what occurred inside the cell. Grover agreed that an officer can use force if necessary, and that an unusual circumstance is determined by the professional judgment of the officer. Grover also acknowledged that there were problems with cell doors properly closing.

Officer Jose Estevez responded to the call for assistance. Upon his arrival at the cell, he observed appellant and Graffagnino fighting with a non-compliant Clayton. Estevez employed a compliance hold on Clayton, but he still would not calm down. Clayton continued to be not in compliance all the way to medical. Estevez was familiar with the cell doors in M pod. He agreed that while it was not common, the cell doors do not always secure because they are made from wood. Estevez also agreed that an officer can use force if necessary, and that an unusual circumstance is determined by the professional judgment of the officer.

Officer Jay Doda also responded to the call for assistance. Upon his arrival at the cell, he observed appellant and Graffagnino fighting with Clayton who was not compliant. Clayton remained not in compliance all the way to medical. Several compliance holds were required to calm Clayton down. He agreed that while it was not common, the cell doors in M pod do not always secure because they are made from wood. The cell doors have been known to pop back open. If that had happened to Doda, he would attempt to close the door again rather than re-entering the cell. However, if an inmate were to come towards Doda in a threatening manner, there may not be enough time to close the cell door, and Doda would attempt to restrain the inmate.

Sergeant Wesley Latham responded to the call for assistance. Upon his arrival at the cell, he observed appellant and Graffagnino fighting with Clayton who was not compliant. Clayton was a large man, and he remained not in compliance all the way to medical. Several compliance holds were required to calm Clayton down. It was properly in the discretion of the officers whether or not to contact a supervisor when they were leading Clayton from the telephones back to his cell. Latham did not believe that the officers were neglecting their duty when they escorted Clayton back to his cell and the other inmates were left unattended. This was because all the individuals were on the same tier and officers were in the area. Latham agreed that if a door was not properly working, the supervisor should be notified. In addition, a fist strike would be appropriate under the Attorney General's Use of Force policy.

Appellant David Reedinger has been employed by MCCC for eleven years. He received use of force training which is consistent with the policy at MCCC. Reedinger assisted in walking Clayton back to his cell after the incident at the telephones. At this time, Clayton was compliant. For precautionary reasons, upon arrival at the cell, Reedinger entered with Graffagnino. Graffagnino advised Clayton to sit down on his bunk. The officers then exited the cell. Graffagnino attempted to secure the door but it popped open approximately six inches. At that time, Reedinger was standing three feet from the cell door. Reedinger could see Clayton through the window of the cell door. Clayton became irate and aggressively stepped or charged towards the cell door with clenched fists. Reedinger did not believe that Graffagnino had sufficient time to close

the cell door. Graffagnino entered the cell and Reedinger followed. Reedinger was backing up his partner and did not believe he had a duty to retreat. Clayton was not compliant and he resisted the officers. Clayton was punching the officers. Graffagnino did not respond with a punch. Reedinger punched Clayton on the back of his head and broke his hand. Clayton was still not compliant and Reedinger activated his assistance button. It took approximately thirty seconds for other officers to arrive. Clayton continued to fight the officers. Reedinger left the cell and attempted to secure the other inmates. It was not unusual for the doors to fail to secure on their first attempt at closing. A maintenance report had not been filed regarding Clayton's cell door. The cells are approximately ten feet by ten feet in size.

FINDINGS OF FACT

Given the apparent contradiction of the versions of events as offered by DeAmicis and appellant, it is my obligation and responsibility to weigh the credibility of the witnesses in this matter in order to make a determination. Credibility is the value that a fact finder gives to a witness' testimony. The word contemplates an overall assessment of a witness' story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The term has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973). Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, supra, 5 N.J. 514.

