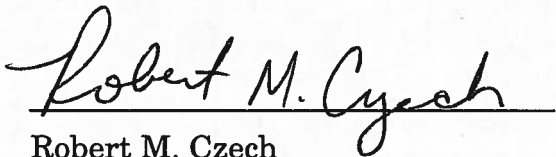


Re: Martha Hicks and Antonio Price

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
SEPTEMBER 17, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 11379-13
and CSV 11494-13

AGENCY DKT. NOS. 2014-332
and 2014-299

(CONSOLIDATED)

**IN THE MATTER OF MARTHA HICKS AND
ANTONIO PRICE, GARDEN STATE YOUTH
CORRECTIONAL FACILITY, DEPARTMENT OF
CORRECTIONS.**

Stephen J. Moschini, Esq., for appellant Martha Hicks

Robert Rottkamp, Jr., Esq., for appellant Antonio Price

**Kathleen Asher, Legal Specialist, for respondent Garden State Youth Correctional
Facility, pursuant to N.J.A.C. 1:1-5.4(a)2**

Record Closed: July 28, 2014

Decided: August 11, 2014

BEFORE JEFF S. MASIN, ALJ:

In these consolidated appeals from thirty-day suspensions imposed by the employer upon senior correction officers, the focus of the employer's concern for their conduct arose

when a social worker brought a cell phone inside the secured area of the Garden State Correctional Facility ("GSC) on April 24, 2013. Officer Antonio Price was assigned to the Front Entry Search position, where persons entering the secured area, including employees, contractors and visitors, must present their belongings and their persons for X-ray, wand, and possibly pat/frisk examination. Price was on duty at that location both when employees and others first enter the facility in the morning, at approximately 7:30 to 8:30 a.m., and again when persons leave and then re-enter the facility during the lunch hour, approximately 11:30 a.m. to 12:30 p.m., referred to at times in the record as the "afternoon." Officer Martha Hicks was assigned to assist Price during the busy morning, but she was not assigned to the location during the 11:30 a.m. to 12:30 p.m. hour. The cell phone was discovered when an alarm on the phone went off during a training class. Testimony and, indeed, recent legislation, note that the presence of cell phones in secure areas of correctional institutions pose serious security threats, and that concern is not disputed by the appellants.

The appellants each received a Preliminary Notice of Disciplinary Action, dated May 31, 2013, charging each with violating N.J.A.C. 2:2.3 (a)12, other sufficient cause. The specified action that purported to provide this "cause" for discipline was a violation of Human Resources Bulletin (HRB) 84-17 as amended, B-8, "serious mistake due to carelessness which may result in danger, or injury to persons or property"; and D-7, "violation of a Administrative Procedures and/or Regulations involving safety or security." Following agency-level hearings, each officer was found guilty of these violations and a thirty-day suspension was imposed upon the issuance of Final Notices of Disciplinary Action, each dated July 18, 2013. Each officer appealed the suspension to the Civil Service Commission, which transferred the appeals as contested cases to the Office of Administrative Law, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. A prehearing conference was held on November 25, 2013. A motion for consolidation was granted by Order, dated February 20, 2014. A hearing was held on July 28, 2014, and the record closed on that date.

Undisputed evidence identified the person who carried the cell phone into the secured area as Ms. Amanda Villalba-Rickert, an employee of Gateway Foundation New Jersey, a contractor with the Department of Corrections that was holding training sessions at GSC for new Gateway employees on April 24, 2013. The cell phone was apparently brought in

inadvertently, in a large colored bag that Ms. Villalba-Rickert brought through the Front Entry Search area. According to her explanation to the prison authorities, she inadvertently brought the phone in after returning from lunch, and not when she first arrived at the Front Entry Search area in the morning. In this instance, no untoward result occurred due to the entry of the cell phone. The investigation of the situation started with SID, but as it appeared that there was no "intended malicious malfeasance" on Villalba-Rickert's part, the investigation of the possible violations of security procedures arising from the fact of the entry of the phone through the search area was detailed to the Custodial Unit.

