



The appellant appealed the decision to the Appellate Division, which found that the ALJ erred in finding that the appellant willfully refused to sign the Failure to Clear report and attempted to enter the prison without clearance because she eventually signed the report. Moreover, the court noted that the appellant correctly observed that she was not charged in the preliminary notice of discipline with refusing to sign the scan form or attempting to enter the prison without clearance. However, the Court found that the ALJ's finding that the appellant used offensive and disrespectful language towards a superior officer was supported by the record and therefore upheld the insubordination and conduct unbecoming charges. Nevertheless, the Court did not uphold the third charge of violation of a regulation or policy, as there was no evidence in the record of such a violation. Thus, the Appellate Division found that the Commission erred by upholding this charge and remanded the matter to the Commission for a redetermination of the penalty.

On remand, the appellant, represented by Michael S. Doran, Esq., argues that in light of her more than ten years of service with no disciplinary history and the fact that her infraction was not serious, she should receive a suspension of five working days or less. In support, she cites *In the Matter of Kenneth Baldoraso* (CSC, decided December 22, 2011), in which the Commission upheld Baldoraso's 30 working day suspension for insubordination for use of derogatory language towards superior officers, in light of his past three day and 45 working day suspensions, and argues that she should receive a lesser penalty because she has no disciplinary history. Next, she cites *In the Matter of Alfred Blanks* (CSC, decided February 6, 2013) in which the Commission upheld Banks' 15 working day suspension for insubordination and intentional disobedience. The appellant observes that Banks' conduct was more egregious because he willfully refused to comply with a direct order of his supervisor. Additionally, the appellant notes that Banks' disciplinary history evidenced two 15 working day suspensions, nine minor disciplines and 11 official written reprimands. Third, the appellant notes that in *In the Matter of Monica Miller* (CSC, decided May 2, 2012), in which the Commission upheld Miller's 15 working day suspension for failing to comply with orders of a superior officer, acting disrespectful toward the supervisor, hanging up on a supervisor and failing to carry out orders in a timely manner, which resulted in the escape of an inmate. By contrast, the appellant argues that she complied with the superior officer's orders and the result of her actions was far less serious. Finally, the appellant maintains that *In the Matter of Veronica Tucker* (CSC, decided April 4, 2012), in which the Commission modified a 15 working day suspension to a five working day suspension after Tucker was charged with insubordination and conduct unbecoming a public employee for using a disrespectful tone of voice to a superior officer. While the appellant concedes that the words she and Tucker used differ, she argues that the penalty should not.

Despite being provided the opportunity, the appointing authority did not respond.

## CONCLUSION

In the instant matter, the Appellate Division upheld the insubordination and conduct unbecoming charges but did not uphold the charge of violation of a regulation or policy, as there was no evidence in the record of such a violation. Therefore, it ordered the Commission to determine what the appropriate penalty should be. In addition to considering the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). 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 an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). In 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. The ALJ found that a review of the appellant's record revealed that she had been employed by the appointing authority for approximately 10 years and that she had no prior disciplinary record. With regard to the seriousness of the offense, the appellant verbally disrespected and abused a superior officer. The appellant is a member of paramilitary organization where strict adherence to the rules is required. The safety of inmates, correction officers and other staff depend on it. Since the appellant's actions were inappropriate and two charges were upheld, a more severe penalty than a five-day suspension is warranted. In this regard, the facts in *Tucker* stand in stark contrast to those in the present matter. Unlike in the instant matter, Tucker did not use foul language, but rather used a disrespectful tone of voice. Additionally, the incident seemed to be a short outburst that lasted only briefly. However, in the present matter, the appellant loudly used offensive and abusive language towards a superior officer and the entire incident lasted for about an hour. Accordingly, based on the totality of the record, including the seriousness of the offense and the appellant's prior record, the Commission concludes that a 20 working day suspension is the appropriate penalty. The imposition of a 20 working day suspension should serve as a warning to the appellant that any future infraction may result in a more serious penalty, up to and including removal from employment.

