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STATE OF NEW JERSEY

In the Matter of Durand Gilyard
Garden State Youth Correctional
Facility
Department of Corrections

CSC DKT. NO. 2014-2515
OAL DKT. NO. CSR 4969-14

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**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: April 15, 2015 PM

The appeal of Durand Gilyard, a Senior Correction Officer with Garden State Youth Correctional Facility, Department of Corrections, removal effective March 25, 2014, on charges, was heard by Administrative Law Judge John Schuster, III, who rendered his initial decision on March 18, 2015. No exceptions were filed.

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 April 15, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

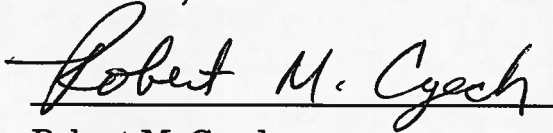
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Durand Gilyard.

Re: Durand Gilyard

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
APRIL 15, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 4969-14

AGENCY DKT. NO. N/A

CSC DKT # 2014-2515

**IN THE MATTER OF DURAND
GILYARD, GARDEN STATE YOUTH
CORRECTIONAL FACILITY.**

Richard D. Robinson, Esq., for appellant (Law Offices of Richard D. Robinson,
attorney)

Anthony DiLello, Deputy Attorney General, for respondent (John J. Hoffman,
Acting Attorney General of New Jersey, attorney)

Record Closed: November 24, 2014

Decided: March 18, 2015

BEFORE JOHN SCHUSTER III, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter Durand Gilyard (appellant) appeals the decision of the Garden State Youth Correctional Facility (respondent) terminating his employment as a Senior Corrections Officer. On March 25, 2014, respondent issued a Final Notice of Disciplinary Action advising appellant that he would be removed from his position effective that date as a result of finding appellant violated N.J.A.C. 4A:2-2.3(a)6 Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)12 Other sufficient

causes; and N.J.A.C. 10A:3-6.1 Procedures for handling contraband. In addition respondent charged appellant with violations of Human Resource Bulletin 84-17 Sections: B.8 Serious mistake due to carelessness that may result in danger and/or injury to persons or property; C.11 Conduct unbecoming an employee; D.1 Violation of administrative procedures and/or regulations involving safety and security; and E.1 Violation of a rule, regulation, policy, procedure or administrative decision. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 on April 22, 2014. The matter was heard on July 21, 22, 23 and 24, 2014 in the Trenton office of the OAL in Mercerville. At the conclusion of the case a settlement offer was made to the appellant. OAL staff contacted appellant's counsel on numerous occasions requesting information as to the status of the settlement offer. Appellant's counsel repeatedly informed OAL staff that an answer would be coming shortly and he expected the appellant would accept the settlement offer. On November 24, 2014, OAL received a letter directly from the appellant advising that he would not accept the offer of settlement and requested that an initial decision be issued. On that date the record was closed.

FINDINGS OF FACT

On November 6, 2013, appellant was the R2 Left Housing Officer on the second shift working from 2:00 p.m. to 10:00 p.m. The R2 Housing Unit is designated for inmates who attend a therapeutic counseling program which concentrates on addiction issues. The therapeutic community consists of approximately 150 inmates, three counselors and three senior corrections officers for security and control. The following morning the inmates in the therapeutic community were called to a group counseling session where they assembled for their daily therapeutic program. The inmates were visibly irritated, angry and hostile to the extent they were non-compliant with regularly assigned tasks such as standing at the beginning of the session and reciting key phrases as part of the therapeutic program. Some inmates shouted out their displeasure and as the counseling program commenced, the emotions and conduct of the inmates intensified to the point of being a mass protest and there was concern by the supervising security force that the mass inmate displeasure could escalate to a

riotous demonstration. An initial investigation determined that the inmates unusual behavior resulted from the fact that two senior corrections officers, one being appellant, confiscated a large number of televisions and radios from the inmates on the evening before. As the inmate non-compliance was escalating, one of the security officers, Sergeant James, contacted the area lieutenant, Lieutenant Brian Hodgson, who responded to the area. Lieutenant Hodgson spoke to a number of the inmates to learn more about the situation and commenced an immediate investigation in an effort to deal with inmate concerns and de-escalate the situation. I **FIND** that investigation revealed that fifty televisions and fifteen radios were taken from the inmates between 7:00 p.m. and 8:00 p.m. on November 6, 2013, under the direction of SCO Gilyard and SCO Rollins. They confiscated those electronics and placed them in a storage closet in the R2 Right Housing Unit. The investigation also revealed that Officer Gilyard did not advise any supervisors of the planned search, confiscation or storage of the electronics seized from the inmates nor was there any entry in the official log books of the housing unit for that action. In addition, no property receipts were given to the inmates when their electronic devices were confiscated.