The investigation was conducted by Lieutenant Bernard Wille. In the hearing, Lieutenant Wille identified Internal Management Procedure GS. #119, which governed the Entrance Search Officer position. This "post" is a one-man post, however, in high traffic times, such as 7:30 a.m. to 8:30 a.m. and 11:30 a.m. and 12:30 a.m., an attempt is made to supplement that one person with another staff member, although that is dependent upon other staffing considerations. The Shift Commander is responsible for staffing decisions. Section D of G.S. #119, "Staffing," does note that the Shift Commander, "shall ensure" that at a minimum one supervisor and one additional officer are assigned to the main entry point at least thirty minutes before all custody shift changes, but these occur at 6:00 a.m., 2:00 p.m. and 10:00 p.m. The Front Entry Search position was equipped with a conveyor belt and an X-ray scanner, with a monitor that permitted the officer to see the contents of items passing through the X-ray machine, and a walk-through metal detection scan, which persons entering the facility had to pass through. In addition, the officer has a wand used for close-up detection, and pat-search or pat-frisk searches could occur where any person or belongings set off alarms. If a female entrant required a pat-frisk, a female officer would, if at all possible, be the person performing that procedure, which involved a very particular process of examining the person's body for any hidden contraband or weapon. G.S. #119 also provided that "[A]ll authorized items shall be carried on person or in a clear plastic cosmetic bag (maximum size of 12 inch x 12 inch x 3 inches)." Further, the document provides, "[I]f a person cannot clear the walk-through metal detector after four (4) attempts, the Shift Commander shall be immediately notified and a supervisor shall be dispatched to the scene for further investigation" GS #119 then provides "in the presence of a supervisor," a non-custody staff person who has been cleared by the use of a hand-held metal detecting

wand and a subsequent pat-search so that the supervisor and the correction officer stationed at the entry post are "satisfied that the person is not concealing contraband", the person "shall be authorized to enter the facility." However, the incident shall be documented in writing via the proper custody chain-of-command." The form upon which this documentation occurs is a "Failure To Clear Walk Thru View Scan Machine" ("Failure to Clear") form.

Lieutenant Wille testified that he and Lieutenant McGowan examined video recordings made by camera #4 which showed the Front Entry Search area. Officer Price was the bidden officer at the post on the morning of April 24, 2013, assisted by Officer Hicks during the busy period starting at about 8:30 a.m. The video shows Ms. Villalba-Rickert approaching the search area with a large red handbag that was neither a clear bag nor within the allowable size limit. Something indicated that her first pass through the walk-through detector was unsatisfactory and she was told to pass through the detector a second time. In fact, she passed through it a total of seven (7) times, despite the four-pass limit in the written procedure. Lieutenant Bruce Hillman, who was the Shift Commander at the time of this event, advised Lieutenant Wille that he was never informed of this person's failure to successfully clear the scan. Additionally, Wille was advised by Sergeant Tangelik Carradine, assigned that day as the Mail Room Sergeant and, as such, the supervisor that the Shift Commander would send out to the Front Entry Search post if the Shift Commander had been notified of a failure to clear, that she was not notified of a person failing to clear. She did not respond to the post: a review of the videos does not show her as present at the post. Yet, she acknowledged that her signature appeared on a Failure to Clear form that documents Ms. Villalba-Rickert's failure to clear on April 24, 2013, a form that shows the time of the incident to have been 08:28 a.m. This form, R-7, is signed by Villalba-Rickert. Carradine explained to Wille that she had "worked out" with Officer Price that he would bring the Failure to Clear forms to her at the end of his shift and she would sign them. This procedure was clearly not authorized by GS #119, and Wille explained that as a result of her improper conduct, Carradine was given a five-day suspension.

Wille interviewed Officer Price in the presence of his union representative. Asked if he recalled the incident of a woman unable to clear the scan after four times (actually seven times), Price said that he had notified Villalba-Rickert's trainer, Mr. Bradford, who then

appeared at the post. He also claimed that that Sergeant Carradine appeared. However, while the videos showed that Bradford had actually appeared, they did not show Carradine.

Wille also questioned Officer Price about Ms. Villalba-Rickert's attempt to clear the scanner during the "afternoon." Price said that when she could not clear after four attempts, he directed her to have a seat while he cleared others seeking entry. (Price testified that the line was out the doorway). He told her that he would assist her and call a supervisor as soon as he cleared the line. Wille testified that Price told him that when he was finished processing this group of persons, he looked back and saw that Ms. Villalba-Rickert was no longer in the area.