Since the penalty is modified, the appellant is entitled to back pay, benefits and seniority for ten working days. *See N.J.A.C. 4A:2-2.10*.<sup>1</sup> However, *N.J.A.C.*

---

<sup>1</sup> It is noted that the appellant has appealed the determination of her back pay to the Commission. That matter has been held pending the outcome of the instant matter.

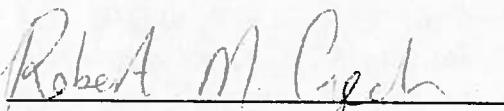
4A:2-2.12 provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal. Therefore, since two charges have been upheld and major discipline imposed, the appellant is still not entitled to an award of counsel fees.

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*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in imposing a 30 working day suspension was not justified. Therefore, the Commission modifies the penalty to a 20 working day suspension. Further, the Commission orders that the appellant be granted 10 days back pay, benefits and seniority. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned by the appellant during this period. 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. Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>rd</sup> DAY OF JUNE, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

**Attachment**

**c: Keisha McGee  
Michael S. Doran, Esq.  
James Mulholland  
Pamela Ullman, DAG  
Kenneth Connolly**

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4821-12T4

IN THE MATTER OF  
KEISHA MCGEE,  
NORTHERN STATE PRISON,  
DEPARTMENT OF CORRECTIONS

---

Argued October 7, 2014 - Decided December 15, 2014

Before Judges Hoffman and Whipple.

On appeal from Civil Service Commission,  
Docket No. 2012-3003.

Michael S. Doran argued the cause for appellant Keisha McGee (Cammarata, Nulty and Garrigan, L.L.C., attorneys; Mr. Doran, on the brief).

Roshan Shah, Deputy Attorney General, argued the cause for respondent Department of Corrections (John J. Hoffman, Acting Attorney General, attorney; Randy Miller, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Keisha McGee, a Senior Corrections Officer, employed by the New Jersey Department of Corrections (DOC) at Northern State Prison, appeals from a Civil Service Commission (CSC) final decision sustaining charges of insubordination, conduct unbecoming a public employee, other sufficient cause ("other cause") and violation of a rule, regulation, policy, procedure, order or administrative decision ("violation of

regulation or policy") as well as the imposition of a thirty-day suspension. The charges stem from an incident wherein appellant addressed offensive language to a superior officer and questioned his authority. We affirm in part, reverse in part, and remand for redetermination of the penalty.

On November 6, 2011, appellant reported to the prison for her 2:00 p.m. shift. The prison has an entrance lobby with a security scanner through which all employees are required to pass. An employee who fails to clear the scanner four times must sign a scan form and consent to a search. Beyond the scanner is a sally port which operates like an air lock, with an officer remotely closing an outer door and opening an inner door.

On that day, appellant walked through the security scanner, failing to clear four times. Sgt. Alvaro Castro was monitoring the security scanner. According to Castro, appellant began talking to co-workers and continued into the sally port. Castro called her name several times in order to have her sign the scan form, but she did not respond. After she entered the sally port, Castro ordered the officer operating the doors to send her back.

When she returned to Castro, appellant said she was not going to "go through this bullshit every day." She also said that supervisors were "fucking jokes." When Castro explained that he was doing his job, appellant stated that he did not know what his

job was. Appellant signed the scan form and was searched in an adjacent room, where it was determined that an article of appellant's clothing had set off the scanner.

Appellant says that she only set off the scanner two times and that, upon being called back, Castro stated, "Oh, McGee, I don't have time for this, I am just doing my job. My job is to make sure you dirty cops clear the machine." Appellant claims she said, "I am not a dirty cop, apparently you don't know what your job is then, I am not a dirty officer, a dirty cop." Appellant stated that Castro then turned to Lt. William Coughlin and said, "You hear this disrespectful ass officer, Lieutenant?" The parties do not dispute that appellant signed the scan form and, ultimately, followed the necessary procedures for entry.