The security officers, as part of the investigation ordered by Lieutenant Hodgson found the confiscated electronics and inventoried same. Of the fifty televisions that were confiscated, only seven could not be identified as belonging to any individual inmate through serial number records or paperwork documenting ownership. The other forty-three televisions were immediately returned when ownership was confirmed. Of the fifteen radios that were confiscated, twelve were returned to their rightful owners and three were maintained as having undocumented ownership. The seven inmates who could not confirm their ownership of the televisions and the three inmates who could not confirm the ownership of their radios were each given 171-I Forms pursuant to regulation. Those forms served as property receipts and are to be given to inmates anytime an inmate's property is taken.

As part of the investigation the second shift area supervisors, Sergeant William Harrell and Lieutenant John Henderson, were questioned regarding their observations of the R2 Housing Units for second shift on November 6, 2013. Both stated that they

observed nothing out of order and no actions or incidents were reported to them by the appellant. Additionally, as part of the investigation the unit log books were reviewed. Log books are supposed to have as an entry any unusual or specific event that occurs on that unit. The shift commanders log book indicated that there was no report of any uncommon occurrence during appellant's shift and the unit log book for both R2 Left and R2 Right did not mention the search, confiscation or storage by appellant of the multiple confiscated items.

I make the following specific findings. Appellant did not notify his supervising officers of his actions either before, during or after he seized sixty-five electronic devices from the inmates under his control. His confiscation of sixty-five electronic devices in one effort was an extra ordinary event in a housing unit. Appellant did not make any entries of the event in his unit's log book or submit unusual incident report. Appellant did not appropriately handle the property he seized from the inmates. Specifically, he did not turn the contraband items over to his supervisor with a Form 171 nor did he report the chain of possession when he took possession of those items and he did not complete and give to the inmates a Form 171. I further find that appellant's action was a serious mistake as the improper confiscation of so many items created a hostile environment which lead to a mass inmate protest. I also find that appellant's conduct was unbecoming to a public employee since that conduct amounted to inappropriately taking personal property from the inmates and putting that property in an unsecured location subject to theft. I also find that appellant violated the facility procedures and in doing so created a situation where safety of inmates, corrections personnel and civilians was put at risk because the mass confiscation of electronics initiated by the appellant created a hostile environment and large inmate unrest. I also find that appellant violated the rules set forth above as well as the policies and general post orders at respondent's facility. I further find that a senior corrections housing officer is not authorized to do a mass confiscation of inmate property without prior approval. An action this extensive requires prior approval so that supervisors are aware of the action and can prepare for any reaction by having additional security ready should the need arise. Prior approval would also ensure that all appropriate steps were taken to comply with general post orders and state regulations. By avoiding the

superior officer's knowledge of these events, appellant created a mass protest, which could have easily escalated into a riotous situation putting inmates, facility staff and the civilian workers at the facility at risk of injury and harm. I also find that on February 15, 2009, appellant was suspended for 120 working days as a result of leaving doors unsecured, which resulted in a physical assault.

LEGAL ANALYSIS

Appellant is charged with the following disciplinary offenses:

N.J.A.C. 4A:2-2.3(a)6. Conduct unbecoming a public employee. This offense has been defined as any conduct which adversely affects the morale or efficiency of the department or which has a tendency to destroy public respect for governmental employees and confidence in the operation of governmental services. In re Emmons, 63 N.J. Super. 136, 140, (App. Div. 1960).

N.J.A.C. 4A:2-2.3(a)12. Other sufficient cause. This charge is one that incorporates violations of rules, regulations, procedures and the like that are not otherwise enumerated in N.J.A.C. 4A:2-2.3.