The respondent did not produce a witness to the altercation. The direct participant, inmate Clayton, provided only a statement to DeAmicis that he did not deserve his beating. Nothing more was elicited from inmate Clayton with regard to what

occurred inside his cell, and Clayton did not testify at the hearing. The respondent's evidence was the testimony of DeAmicis, the officer who viewed a recorded video version of the incident. However, the recording was from a camera located across the pod from inmate Clayton's cell, showing only the exterior of Clayton's cell and the cell door. Neither the interior of Clayton's cell, nor what actually occurred inside the cell, are shown in the video. What is undisputed, and admitted by appellant, is that he struck Clayton in the back of his head with a closed fist, resulting in a broken hand.

Respondent's position is that the video did not match the report and statement given by appellant. DeAmicis did not see the cell door pop open nor did he see inmate Clayton rush toward the cell door. DeAmicis' position is that even if Clayton was charging at the officers, the cell door could simply have been closed and the crisis averted.

Appellant's position is that Graffagnino attempted to secure the door with his hand. The cell door "popped" open approximately six inches, whereupon Clayton approached the cell door with a clenched fist. Rather than attempt to close the cell door again, Graffagnino re-opened the cell door and entered the cell in an attempt to restrain Clayton, and appellant followed into the cell behind Graffagnino. Clayton was swinging his arms when Graffagnino met him in the cell. Graffagnino and Clayton became engaged in a physical confrontation. Appellant was backing up his partner and did not believe he had a duty to retreat. Clayton was not compliant and he resisted the officers. Appellant submits that because Clayton was not taking his medication and was not eating, that he was agitated and predisposed for a fight.

While difficult to determine and somewhat inconclusive, it does appear that the cell door "popped" open after the three officers had exited the cell. A close review of the video reveals that the cell door appears to move slightly after the officers attempted to close it. (R-1 at 14:33.40.3.) It does not appear that Graffagnino attempted a second time to close the door. Clayton cannot be seen stepping or charging towards the door with fist clenched in an aggressive manner. Clayton is not seen until he is pulled out of the cell by several officers. However, based simply on the video, the fact that Clayton cannot be seen stepping or charging the officers from that camera angle is not sufficient

proof to discount appellant's testimony. Respondent has produced no evidence that Clayton did not charge toward the cell door, other than the absence of such proof on the video. As such, since what exactly occurred inside the cell cannot be seen from the camera angle in the video, the only evidence of what did occur is appellant's sworn testimony and his report. Appellant's version of events has not been proven to be inconsistent with what can be seen in the video. For this reason, I credit the testimony of appellant.

I **FIND** that appellant's testimony was credible that the cell door popped open and that Clayton was stepping or charging at the three officers. A review of the video reveals that while Graffagnino and appellant are in Clayton's cell after walking him back from the telephones, whatever is occurring inside the cell draws the attention of several inmates who are passing by. The two officers are inside Clayton's cell for more than a minute, and it is apparent that the passing inmates were attentive of something occurring within the cell. One inmate can be seen approaching the cell, but he is rebuffed by Williams, who then puts his body between the inmate and the cell, using his body and the cell door as a shield. After all three officers exit the cell and then re-enter, approximately four to six seconds elapse between the time the first officer, Graffagnino, re-enters the cell and the third officer, Williams, re-enters the cell.

I **FIND** that appellant was involved with a confrontation with inmate Clayton in his cell. Appellant, to his credit, admitted striking inmate Clayton in the back of his head with a closed fist. This action by appellant was not an unlawful action, however, because it was done in defense of an attacking inmate. I also **FIND** that it has not been proven by a preponderance of the evidence that appellant failed to exhaust all reasonable means before resorting to the use of force.

The record in this matter includes documentary evidence and the testimony of the individuals who witnessed or had knowledge of the incidents they described. After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to review the video on numerous occasions and to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the additional relevant and credible **FACTS** in this matter:

Appellant had been employed by the Middlesex County Corrections Center for approximately eleven years when the incident occurred. Appellant had no disciplinary history of abuse or mistreatment of inmates.