On December 20, 2011, the DOC served appellant with a notice of disciplinary action, charging her with: insubordination, N.J.A.C. 4A:2-2.3(a)(2) and DOC Human Resources Bulletin (HRB) 84-17 as amended, C-9; unbecoming conduct, N.J.A.C. 4A:2-2.3(a)(6) and HRB 84-17 as amended, C-11; other cause, N.J.A.C. 4A:2-2.3(a)(11)<sup>1</sup>; and violation of regulation or policy, HRB 84-17, as amended, E-1. Appellant requested a departmental hearing, which the DOC conducted on January 17, 2012. On April 3, 2012, the DOC

---

<sup>1</sup> Subsequently re-codified as N.J.A.C. 4A:2-2.3(a)(12) as amended by R.2012 d.056, effective March 5, 2012. Hereinafter referred to as N.J.A.C. 4A:2-2.3(a)(11), as originally charged.



issued a final notice of disciplinary action, sustaining all charges and suspending appellant for thirty days. Appellant appealed to the CSC, and on October 18, 2012, a hearing was conducted before an Administrative Law Judge (ALJ). After considering all of the testimony, the ALJ issued a written decision finding appellant guilty of all disciplinary charges.

The ALJ found the DOC's witnesses to be credible, independent and corroborative. The ALJ found inconsistencies in appellant's account and found her version not worthy of belief. The ALJ specifically found that appellant "willfully refused to sign the Failure to Clear report and attempted to enter the prison without clearance." The ALJ also found that appellant told Castro she would not "go through this bullshit every day," that she told him that supervisors were "fucking jokes" and that she told him that he did not know what his job was.

The ALJ found appellant guilty of insubordination pursuant to N.J.A.C. 4A:2-2.3(a)(2) and HRB 84-17, as amended, C-9, and guilty of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and HRB 84-17, as amended, C-11. The ALJ also found that appellant's conduct violated departmental regulations or policies under HRB 84-17 as amended, E-1, which constitutes other cause for purposes of N.J.A.C. 4A:2-2.3(a)(11) and that she was subject to major discipline. The ALJ concluded,

after consideration of appellant's lack of a prior disciplinary record, that her offenses warranted a thirty-day suspension.

On May 1, 2013, the CSC issued a final decision adopting the findings of fact and conclusions of law of the ALJ and affirming the thirty-day suspension. Appellant appeals that final decision, arguing that the decision is arbitrary, capricious and unreasonable and is based on findings not supported by substantial, credible evidence. She also argues that the ALJ improperly expanded the charges set forth in the preliminary notice of disciplinary action and improperly prohibited appellant from questioning witnesses during the hearing.

We have a limited role in reviewing a decision of an administrative agency. Ordinarily, we will only reverse the decision of an administrative agency if it is arbitrary, capricious or unreasonable, or if it is not supported by substantial credible evidence in the record as a whole. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)). Moreover, while we are not bound by the CSC's legal opinions, we must give deference to the CSC's interpretation of its own regulations. Bd. of Educ. of City of Sea Isle v. Kennedy, 393 N.J. Super. 93, 101-02 (App. Div. 2007), aff'd, 196 N.J. 1 (2008). If we conclude that the decision of the CSC is arbitrary, we may finally determine the matter by fixing

the appropriate penalty or remand it to the CSC for redetermination. Henry, supra, 81 N.J. at 580.

In applying these standards, we conclude that the ALJ's findings that appellant willfully refused to sign the scan form and attempted to enter the prison without clearance were unsupported by the record and are arbitrary, capricious and unreasonable. The parties do not dispute that appellant signed the scan form, and there is no testimony in the record that supports a finding that she refused. Castro admitted appellant signed the scan form and followed procedure. Moreover, appellant correctly points out that she was not charged in the preliminary notice of discipline with refusing to sign the scan form or attempting to enter the prison without clearance, and therefore the ALJ's finding expands the charge.