Lieutenant Wille also noted that the video of Officer Hicks performing the pat-frisk of Ms. Villalba-Rickert in the morning showed that the officer did not perform the procedure properly. The officer is to stand behind the woman, who has her hands up in a horizontal position. The arms, sleeves, collar mid-back, pockets, inside and outside of both legs, and the area under the bra line are all to be examined. But the video showed that Officer Hicks only pat-searched Villalba-Rickert's sides and pocket areas. Her performance of the pat-frisk was "not even close" to standard. Hicks acknowledged to Wille that she was familiar with and had read GS #119. She also did not tell him that she was unfamiliar with the procedure for performing pat-down searches. In his recording of her answer to his question about her familiarity with pat-frisk procedure, she advised that she was, "according to the training that I received"

On cross-examination, Lieutenant Wille acknowledged that at one point on the video of the morning activities, Officer Price is observed to be making a phone call, but he had no idea who the officer was calling. However, the phone that he appears to use is only an internal phone and cannot be used to place a call going outside of the institution. The officer is also observed, at 08:36, to be behind the podium at the post, appearing to be writing something that Wille acknowledged might be the Failure to Clear report.

Queried as to whether, in actual practice, visitors, employees and inmates all receive the same type and degree of search, including pat-frisks, Lieutenant Wille claimed that they did.

Lieutenant Bruce J. Hillman has been assigned to Garden State for most of the past twenty-four-and-a-half years. On April 24, 2013, he was the Shift Commander, in charge of the jail. He worked the 6:00 a.m. to 2:00 p.m. shift. He first learned of the cell phone entering the secured area the next day. He did not recall having been called in the morning regarding someone not clearing the scanner and received no phone call that afternoon. If he had received such a call about someone unable to clear the machine, he would have had the area supervisor, a sergeant, respond to take care of the situation.

Major Gerard Calderese, assigned at this time to GSC as the Security Major in charge of all custody, testified about the security threat posed by cell phones in the prisons. If these phones get in inmate hands, they may be used for the conduct of business outside the institution, which may include gang-related or drug business or other illicit matters. When Calderese examined the videos, he determined that there might be wrongdoing by two officers and he initiated an investigation which was eventually given to Custody to perform. He also noted the importance of Post Orders, or as now known, Internal Management Procedures, the importance of which are taught from "day one" at the Academy. He personally placed a copy of the IMP GS #119 at the Front Entry Search post.

The witness did not recall if there had been complaints by non-custodial staff that the pat-frisk procedure was "too intrusive." The only substantive change he recalls in the procedure over the years has been as to the manner of the placement of hands in the area of the female chest when that area is to be searched. No difference is authorized for the pat-frisk of a civilian employee or a visitor. An officer who felt that she was not sufficiently trained should receive training, but in Hick's case, she would have received training at the Academy and further, she served for quite some time in the Transport Unit, where frisks are frequently undertaken.

Officers Price and Hicks both had good records, with Price an eighteen-year veteran with no record and Hicks a seventeen-year veteran with a minimal disciplinary record. Given a range of possible discipline, and considering the seriousness of the offense, with the risk it entailed to security, he opted for the lowest penalty he was authorized to impose.

Officer Martha Hicks has been employed with the Department of Corrections since February 1997. She attended the Corrections Officer Academy, served at another facility, then served in the Central Transport Unit for five years. She also served in custody recruitment, doing background checks, and was then assigned to GSC, where she had served for about one month prior to the incident of April 24, 2013. On that date, she was serving as a "floater," without a bidded job. As a General Assignment Officer (GA) that day she was told to assist Officer Price in the morning at the Front Entry Search post. She had been assigned at that post to assist about four to five times prior to that date. This was, however, the first time that she assisted Price. The first time she was assigned to the post she had "quickly" read the Post Orders, and, and she also spoke to Price. She never took the time to read GS #119 in a more calm situation, explaining that she was bidding on another position and, as a result, she "knew" that she would not be at the Front Entry Search post. On April 24, Officer Price told her to monitor the X-ray machine, which she had never operated before. He showed her how to operate the machine and took his cell phone from his locker and ran it through the X-ray, so that she would know what a cell phone looked like on the X-ray monitor. When Officer Price testified, he confirmed his having done this for Hicks and he also recalled that he had not instructed her of the need to search every bag. She testified that he told her that she would have to pat-down females, but did not instruct her how she was to do that. He also did not advise that she had to search through bags and other items that went through the X-ray machine.

On April 24, Officer Hicks was assigned to the Front Entry Search post, assisting Officer Price. No supervisor was present. Price told her that if anyone could not successfully pass through the scanner it was necessary to call the Shift Commander and a supervisor would be dispatched to come to the machine and handle the problem. In fact, on that date a person could not pass through successfully. When she was interviewed by Lieutenant Wille, Officer Hicks did not have an opportunity to review the recordings of the morning of the 24th.