N.J.A.C. 10A:3-6.1. Procedures for handling contraband. This regulation requires the custody staff member making the seizure of the articles determined to be contraband to turn over those items to the unit supervisor along with a completed Form 171-1 by the end of shift. The chain of possession must be recorded and an inmate receipt (Form 171-11) must be completed and given to the inmate who possessed the item of contraband.

Charges enumerated in Human Resource bulletin 84-17:

B.8. Serious mistake due to carelessness which may result in danger and/or injury to persons or property. The act of confiscating all the televisions and radios in a prison residential wing is an extraordinary event because of its potential serious problems. Inmates have very few items they can claim as their own and few, if any, more cherished than a television or radio. Confiscating them in mass is an extraordinary event and by not following procedure of advising a supervisor, preparing and distributing property receipts and making no entry in log books was an act of carelessness, which gave rise to a potentially riotous situation. In addition by storing the confiscated items in a cleaning closet put them at risk of loss or damage. These acts individually and collectively may have resulted in an injury to persons in the facility and loss or damage to the confiscated items.

C.11. Conduct unbecoming an employee. Appellant's actions not only violated the facility's regulations, which lessen the facility's efficiency it also put persons at risk of harm and therefore was unbecoming conduct.

D.7. Violation of administrative procedures and/or regulations involving safety and security.

E.1. Violation of a rule, regulation, policy, procedure, order or administrative decision.

Violations of D.7 and E.1 are intertwined and will be discussed together as they are part of the Standard Operating Procedure and involve rules, policies and procedures to ensure the safety of those in the facility, while providing security in the institution in order for its function to be accomplished. General Post Order (R-28) requires on page 6 "At all times the chain of command is to be followed for all non-emergent matters." Since this confiscation of electronics was not an emergent matter, appellant should have received supervisor approval before committing the act. He did not. On page 16 the requirement is set forth that correction officers are to

maintain the log book for their shift and include "any occurrence or emergency not considered routine." The act of confiscating all electronics in the housing wing was such an occurrence and no log book entry was made by appellant. In addition as stated previously appellant did not follow the procedures required by N.J.A.C. 10A:3-6.1 regarding the procedure for handling contraband. He did not submit the items to the unit supervisor with the required Form 171-1. He did not record the chain of possession nor did he give any of the inmates a signed and dated receipt. These omissions are likewise violations of the enumerated sections of H.R. Bulletin 84-17 as well as N.J.A.C. 4A:2-2.3(a)12.

PENALTY

In determining the proper penalty, consideration must be given to the seriousness of the underlying offenses along with the concept of progressive discipline. West New York v. Bock, 38 N.J. 500 (1962). Specifically, in determining the propriety of the penalty, several factors must be considered including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. North Princeton Developmental Center, 96 N.J.A.R. 2d (CSV) 463. Moreover, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of the individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a fixed and immutable rule to be following 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).

Human Resources Bulletin 84-17 (R-29) is the Table of Offenses and Penalties adopted as part of the Department of Corrections Disciplinary Action Policy. It lists a Table of Offenses and suggests a range of penalties for each offense listed based on the number of times an individual committed the offense. All of the sections charged (B.8, C.11, D.7 and E.1) all permit removal on a finding the offense was committed provided the circumstances warrant that action.

Appellant was suspended for 120 days in February, 2009 for committing the serious act of leaving doors unsecured which resulted in a physical assault. I **FIND** these pending charges to be more than sufficiently egregious to warrant removal from appellant's position even without the previous discipline as they were the direct cause of increasingly acrimonious inmate behavior leading toward a riotous condition. It was only the immediate actions by responsible superior officers that prevented likely harm to inmates and staff. In addition, in observing appellant during the hearing and listening to his testimony, I am of the belief appellant still does not comprehend the seriousness and consequences of his actions.

CONCLUSION

I **CONCLUDE** appellant violated N.J.A.C. 4A:2-2.3(a)6 and Human Resource Bulletin 84-17 § C.11 because his conduct on November 6, 2013, created a situation that negatively impacted the efficiency of staff at the facility since it took multiple man hours of effort by staff to investigate and correct the inappropriate and unauthorized conduct of the appellant. That result diverted staff from their regular duties so normal activities had to be either delayed or eliminated. I further **CONCLUDE** appellant violated N.J.A.C. 4A:2-2.3(a)12 since appellant did not comply with the procedures for dealing with contraband as set forth in N.J.A.C. 10A:3-6.1 and sections B.8, C.11, D.7 and E.1 of Human Resources Bulletin 84-17 as previously described.