However, the ALJ's findings that appellant used offensive, disrespectful language are supported by substantial credible evidence in the record. The ALJ found Castro's testimony about what appellant said to him to be credible and corroborated by other DOC witnesses. Appellant's account was discredited. Therefore, we must consider whether appellant's use of offensive, disrespectful language to a superior officer alone is sufficient to sustain all three charges.

N.J.A.C. 4A:2-2.3(a)(2) does not define insubordination. HRB 84-17, as amended, C-9 defines insubordination as "[i]ntentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor." Here, appellant used offensive language and exhibited a disrespectful attitude toward a superior officer. While not a direct act of disobedience, appellant's language was clearly insulting and abusive. Giving deference to the CSC's determination of its own regulations, we conclude that the record supports the finding of insubordination.

N.J.A.C. 4A:2.2-3(a)(2) as well as HRB 84-17, as amended, C-11 do not define unbecoming conduct. Conduct unbecoming an employee is an elastic phrase "that 'has been defined as any conduct which adversely affects the morale or efficiency of the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.'" Karins v. Atl. City, 152 N.J. 532, 554 (1998) (quoting Appeal of Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (alterations in original)). The CSC's decision to affirm the finding of conduct unbecoming is consistent with the definition of conduct unbecoming in Karins, and we apply the same definition for state employees. Such misconduct need not be predicated upon the violation of any particular rule or regulation,

but may be based upon the violation of implicit standards of good behavior. Emmons, supra, 63 N.J. Super. at 140. Appellant's profanity and disrespectful remarks toward her superior clearly fit within this definition because of their capacity to undermine morale, efficiency and discipline within the confines of a prison. We conclude that the record supports the finding.

The third charge, other cause, N.J.A.C. 4A:2-2.3(a)(11), pertains to violations of regulations or policy, HRB 84-17 as amended, E-1. As noted previously, we have determined that the charges of willful refusal to sign the scan form and attempting to enter the prison without clearance were not supported by sufficient credible evidence. There is no evidence of any other regulatory or policy violations. Therefore, the CSC erred by finding that the evidence established this charge.

The ALJ found that appellant's behavior warranted the thirty-day suspension based upon findings of guilt on three charges and found that appellant's conduct was sufficiently egregious to permit the imposition of a significant suspension in the absence of any prior disciplinary history. Because we have determined that the evidence does not support the third charge, the penalty imposed must be reversed and the matter remanded to the CSC for a redetermination of the penalty.

Finally, appellant challenges the ALJ's decision to prohibit appellant from questioning DOC witnesses regarding their failure to submit DOC-mandated written reports detailing appellant's violations of rules and regulations, and claims in her reply brief that her due process rights were violated when the ALJ expanded the charges. These arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed in part, and remanded to the CSC for redetermination of the penalty. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office

  
CLERK OF THE APPELLATE DIVISION



STATE OF NEW JERSEY

In the Matter of Keisha McGee  
Northern State Prison  
Department of Corrections

CSC DKT. NO. 2012-3003  
OAL DKT. NO. CSV 06149-12

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: May 1, 2013 PM

The appeal of Keisha McGee, Senior Correction Officer, Northern State Prison, Department of Corrections, 30 working day suspension, on charges, was heard by Administrative Law Judge Edith Klinger, who rendered her initial decision on March 21, 2013. Exceptions and cross exceptions were filed on behalf of the parties.

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 May 1, 2013, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

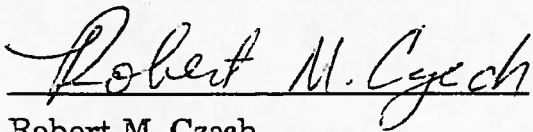
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Keisha McGee.