Having done so since, she saw that Villalba-Rickert did put items into the tray and these passed through the X-ray machine, No contraband was observed. Hicks did not go through the woman's goods. Villalba-Rickert was unable to successfully pass through the body scan, although Hicks could not recall how many times she attempted to do so. Officer Price then used the wand to scan her. Hicks was requested to perform a body frisk and she did so, finding no contraband. Price told the woman to step to the side and picked up the house phone and made a call. Lieutenant Wille heard Price tell her that he was calling the Shift Commander. He heard Price say on the phone that a civilian had not cleared the machine. She could not hear who he was speaking to and did not hear a name attributed to that person.

Officer Price had told Hicks about the Failure to Clear form. She knew that the area supervisor would sign it and then the supervisor would sign and the person would be permitted to enter the secure area. On this occasion, Price showed her a partially filled out form, which she believed that he had filled out, and he told her that Sergeant Carradine would sign it at the end of the day, but that Carradine had given permission for the civilian to enter the secure area. Hicks understood that this was the normal practice and did not question this. Bradford arrived and was told that the civilian had not cleared the body scan and that he was responsible to allow her to enter once all the necessary signatures were obtained. Bradford signed the form and escorted the civilian inside. When Price returned from his break between 9:00 and 9:15 a.m., Officer Hicks returned to her sergeant for further assignment. The next day she learned from Price that a cell phone had entered the facility and she was advised by Sergeant Walker that she was banned from working the post.

Officer Hicks testified that she was instructed during her time at the Academy in 1997 about how to conduct a pat-frisk. She did not do these at her assignment at South Woods, a male institution. While assigned to Central Transport, she did have one day of training on pat-frisk, but this involved the procedure for doing this in the area of women's chests, as that procedure had been modified. At GSC, she spoke to a female officer, M. Velasquez, who normally assisted Officer Price, and this officer told her that due to complaints about the pat-frisk procedure, Hicks could not pat-frisk civilian females in the same manner as she would female inmates. When a pat-frisk was required, it would be done with a quick pat, as the

body scan had already scanned the whole body. However, Officer Hicks conceded that she was never taught to do such a "light frisk."

Officer Antonio Price has been assigned to GSC since 1995. He first worked the Front Entry Search post in 2005/06 and this became his permanent position at that time. He learned of the cell phone having entered the facility on the night of the 24th when he received a phone call advising him that he had been pulled from his post. He later learned that Ms. Villalba-Rickert had been the person who brought the phone in. He could not recall the details of the incident and what he learned about what had occurred only slightly refreshed his recollection. He recalls that the post was "real busy" and that the line of persons awaiting entry ran out of the door. Based upon his review of the recordings of the morning, he observed that it was real busy, but the quality of the recording was not good. He recalls that Villalba-Rickert went through the body scanner seven times. However, when the gates within the facility open and close the machine gives a warning, so when she failed to clear he sent her through several times to see if she would clear. When she did not he wanded her. He then called Lieutenant Hillman, who asked him if the person was from the institution. She actually was from Edna Mahan, another correctional facility. Hillman said that he would call Sergeant Carradine. However, because Price was about to go on his break and no one had responded to the post after his call to Hillman, he called the sergeant, who he later testified was located at her post about sixteen feet away from the search location, and she asked him how Sergeant Norgren, the other area sergeant, acted in this sort of situation. Officer Price told Carradine that that other sergeant would sign the Failure to Clear form at the end of the day. Carradine asked him if he had wanded the civilian, and Price responded that he had. Carradine then responded that the person was cleared to enter. Price had Villalba-Rickert prepare the form.

The officer testified that in the absence of a female officer already assigned to the Front Entry post, the normal practice was for a female officer to be dispatched to perform pat-frisks of females who require such a search. He agreed that a colored bag is not authorized for entry. However, he noted that many otherwise unauthorized bags, such as attorneys' briefcases and other such items, are allowed in if pre-approved by management.

Officer Price testified that in the past another officer and a sergeant would be present during the 11:30-12:30 period, but this practice stopped when he was told that they did not have time to be there. As a result, on April 24, he was alone on the post for the period from 11:30 a.m. to 12:30 p.m. This required that he perform all of the tasks involved in properly manning the post. There was a "very heavy volume" of traffic. He performed his responsibilities "to the best of his ability with the tools he had." He does not have any recollection of Villalba-Rickert entering at that time, however, he has seen the recordings. Her bag was run through the X-ray machine and was clear of contraband. She grabbed the bag and stood to the side. The machine will flash if contraband is detected. It did not flash for her bag. He did not search her bag. When she went through the metal detector and failed to clear four times, he told her to stand aside while he processed the line through the detector. When he finished, she was gone. He called Center, but is not sure who was there at the time.