Prior to the incident, inmate Clayton, a diabetic, had stopped eating, and he had not had his medication for three days. He was seen several times at the medical department on the day in question prior to the incident. Clayton was agitated and frustrated, and he became easily angered. During the 8:20 a.m. visit to medical, he walked out of the office.

On December 7, 2012, at approximately 2:30 p.m., Clayton was involved in a verbal altercation with another inmate over the use of the prison telephones. Clayton was compliant as he walked back from the telephones followed by the three officers. Clayton proceeded into his cell without incident. Graffagnino and appellant entered the cell after Clayton, and cannot be seen on camera. Williams stood by the cell door looking inside the cell. Clayton was told to sit on his bunk, after which time he became angry and irate. Graffagnino and appellant were in the cell, off camera, for over one minute. While the two officers were in the cell, other inmates outside the cell in the common area became aware of some type of activity within the cell. One inmate approached Williams, but Williams turned him away. Williams put his body between the inmate and the cell, using his body and the cell door as a shield. Williams then turned and got out of the way as Graffagnino and appellant exited the cell. Graffagnino closed the cell door behind him but remained at the cell door. Appellant was standing behind Graffagnino facing the cell door.

Although no maintenance report had been filed for Clayton's cell door, the cell doors in the area of Clayton's cell did occasionally pop open. On this occasion, the cell door "popped" open and did not secure. Clayton began to move toward the cell door in an aggressive manner. Graffagnino re-opened the cell door and Graffagnino re-entered the cell. Appellant did not re-open the cell door. Graffagnino was followed into the cell by appellant and then Williams. Appellant followed Graffagnino into the cell to assist and protect his fellow officer. An altercation followed inside the cell involving Clayton

and the three officers. Clayton was not compliant with orders of the officers and he resisted. Clayton was attempting to punch the officers. Appellant was acting to protect his fellow officer Graffagnino. During the altercation, appellant punched Clayton with a right hand fist to the back of Clayton's head with enough force to break appellant's hand. Panic buttons were activated, and a call for assistance went out over the officer's radios. Williams then again exited the cell, and began to lock down some of the other approximately seventy inmates on the lower tier pod. Other assisting officers subsequently began to enter the cell, and they were required to use force to subdue Clayton. Compliance holds were used on Clayton, but he still would not calm down. Several officers struggled to restrain Clayton for several minutes. Inmate Clayton was brought out of the cell and he continued to be non-compliant as he was taken off the unit and transported to medical. Appellant exited the cell and after checking on the status of the inmates, sought medical attention for his hand.

Photographs of the injuries to Clayton, taken on December 7, 2012, showed injuries to the back of his head, a contusion on the left side of his face, and a bruise on the upper right side of his face. Clayton did not submit a complaint about the incident to any staff member, and he advised DeAmicis that he would not submit a complaint.

LEGAL ANALYSIS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his duties. N.J.S.A. 11A:1-2(a). Such a civil service employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). An appeal to the Merit System Board requires the Office of Administrative Law to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Soc. Servs., 197 N.J. Super. 307 (App. Div. 1984).

Based on the specifications, appellant was charged with negligence in performing his duties, in violation of N.J.A.C. 4A:2-2.3(a)(7); unbecoming conduct, in violation of N.J.A.C. 4A:2-2.3(a)(6); and other sufficient cause, for unauthorized use of force, in violation of N.J.A.C. 4A:2-2.3(a)(11). Appellant has been removed from his duty as a result of this incident.

Appellant has been charged with violating N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a County Employee. Conduct unbecoming a public employee has been described as an elastic phrase that includes any conduct that adversely affects the morale of governmental employees or the efficiency of a public entity or conduct that has a tendency to destroy public respect for governmental employees and confidence in public entities. Karins v. City of Atl. City, 152 N.J. 532, 554-57 (1998); In re Emmons, 63 N.J. Super. 136 (App. Div. 1960). A finding or conclusion that a public employee engaged in unbecoming conduct need not be based upon the violation of a particular rule or regulation and may be based upon the implicit standard of good behavior

governing public employees consistent with public policy. City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955); Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992).