Re: Keisha McGee

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  
MAY 1, 2013



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

attachment





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

**INITIAL DECISION**

OAL DKT. NO. CSV 06149-12

AGENCY DKT. NO. 2012-3003

**IN THE MATTER OF KEISHA MCGEE,  
NORTHERN STATE PRISON,  
DEPARTMENT OF CORRECTIONS.**

---

**Michael Doran, Esq., for appellant Keisha McGee (Cammarata, Nulty & Garrigan, attorneys)**

**Susan Sautner, Legal Specialist, for respondent Northern State Prison pursuant to N.J.A.C. 1:1-5.4(a)(2)**

Record Closed: November 8, 2012

Decided: March 21, 2013

**BEFORE EDITH KLINGER, ALJ t/a:**

Appellant, Keisha McGee, a senior correction officer at Northern State Prison, Department of Corrections (Department), was suspended from her position for thirty days on charges. In the Final Notice of Disciplinary Action (DPF-31B), dated April 3, 2012, and personally served upon appellant on the same date, no effective date was set for her suspension to commence.

Appellant requested a hearing, and the Department of Personnel transmitted the matter to the Office of Administrative Law (OAL), where on May 7, 2012, it was filed 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. The matter was assigned to the undersigned on August 31, 2012. The hearing was held on October 18, 2012, and the record closed on November 8, 2012.

After a departmental hearing, held on January 17, 2012, appellant was found guilty of the following charges:

1. Insubordination, in violation of N.J.A.C. 4A:2-2.3(a)2;
2. Conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)6;
3. Other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)11;
4. Conduct unbecoming an employee, in violation of HRB 84-17 (as amended) C-11;
5. Violation of a rule, regulation, policy, procedure, order, or administrative action, in violation of HRB 84-17 (as amended) E-1;
6. Insubordination, in violation of HRB 84-17 (as amended) C-9.

Human Resources Bulletin (HRB) 84-17, as amended, provides as follows:

C-9: Insubordination: Intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to a supervisor.

C-11: Conduct unbecoming an employee.

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

The specifications to the charges are as follows:

On 11-6-11 you failed to clear the security scan. After a failed 4th attempt you stated to Sgt. Castro that you were not going to "go through this bullshit every day." You further

referred to supervisors as "fucking jokes." You then stated to the Sgt. that he "didn't even know what his job was." Your unprofessional intentional disrespect to a supervisor can not be tolerated by the Department.

### REVIEW OF EVIDENCE

Northern State Prison's policy entitled "Security at Facility Entry Points" provides that

[t]he policy of the New Jersey Department of Corrections is to operate secure correctional facilities and to provide a safe environment for all persons entering these facilities or housed within. In order to accomplish this policy, maintain a high level of security at all facility entry points, and prevent the introduction of contraband, all persons requesting entrance into the Inner-Security Perimeter of any medium and maximum NJDOC facility to include Northern State Prison shall be required to present and wear appropriate identification, clear a walk-through metal detector scan and submit to a subsequent pat-search.

[R-16.]

Sgt. Alvaro Castro testified for respondent at hearing. He has been employed by Northern State Prison for thirteen and one-half years; he has been a sergeant for the last six and one-half years. Although he was not McKee's direct supervisor, he was above her in the chain of command. Department policy and procedures did not require that his job be in her direct chain of command in order for him to compel her to comply with inspection requirements.

Castro testified that on November 6, 2011, he was assigned to work at the main-lobby scanning machine on the second shift, which begins at 1:30 p.m. Before entering the prison, every employee, without exception, was required to pass through two machines, one being a walk-through lobby frisk machine. This procedure is designed to ensure that no one brings contraband into the prison.

Department policy required that a staff member who was unable to successfully pass through the lobby frisk machine after four attempts had to fill out a Failure to Clear Lobby Frisk Machine Report. This form permitted the employee to explain that there was a medical or other legitimate reason for the inability to clear. Castro testified that on November 6, 2011, McGee failed to clear the machine four times, repeatedly refused to complete the required report, and attempted to enter the prison without clearance. She was summarily returned to the main lobby, where she became defiant and began to verbally abuse Castro.