On cross-examination, Price noted that he had been instructed that he needed to speed up the process at the post, but he acknowledged that he had not been told that he should not do bag searches. Well before this incident, he had grieved through the union's institutional vice-president to get a female permanently assigned to the post, but this grievance was denied.

Discussion

Civil service employees such as the appellants in this case are subject to disciplinary action if the appointing authority is able to meet its burden of establishing, by a preponderance of the credible evidence, that the employee has engaged in conduct that fits within a series of specified disciplinary charges authorized by the New Jersey Administrative Code. N.J.A.C. 4A:2-2.3(a); Matter of Polk, 90 N.J. 550 (1982). The appellants are correction officers, and as such, fall within that body of law enforcement and custodial officers who, as is well understood and recognized by case law, are held above other public servants, to a higher standard regarding their conduct due to the very nature of their role in society. Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied 47 N.J. 80 (1966); In re Phillips, 117 N.J. 567, 576-577 (1990). Here the charges

levied are characterized as falling under the New Jersey Administrative Code's Civil Service title's catch-all category of "other sufficient cause," N.J.A.C. 2:2.3 (a)12. The specified action that purported to provide this "cause" for discipline was a violation of Human Resources Bulletin (HRB) 84-17 as amended, B-8, "serious mistake due to carelessness which may result in danger, or injury to persons or property"; and D-7, "violation of a Administrative Procedures and/or Regulations involving safety or security." The primary factual element of the situation that occurred on April 24, 2013, was that a cell phone, an item considered as contraband within the secure areas of prison facilities due to the harm that may arise if such items are obtained by prisoners, did enter GSC. The findings of the investigation resulting from the entry of the phone were that the person who brought the phone in, Ms. Villalba-Rickert, a civilian associated with a contractor performing work for the Department of Corrections and, on that day, holding a training session at GSC, acted innocently, having inadvertently brought it through the security checks. The charges against the two officers stem from the investigation conducted to determine how and why that cell phone entered the secure area of the institution. The evidence ultimately indicated that the actual entry of the phone occurred in the period from 11:30 a.m. to 12:30 p.m., when only Officer Antonio Price was assigned to the Front Entry Search post. Officer Martha Hicks was not assigned to that post during that time period, and, as such, is not implicated in any manner in actually allowing the phone through the security check point. It was only Officer Price who had the responsibility for the post in this latter time frame when entry occurred. But the investigation, including review of the video recording of the events at the post both in the 11:30-12:30 period, as well as earlier part of that day between 7:30 and 8:30 a.m., purportedly demonstrated that Officer Hick's performance of the assigned and required duties associated with the post, was lacking to the degree that charges were considered warranted. In Hicks's case, the alleged failures included her failure to search the insides of a large colored bag that Ms. Villalba-Rickert put through the X-ray machine, a bag that failed to comply with the Post Orders requirement that only clear bags up to a size smaller than her bag could be passed through, and Hicks's additional failure to perform the extensive pat-frisk that was required, as she performed a far more limited and potentially far less effective pat-frisk. In Officer Price's case, especially during the 11:30 a.m. to 12:30 p.m. time frame, the officer's failure to search the bag, to assure that Villalba-Rickert did not leave the security area without receiving a proper pat-frisk, his failure to properly adhere to the requirements for dealing with someone

who does not pass the body scanning within the allowable number of attempts, and the manner in which the Failure to Clear form was handled, all purportedly support the charges against him.

Examination of Exhibit 19a, which incorporates the view from Camera #4 of the search area, shows that a woman with a large red bag, Ms. Villalba-Rickert, first appears in the area of the search machinery at 8:32:24 a.m. She appears to be with another woman, also carrying a very large, non-transparent bag. One other woman has just appeared before these two and has been passed through the scanner. Ms. Villalba-Rickert is required to pass through the scanner multiple times, in excess of the four attempts permitted under the terms of GS #119. Her large colored bag, clearly not a clear plastic see-through bag, is placed on the conveyor belt and is passed through the machine. Although it must be assumed that the interior of the bag was scanned by the X-ray machine and that Officer Hicks was able to see this, as she is in the correct location when it passes through on the belt, the interior of the bag is clearly never subject to a hand search or even a visual, naked eye search. For that matter, neither was the other woman's large, non-transparent bag. At 8:36:06, Hicks conducts what is surely a cursory pat-frisk, which does not appear to include any frisk of the legs, the collar area, and the woman's long hair. It is undoubtedly not the sort of pat-frisk described as proper by Lieutenant Wille, although it appears to conform with the pat-frisk Hicks claimed she was told was the type to be used for non-inmates due to the purported complaints. All of this information confirms the witnesses' testimony, including Hick's acknowledgement that she did not examine the interior of the bag by hand and that her pat-frisk was not in accordance with what Wille described as proper. Nothing in the video supports the concept that this area was busy at the time included in the video of Villalba-Rickert's time at the Front Entry Search post. Three women are processed, and one other woman arrives at the end of the active search and frisk time shown in the video.