According to Lieutenant Grover, the charge of conduct unbecoming was based upon an erroneous police report being submitted by appellant. Appellant stated in his report that inmate Clayton charged aggressively at Graffagnino. Although the video did not show this, the absence of such video proof is not dispositive, given the distance and high angle of the camera, and the absence of a camera view inside the cell. No witness stated that Clayton did not charge Graffagnino. Accepting the testimony of appellant, I have found that the cell door did pop open, and that Clayton did charge at Graffagnino. Graffagnino re-entered the cell, followed by appellant. I am unable to discern anything in appellant's report which was erroneous. As such, appellant was defending his fellow officer, and was assisting his fellow officer in attempting to restrain Clayton. Appellant admits striking Clayton in the head in his report. Therefore, as to this charge, respondent has not met its burden of proof that appellant submitted an erroneous police report, and as such, respondent has not proven that appellant did commit an act of unbecoming conduct. I do so **CONCLUDE.**

Appellant has been charged with violating N.J.A.C. 4A:2-2.3(a)(11), Other Sufficient Cause. Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. According to Lieutenant Grover, this charge is based on the unauthorized use of force on inmate Clayton. I have found that Clayton did charge at Graffagnino. As such, appellant was defending his fellow officer, and was assisting his fellow officer in properly using force to restrain Clayton.

DeAmicis agreed that if Clayton did charge at the officers, the use of force was justified and authorized. An officer is under no obligation to retreat or desist when resistance is encountered or threatened. (R-24 at 5.) DeAmicis stated that officers can use force one step higher than that being used by an inmate against them. Officers can strike an inmate to get their compliance and a closed hand strike is permitted in that

circumstance. Grover stated that an officer can use force if necessary, and that an unusual circumstance is determined by the professional judgment of the officer. Estevez testified that an officer can use force if necessary, and that an unusual circumstance is determined by the professional judgment of the officer. Doda set forth that if an inmate were to come towards him in a threatening manner, there may not be enough time to close the cell door, and he would attempt to restrain the inmate. Latham testified that a fist strike would be appropriate under the Attorney General's Use of Force policy.

Appellant was trained in the Use of Force Policy. That policy clearly dictated that deciding to use force was a decision which needed to be made quickly under difficult and unpredictable circumstances. (R-25 at 2.) Appellant followed the dictates of the Use of Force Policy. The degree of force employed in this situation was reasonably necessary.

Also of interest is a review of the specifications resulting in the charge of unauthorized use of force. Those specifications allege that appellant re-opened the cell door and purposely re-entered. As the evidence has shown that it was Graffagnino, and not appellant who re-opened the cell door, the specification is faulty and must be disregarded. Therefore, as to the charge of other sufficient cause, unauthorized use of force, respondent has not met its burden of proof that appellant abused an inmate, allowed inmate abuse, or failed to prevent same, and therefore, appellant did not commit an act of using unauthorized force. Therefore, respondent has not proven that appellant committed an act which violated this standard of good behavior, and I do so **CONCLUDE**.

Appellant was also charged with Neglect of Duty, in violation of N.J.A.C. 4A:2-2.3(a)(7). This section prohibits negligence in performing one's duty which results in injury to persons or damage to property. The specification in the PNDA sets forth that the charge was brought because appellant failed to notify his sergeant of an incident with an inmate which later resulted in the use of force. (R-5B.) Grover testified that respondent brought this charge based upon other inmates being left unsupervised while appellant was in the cell trying to restrain inmate Clayton, and that appellant should