Castro testified that appellant told him she was "not going to go through this bullshit every day" because she had no contraband. She said he was a "fucking joke." When he explained that she should not be disrespectful because he was just doing his job, she said that he "didn't know what his job was." She ultimately signed the Failure to Clear report. He denied referring to McGee as a "dirty cop," as she claimed.

According to Castro, McGee was familiar with the procedure and had been induced to sign Failure to Clear reports "many times" in the past, despite her attempts to refuse. He never reported her before, but this was the first time she attempted to enter the prison without clearance. He further testified that she told him in the past that she had a medical issue, a metal plate in her head, and he advised her to provide paperwork confirming this. To his knowledge, appellant had no such medical paperwork on file.

Under circumstances such as what occurred on November 6, the frisk-machine operator is required to complete a Department Special Custody Report. Castro completed his report and submitted it to his immediate supervisor, Lt. William Coughlin, who was located about six to eight feet away at the podium in the lobby at the relevant time. He countersigned Castro's report on the same day. The matter was later assigned to Lt. Bruce Kerner for investigation.

William Coughlin has been employed by the Department since February 1990. He became a lieutenant in June 2007 and was assigned to Northern State Prison. He testified on behalf of respondent.

On November 6, 2011, Coughlin was supervising all officers, inmates and employees on the second shift. His assignment included supervision of the lobby area when this incident was taking place. He testified that he was at the podium in the lobby approximately eight to ten feet from Castro and was able to hear Castro tell McGee that he was only doing his job, and hear her respond that Castro did not know what his job was. He observed Sgt. Deborah Foster walk over to Castro and McGee and tell McGee to stop talking. He saw Foster escort appellant to the mail room so that she could be frisked manually in a private location.

Coughlin testified that Castro told him he felt that appellant had disrespected him and he wanted to file a report. He was told to file it. The witness confirmed that Castro's report initiated the departmental investigation by Kerner.

Bruce Kerner has been employed by the Department for fifteen years and four months. He has worked at Northern State Prison for six and one half years and has been a lieutenant for the past two years. He testified on behalf of respondent.

Kerner stated that he interviewed all involved in the incident and all potential witnesses during the course of his investigation. Appellant was accompanied by her union representative during her interview. With the exception of Castro, Foster, Coughlin and appellant, none of the other potential witnesses acknowledged seeing or hearing anything out of the ordinary during the exchange between Castro and McGee.

Deborah Foster testified as a witness on behalf of appellant. She has been employed at Northern State Prison for twenty-two and one-half years. She has been a sergeant for the past six to seven years.

According to Foster, on November 6, 2011, a loud argument between Castro and McGee attracted her attention, but she did not pay attention to the subject of their disagreement. Appellant, who had already signed the Failure to Clear report, called Foster over and asked Foster to search her because Foster was the only female officer in the lobby area. Foster confirmed that the scan registered a problem in McGee's

chest area. A body search in a private location revealed that appellant was wearing a brassiere with a metal underwire. The underwire, and not a medical reason, was creating the problem. During her interview with Kerner, Foster mentioned that she witnessed a "verbal exchange between Castro and McGee," not that she heard a "loud argument" between them as she testified at hearing.

At hearing, Keisha McGee testified that she has been a senior correction officer at Northern State Prison for approximately ten years. She claimed that when she reported for work on November 6, 2011, she put her belongings in the basket to be checked and she walked through the metal-detector machine. A television monitor at the end of the checkpoint told her that she had cleared, but Castro told her to go around again several times. He asked her to sign the Failure to Clear report, which she refused to do. She then took her belongings and walked through the door out of the lobby area in the direction of the prison.