Based upon the testimony and the video recording, I **FIND** that given the fact that the cell phone was only discovered to be in the secure area after Ms. Villalba-Rickert's later entry at this post, and Villalba-Rickert's claim that the phone was only brought in after lunch when Hicks was not present and not assigned to be at that post, Ms. Hicks cannot reasonably be held responsible for its entry. However, I **FIND** that while assigned to the Front Entry post,

Officer Hicks did not inspect the interior of Ms. Villalba-Rickerts' large colored bag, or of the other woman's large non-transparent bag, each of which failed to meet the requirements for such bags as set forth in GS #119. Hicks does not perform a pat-frisk that in any reasonable fashion can be accounted as close to the thorough examination described by Wille. Her excuses about not being clear as to the requirements for a proper pat-frisk appear hollow. She was trained at the Academy and must have conducted, by her own admission, many pat-frisks while assigned to Central Transport. No credible supporting evidence supports her contention that she was told about some complaints and some limitation on the type of pat-frisk that was permissible for civilians. I **FIND** that she had no authorization not to examine the interior of a non-see-through bag that, by its size and its color, should not even have been permitted into the secure area unless clear authorization for its admission from senior authority had been obtained. Given these findings, I **CONCLUDE** that Ms. Hicks did violate HRB 84-17 D-7, "violation of an Administrative Procedures and/or Regulations involving safety or security." Her actions as demonstrated on the video and confirmed by her own testimony violated the portion of GS #119 concerning the number of permissible passes through the body scanner, limited to four before the Shift Commander is to be contacted. Her pat-frisk was not done as required. Finally, it is clear that she, as well as her partner that day, Officer Price, did not follow the terms of the IMP in that they allowed the civilian to enter and proceed through the secured area without the presence of a supervisor to clear the civilian in person. That others may have also defaulted in their responsibilities in regard to the Failure to Clear process is not an excuse for the assigned officers' failure to insist upon the proper performance of the responsibility, although perhaps the concurrence of superiors in the violation of the policy may, in certain instances, mitigate the sanction for the offense committed by the offending officer. There is no evidence that would support any contention that either Hicks or Price was ordered to violate the mandatory procedures.

As for Officer Price, two videos contain the essential material regarding the events around the so-called "afternoon" entry. In fact, in Exhibit 19b, Ms. Villalba-Rickerts is seen to exit the secure area and pass the entry post on her way out of the facility, as she was going to lunch. She is carrying the same large colored bag. On Exhibit 19c, which definitely shows a very busy Front Entry Search post manned exclusively by Officer Price, Ms. Villalba-Rickert already appears on line near the body scanner at the start of the recording at 12:05:48. Her

large bag is already in a container on the conveyor belt, as is confirmed when, after she enters and fails to clear the body scan, she takes off her jacket and places it in the container, at which point the bag is visible at 12:06:42. In total she enters the body scanner three times, and after her third try, she is let through and takes her bag off of the conveyor at 12:07:42, after which she stands aside near a wall until, at 12:10:07, she leaves with Mr. Bradford (identified as such by Lieutenant Wille in his report). From my observation of the video, I **FIND** that at no point in this sequence of events does Officer Price make any hand search of the bag, or any visual look-in other than by machine, and no pat-frisk of Villalba-Rickert occurs, with no female officer appearing to perform such a search. It does appear that she was wanded, although this procedure is partially obscured as she stands on the far side of the scanner.

As for the "morning" events, Price did not undertake any hand search of the large bags, although perhaps Hicks would have had the primary responsibility for doing this as she was at the conveyor. While Price claims to have called Lieutenant Hillman, who denies receiving a call, I cannot make out any sign of Price appearing to have made such a call, at least not from a position clear on the video. Given this and what appears to have been an arrangement that Price had with Sergeant Carradine, I do not credit Price on this point and **FIND** that Hillman was the more credible witness and that no call was made to him during the time frame of the "morning" entry.