have notified a sergeant of the incident with Clayton by the telephone. More specifically, Grover stated that while Clayton was being walked by the three officers from the telephones back to his cell, appellant should have called or "stopped by" and notified a supervisor. Conversely, Latham testified that it was properly in the discretion of the officers whether or not to contact a supervisor when they were leading Clayton from the telephones back to his cell, and that he would not require notification under such circumstances. As to the charge regarding other inmates being left unsupervised during this confrontation, this allegation was not charged in the specifications of appellant's PNDA (R-5B) or FNDA. (T-1.) In addition, Latham testified that he did not believe that the officers were neglecting their duty when they escorted Clayton back to his cell and the other inmates were left unattended. This was because all the individuals were on the same tier and officers were in the area. Therefore, respondent has not proven that appellant committed an act of neglect of duty, and I do so **CONCLUDE.**

I **CONCLUDE** that the action of the Appointing Authority removing appellant for his actions on December 7, 2012, should be **REVERSED.**

ORDER

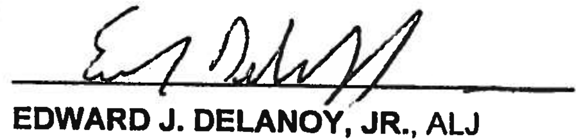
I **ORDER** that the appeal of Officer David Reedinger is granted, and that the disciplinary action of Middlesex County removing appellant is **REVERSED.** I also **ORDER** that David Reedinger be reinstated to the position of Corrections Officer with back pay and with all other rights and privileges of his position retroactive to the date of his termination.

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 Merit System Board 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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, DEPARTMENT OF PERSONNEL, 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.



October 16, 2013
DATE

EDWARD J. DELANOY, JR., ALJ

Date Received at Agency: October 16, 2013

Date Mailed to Parties: 10/16/13

EJD/cb

APPENDIX

LIST OF WITNESSES

For respondent:

Paul DeAmicis

Robert Grover

For appellant:

Jose Estevez

Jay Doda

Wesley Latham

David Reedinger

LIST OF EXHIBITS

For respondent:

R-1	Copy of the Surveillance Video from the Housing Unit for date of incident, December 7, 2012
R-2	Copy of Report submitted by David Reedinger, dated December 7, 2013
R-22(a)	Photographs from December 7, 2012
R-22(b)	Interview of David Reedinger on February 14, 2013
R-22(c)	Photographs from December 12, 2012
R-23	Middlesex County Department of Corrections Intake Unit Policy
R-24	Middlesex County Department of Corrections Use of Force Policy
R-25	Middlesex County Department of Corrections Use of Force Training/Attorney General's Use of Force Policy Training for Law Enforcement Officers
R-26	Use of Force Acknowledgement Forms signed by David Reedinger

For appellant:

R-5B	Copy of the Preliminary Notice of Disciplinary Action, dated December 20, 2012
R-8	Copy of Report submitted by Sergeant Resetar, dated December 7, 2012
R-9	Copy of Report submitted by Sergeant Latham, dated December 7, 2012
R-10	Copy of Report submitted by Officer Jorge, dated December 7, 2012 and December 12, 2012
R-11	Copy of Report submitted by Corrections Officer Bartlinski, dated December 7, 2012
R-12	Copy of Report submitted by Corrections Officer Estevez, dated December 7, 2012
R-13	Copy of Report submitted by Corrections Officer Doda, dated December 7, 2012
R-14	Watch Memo submitted by Dr. Sandrock, dated December 7, 2012
R-15	Speed Memo submitted by RN Williams for inmate Clayton, dated December 7, 2012
R-17	Interdisciplinary Progress Notes, dated December 7, 2012
R-18	Anatomical Figure Drawing by RN Williams
R-20	Medical Observation Patient Shift Assessment of I/M Clayton, dated December 7, 2012

For tribunal:

T-1	Final Notice of Disciplinary Action

The nonsequential numbering of exhibits reflects the fact that several pre-marked exhibits were neither identified nor offered into evidence.