ORDER

For the reasons set forth herein, I **ORDER** respondent's action of terminating appellant from his position as a Senior Corrections Officer be **AFFIRMED**. I further **ORDER** appellant's appeal be **DISMISSED**.

I further **ORDER** any application by appellant for back pay during the pendency of this initial decision be reduced by the time between the conclusion of the hearing (July 24, 2014) until appellant notified the court (November 24, 2014) he was not

accepting the settlement offer presented to him. This is based on the representation of appellant's counsel during this period that he believed appellant was going to accept the offer made by respondent and a signed settlement document would be sent to the court for consideration.

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. 40A:14-204.

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.

March 18, 2015
DATE



JOHN SCHUSTER III, ALJ

Date Received at Agency:

March 18, 2015

Date Mailed to Parties:

March 18, 2015

JS/cb

WITNESSES

For Appellant:

SCO Durand Gilyard
Sergeant William Harrell
SCO Bart Williams
SCO Charles Beid-Bey
SCO Steven Martin
SCO Robert Scarlata
SCO Marcus McKenzie
SCO Richard Carlson
Lieutenant Duane Hollingshead

For Respondent:

Lieutenant Bernard Wille
Ira Crespi
Jennifer Penninpede-Fiore
Sergeant Craig James
Lieutenant John Henderson
Major Gerard Caldarise

EXHIBITS

For Appellant:

A-1 Inventory List of confiscated items created by SCO Martin
A-2 Inventory List created by SCO McKenzie
A-3 R-2-Left Inmate Roster

For Respondent:

- R-1 SCO Durand Gilyard Work History, 1/1/99 to 1/13/14
- R-2 Lt. Bernard Wille Investigative Report, 12/18/13
- R-3 Sgt. Craig James Special Custody Report, 11/7/13
- R-4 Lt. Brian Hodgson Special Custody Report, 11/7/13
- R-5 SCO Martin Special Custody Report, 11/7/13
- R-6 SCO McKenzie Special Custody Report, 11/7/13
- R-7 Jennifer Penninpede Special Custody Report, 11/7/13
- R-8 Ira Crespi Special Custody Report, 11/7/13
- R-9 Kristen LaMorticella Special Custody Report, 11/8/13
- R-10 Not admitted
- R-11 Lt. John Henderson Special Custody Report, 11/7/13
- R-12 Not admitted
- R-13 SCO Dana Rollins Special Custody Report, 11/7/13
- R-14 SCO Durand Gilyard Special Custody Report, 11/7/13
- R-15 R-2-Right Log Book, 11/6/13 to 11/7/13
- R-16 R-2-Left Log Book, 11/6/13 to 11/7/13
- R-17 Unusual Incident Report, 11/6/13
- R-18 Shift Commander Report, 11/6/13, Second Shift
- R-19 Apparently not admitted
- R-20 Not admitted
- R-21 SCO Richard Carlson Special Custody Report, 12/23/14
- R-22 Photographs of storage closet containing TV's and radios
- R-23 Not admitted
- R-24 GSCF S.O.P. Seizure, storage and disposal of contraband
- R-25 Questions for Rollins, Harrell, Henderson and Hollingshead
- R-26 Seizure of Contraband Report, 171-I and 171-II
- R-27 SCO Durand Gilyard Preliminary and Final Disciplinary Acton
- R-28 GSCF General Post Order, revised 04/13
- R-29 DOC Human Resources Bulletin 84-17 as amended
- R-30 N.J.A.C. 10A:3-6.1 procedures for handling contraband

- R-31 Not admitted
- R-32 Not admitted
- R-33 Not admitted
- R-34 Question and Answer Statement of Sergeant Harrell
- R-35 Question and Answer Statement of Lieutenant Henderson
- R-36 Question and Answer Statement of Lieutenant Hollingshead
- R-37 Initial and Final Decision in the Matter of Durand Gilyard, CSC Dkt. No. 2009-3794 and OAL Dkt. No. CSV 8006-09