I **FIND** that Officer Price violated N.J.A.C. 2:2.3 (a)12, other sufficient cause, in that he violated Human Resources Bulletin (HRB) 84-17 as amended, B-8, "serious mistake due to carelessness which may result in danger, or injury to persons or property"; and D-7, "violation of a Administrative Procedures and/or Regulations involving safety or security." Unlike Hicks, Price was the responsible officer at the time when it is most likely that the cell phone passed through the security check. He failed to follow the required procedures for a situation such as presented by Ms. Villalba-Rickert's multiple failures to pass successfully through the scanner. He did not conduct any hand search of the bag(s), indeed did not immediately bar the entry of an unauthorized bag (by size and lack of transparency) did not call the Shift Commander, and did not properly utilize the Failure to Clear Entry form procedure.

Sanction

The Front Entry Search post is the first line of security for the GSC. It is at this point that contraband is to be prevented from entry into the secure areas of the institution. The officers assigned to this post have a substantial and critical responsibility, and their careful performance of the details of that post's procedures as set forth in IMP GS #119, is essential. In the matter at issue, both officers, each a veteran officer, failed in their performance. Price was a long-serving Front Entry Search officer; Hicks not so, but it was not her first time at the post and she appears to have been a bit cavalier in regard to assuring that she understood the IMP. While the evident crowd of persons seeking entry after the lunch break certainly presented Officer Price with a challenge, he had to be sure that he dealt with the situations he encountered in a manner in conformity with the applicable procedure. He failed to do so.

In assessing the penalty to be imposed for violations, use may be made of a civil servant's prior disciplinary record. West New York v. Bock, 38 N.J. 500 (1962). In this case, each officer arrives at this junction in their careers with an excellent record, at least as far as discipline is concerned. Indeed, in Price's case, he has no disciplinary record in eighteen years, and Hicks only a minor record in seventeen years, having received Official Reprimands in 2002 and 2003. In addition to prior disciplines, West New York v. Bock also permits consideration of prior commendations. Hicks received a commendation (perhaps two, the record is unclear) in April 2007. It is rare that such exemplary disciplinary records appear after so long a time for officers whose cases are heard at the OAL and before the Civil Service Commission and who must of necessity receive some form of discipline for violating the Administrative Code.

HRB 84-17 is a guideline that lists a Table of Offenses and what are, for the purposes of the Civil Service Commission's consideration, recommendations as to the range of sanctions that may be applied for first and subsequent violations of the several specified types of violations. The sanction listed for a first violation of HRB 84-17, B-8, "serious mistake due to carelessness which may result in danger and/or injury to persons or property," (underlined in the original) is a range, with Official Written Reprimand (listed as "OWR") at

the lower end and removal at the upper end. A "Note" in the document reads, "The first infraction under this charge should only be treated as a major disciplinary action where an individual is placed in a hazardous situation, property is damaged, or there is a serious breach of security." Similarly, the recommended range for a violation of HRB 84-17, D-7, "violation of administrative procedures and/or regulations involving safety and security," is official written reprimand to removal. Here, the violations fortunately did not cause any actual security crisis, no damage to property, and most importantly, no injury to persons. Ms. Villalba-Rickert had no evil motive in bringing the phone in: indeed, it appears from the investigation that she did so inadvertently. The cell phone was discovered in Villalba-Rickert's bag in the training room, and no inmate obtained possession. Nevertheless, a different result could have occurred once this phone entered the secure area, and, of course, a similar violation by these officers in any other instance in a set of procedures that they would have to repeat over and over if assigned to this post might have a very different, and conceivably, serious outcome. Therefore, the violations here cannot be minimized. However, in determining the appropriate level of discipline two factors besides the potential serious outcome of such violations must be considered, and a third might be as well. One, most assuredly, is the aforementioned long-standing good behavior of the officers. A second is that in matters that affect the custodial institutions of the State, the Civil Service Commission, in line with the attitude of the Judicial Branch, is mindful of the serious security responsibility imposed upon the Department of Corrections. As the Commission noted in In the Matter of Orlando Mercado, Department of Corrections, <http://njlaw.rutgers.edu/collections/oal/final/csv10704-09.pdf>

Moreover, the Commission is also mindful of the following admonition from the court:

The appraisal of the seriousness of [the appellant's] offense and degree to which such offenses subvert discipline . . . are matters peculiarly within the expertise of the corrections officials. The appraisal is subject to de novo review by the [Commission] . . . but that appraisal should be given significant weight. Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), cert. denied, 135 N.J. 469 (1994).

