



appellant finally left, she told Wille that she was going to file a harassment complaint against him. Upon the appellant's appeal to the Commission, the matter was transmitted to the Office of Administrative Law as a contested case.

In the initial decision, the ALJ set forth the testimony of the witnesses. Correction Major Michael Gallagher,<sup>1</sup> who had heard most of the conversation, testified that the appellant was upset, used loud and crude language and refused to leave even after being ordered to do so by Wille. The appellant testified that she wanted to discuss her minor discipline with Wille because other employees who refused to work the mandatory shift were not disciplined. She also testified that she was trying to stand up for herself and her intent was to convince Wille to drop the disciplinary charge, and not to be disrespectful. Finally, although the appellant admitted to using crude language, she testified that all employees at the Garden State facility use such language.

Based on the evidence presented, the ALJ found the appellant guilty of insubordination and conduct unbecoming a public employee. Specifically, the appellant refused to obey orders to leave Wille's office, and she continued to argue and used loud and inappropriate language. However, the ALJ stated that because the appellant wanted to discuss her minor discipline and did not act in a violent or defiant manner, the 15 working day suspension was "excessive" for this matter. Additionally, the ALJ stated that although the appellant had a prior disciplinary history, it was not considered in determining the penalty because it was not "recent." Accordingly, the ALJ recommended modifying the penalty to a seven working day suspension.

In its exceptions, the appointing authority maintains that the 15 working day suspension is appropriate. It argues that the ALJ inappropriately disregarded the appellant's disciplinary history when modifying the suspension because the appellant's entire disciplinary history is relevant for progressive discipline purposes. In this regard, it notes that from 2003 to 2013, the appellant received nine Official Written Reprimands, one of which was for refusing to work mandatory overtime in 2013; a 15 working day suspension for refusing to comply with an order in 2004, a 30 working day suspension for sleeping on duty on multiple days in 2005, and five additional suspensions for attendance-related matters in 2005, 2006, 2007 and 2010.<sup>2</sup> The appointing authority also argues that while the ALJ correctly found that the appellant disobeyed Wille's orders, argued with him and used loud and appropriate language towards him, her conclusion that the appellant was not defiant is "illogical."

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<sup>1</sup> Agency records indicate Gallagher retired, effective January 1, 2015.

<sup>2</sup> The appointing authority indicates that the length of these suspensions varied between three, five and 15 working days.

Upon its *de novo* review of the record, the Commission agrees with the ALJ that the appointing authority has established by a preponderance of the credible evidence that the charges of insubordination and conduct unbecoming a public employee should be upheld. In this regard, the Commission agrees with the ALJ that, based on the testimony, the appellant failed to obey Wille's orders to leave, argued with him, and used loud and inappropriate language towards him. Thus, the charges against her have been substantiated.

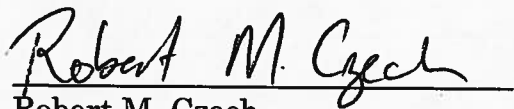
With regard to the penalty, the Commission's review is also *de novo*. In addition to considering the seriousness of the underlying incident, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d 463, 465 (CSV) 1996. Although the Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. *Henry v. Rahway*, 81 N.J. 571, 580 (1980). It is settled that the principle of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). In the instant matter, the appellant's actions warrant major discipline of a 15 working day suspension. There are no mitigating circumstances to modify the penalty. Although the ALJ considered a seven working day suspension a more appropriate penalty, the appellant's extensive disciplinary history, which was inexplicably ignored by the ALJ, and her clear defiance on the day at issue clearly warrant upholding the original penalty. Accordingly, based on the appellant's prior record and the seriousness of her infraction, the Commission upholds the 15 working day suspension.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 15 days was justified. The Commission, therefore, affirms that action and dismisses the appeal of Tiffany Mayes.

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 4<sup>th</sup> DAY OF FEBRUARY, 2015



Robert M. Czech  
Commissioner  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 16153-13

AGENCY DKT. NO. 2014-1147

**IN THE MATTER OF TIFFANY MAYES,  
GARDEN STATE YOUTH CORRECTIONAL  
FACILITY, DEPARTMENT OF  
CORRECTIONS.**

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**Tiffany Mayes, appellant, pro se**

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

Record Closed: September 14, 2014

Decided: December 15, 2014

**BEFORE BEATRICE S. TYLUTKI, ALJ t/a:**

This matter concerns the fifteen (15) day suspension of the appellant, Tiffany Mayes, a communications operator, at the Garden State Youth Correctional Facility (Garden State). In the final notice of disciplinary action, dated October 11, 2013, the appellant was charged with insubordination and conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a) (R-1).

The appellant requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on November 7, 2013, for a hearing pursuant to N.J.S.A.

52:14F-1 to -13 and N.J.S.A. 52:14B-1 to -15. The hearing took place on September 19, 2014, and the record closed on that date. At my request, the time period for the issuance of an initial decision was extended to December 18, 2014.

I **FIND** the facts in this matter are not in dispute. On August 26, 2013, the appellant went to the office of Lieutenant Bernard Wille to receive a minor disciplinary form for the refusal of a mandatory. Later, the appellant returned with her union representative. She wanted to discuss the disciplinary charge with Wille. Wille refused to discuss the matter and several times told her that she could dispute the discipline charge at an appropriate time. Wille testified that the appellant argued with him, shouted at him and used crude language such as "this is bull shit" (R-2). Wille ordered the appellant to leave three times before she left. As she left, the appellant told Wille that she was going to file a harassment complaint against him.

Major Michael Gallagher heard most of the conversations between Wille, the appellant and the union representative. He testified that the appellant was upset, used loud and crude language, and refused to leave even after being ordered to do so by Wille (R-3).

Appellant testified that not all employees who refused the mandatory were disciplined and that she wanted to discuss the matter with Wille. Appellant admitted that she used crude language but that all employees at Garden State used such language. She stated that she was upset and was standing up for herself.

On her own behalf, the appellant stated that she tried to convince Wille to drop the disciplinary charge, and that she did not mean to be disrespectful.

In closing, Kathleen Asher, on behalf of Garden State, argued that the facts show that the appellant was insubordinate and that her conduct was unbecoming a public employee. She argued that a fifteen (15) day suspension was appropriate based on the facts. The appellant has a prior disciplinary history (R-4); however, there is no

recent discipline and her disciplinary history will not be considered in determining any penalty to be imposed.

Based on the facts, I **CONCLUDE** that Garden State has proven the charges. The appellant refused to obey orders to leave after she was served with the disciplinary action. She continued to argue, and to use loud and inappropriate language.

However, based on the facts, I **CONCLUDE** that a fifteen (15) day suspension is excessive. The appellant wanted to discuss the discipline but she did not act in a violent or defiant manner. Therefore, I **CONCLUDE** and **ORDER** that the appellant be suspended for seven (7) 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.

December 15, 2014  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ t/a

Date Received at Agency:

12/15/14

Date Mailed to Parties:

12/16/14

/cad



**WITNESSES**

For Appellant:

Tiffany Mayes

For Respondent:

Lieutenant Bernard Wille

Major Michael Gallagher

**EXHIBITS**

For Appellant:

None

For Respondent:

- R-1 Notice of Preliminary Disciplinary Action, dated September 5, 2013, and Final Notice of Disciplinary Action, dated October, 2013
- R-2 Special Custody Report, dated August 26, 2013, authored by Lieutenant Bernard Wille
- R-3 Special Custody Report, dated August 27, 2013, authored by Major Michael Gallagher
- R-4 Disciplinary history for appellant
- R-5 Marked for identification only