Here, the prison authorities imposed thirty-day suspensions on these officers, citing the serious consequences that can arise from the unauthorized entry of cell phones into prisons and the failure of the officers to abide by the procedures that are mandated for the post in

which they served. Given their otherwise fine disciplinary histories, such a suspension, for a first offense, is, when viewed from the standpoint of progressive discipline, pretty significant. However, while the Commission has the authority to consider the penalty de novo and reduce it, the teaching of Bowden, supra, as noted by Mercado, cautions against unduly interfering with the judgment of corrections officials, especially in a security matter of this type.

The third factor that might be considered is the rather slight penalty that the prison officials imposed on Sergeant Carradine, who was given a five-day suspension when it was discovered that she had permitted Villalba-Rickert to proceed despite never going to the post as GS #119 required, and instead signed the form at the end of the day. This supervisor also had a part to play in a situation that was presented of someone who could not successfully pass through the body scanner time after time after time. Her disciplinary history is not part of this record, and it is recognized that her case is not before the Commission, and the reasoning behind the minimal penalty imposed is not a part of this record. Yet the disparity between her penalty and that imposed on Price and Hicks, whose disciplinary records are as clean as they are, seems a bit striking. In such an instance, it may be that the Commission should invoke its de novo authority to soften the sanction imposed on Price and Hicks, while still recognizing that as the first line officers at the post, they bear the most responsibility for the breach of security.

Despite the deference principle, I would not hesitate to reduce the sanction here if it were significantly more substantial than a thirty-day suspension. However, with such a relatively limited sanction, even for a first offense, a reduction of days, or even weeks, might appear to be quibbling with the prison authorities about a matter involving security in a manner discouraged by the Courts and the Commission. Thus, other than my concern about the very minor sanction given to Carradine, I am persuaded that the thirty-day suspensions should be accorded deference and be imposed.

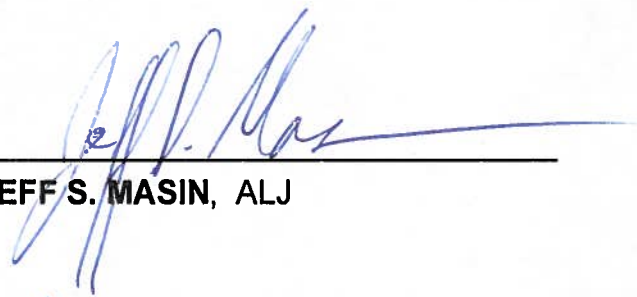
It is **ORDERED** that Officers Hicks and Price shall each be suspended for thirty days.

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.

August 11, 2014
DATE



JEFF S. MASIN, ALJ

Date Received at Agency:

8/11/14

Date Mailed to Parties:

8/11/14

LIST OF WITNESSES:

For appellants:

Martha Hicks
Antonio Price

For respondent:

Lieutenant Bernard Wille
Lieutenant Bruce J. Hillman
Major Gerard Calderese

LIST OF EXHIBITS:

For appellants:

None

For respondent:

- R-1 Notice of Preliminary Disciplinary Action, dated May 31, 2013, and Final Notice of Disciplinary Action, dated July 18, 2013, Martha Hicks
- R-2 Notice of Preliminary Disciplinary Action, dated May 31, 2013, and Final Notice of Disciplinary Action, dated July 18, 2013, Antonio Price
- R-3 Incident Investigation Report, Lieutenant Bernard Wille, dated May 30, 2013
- R-4 For identification only
- R-5 For identification only
- R-6 Entrance Search Officer, Internal Management Procedure, GS.119
- R-7 Failure to Clear Walk thru View Scan, Amanda Villalba-Rickert, April 24, 2013, 8:28 a.m.

- R-8 First written statement by Amanda Villalba-Rickert, April 24, 2013
- R-9 Second written statement by Amanda Villalba-Rickert, SID, April 24, 2013
- R-10 For identification only
- R-11 For identification only
- R-12 Question and Answer Interview of Antonio Price, May 1, 2013
- R-13 Question and Answer Interview of Martha Hicks, May 2, 2013
- R-14 Questions and Answer Interview, Sergeant Tangelik Carradine
- R-15 Special Report, Bryan Bradford, April 24, 2013
- R-16 Disciplinary History, Martha Hicks
- R-17 Disciplinary History, Antonio Price
- R-18 HRB-84-17, as amended DOC Disciplinary Action Policy
- R-19a, b, c, d Four DVD portions of the fronthouse, GSYCF, Entrance Officer Post, April 24, 2013