Castro ordered that McGee be allowed to go no further, and had her returned to the lobby immediately. The officer on duty in this area did not know who was the subject of Castro's order, and sent everyone in her area back to the lobby. Appellant claimed that this circumstance failed to notify her that she was the sole target of the inquiry, because she was certain she had done nothing wrong. When the situation was explained to her, she asked Castro why he called everyone back to speak to her. She first claimed he said, "My job is to make sure you dirty cops clear the machine." She said she told Castro he was being unprofessional, not that he didn't know his job. McGee reluctantly signed the Failure to Clear form and requested that Foster search her so she could get inside to work.

According to McGee, and contrary to the testimony of Foster, the machine indicated that appellant had problems in two places: her head area and her chest area. Appellant asserted that she had a metal plate in her head that the Department knew about. There is nothing in the record but her unsubstantiated assertion to indicate that she had a metal plate or that the Department was aware of it. This testimony is also inconsistent with her prior testimony that she was cleared by the machine before she attempted to leave the lobby.

In a written report, prepared on the date of the incident at 2:30 p.m., appellant wrote that Castro said, "My job is to make sure you dirty fucking officers clear the machine." She further claimed that she answered him in a professional manner, seeking to learn why he had called her a dirty cop. In a second report on the same date, McGee objected to being asked to write the first report, because she had been pulled from her post to write it without being told the purpose of the report. She further alleged that she had been denied the presence of her union representative. Lieutenant Abdus-Sabur, who requested that she write the first report, filed a Special Custody Report, dated November 6, 2011, stating that McGee had been offered the presence of a union representative or other witness while preparing her first written statement.

Appellant next testified, inconsistently, that her written statement of the incident was actually composed on November 7, 2011, not on the preceding day. She said her union representative advised her to write the second report and backdate it to November 6.

She denied to Kerner that she told Castro he didn't know what his job was; she said she only politely reminded Castro that he was not a duty officer and this was not part of his duties. McGee testified at hearing that Coughlin was standing a distance away speaking with someone and could not have heard this part of her conversation with Castro.

### FINDINGS OF FACT

Based upon the testimony of the witnesses and the contemporaneous documents, I FIND the following by a preponderance of the credible evidence:

1. I FIND that Coughlin was an independent witness who was not directly involved in the incident.
2. Castro's testimony that Coughlin was standing within earshot was confirmed by Coughlin, who overheard McGee tell Castro that he did not know

what his job was. Consequently, I **FIND** that McGee told Castro that he did not know what his job was.

3. I **FIND** that Foster was an independent witness who was not directly involved in the incident.

4. Although McGee claims that she calmly tried to elicit from Castro the reasons for his actions, Foster testified that her attention was called to the pair because she heard a loud argument in progress. No one alleged that Castro raised his voice. Therefore, based upon Foster's testimony, in conjunction with the testimony of Castro and Coughlin, I **FIND** that McGee, not Castro, was the source of the disturbance.

5. Foster testified that McGee's only clearance issue was a signal emanating from her chest area. Appellant first claimed she was cleared by the scanner so that there was no issue. She later claimed that the scanner reacted to a metal plate in her head, as well as to her chest area. There is no evidence in the record that McGee had a metal plate that caused the scanner to react. I **FIND** the facts with respect to these issues to be as stated by Foster.

6. Based upon the record as a whole, I **FIND** that McGee's testimony at hearing, as generally and specifically noted above, was internally inconsistent, inconsistent with her prior version of events in her written statements, and inconsistent with the testimony and statements of other witnesses. I, therefore, **FIND** that McGee's testimony is not worthy of belief and her uncorroborated statements should not be accepted as fact.

7. Castro testified in a convincing manner and his testimony is corroborated in the record. I, therefore, **FIND** that his testimony is more reliable and should be accepted as fact in the present matter.

8. Consequently, I **FIND** that McGee willfully refused to sign the Failure to Clear report and attempted to enter the prison without clearance; that she told



Castro she would not "go through this bullshit every day"; that she told him that supervisors were "fucking jokes"; and that she told him that he did not know what his job was.

9. I **FIND** that her allegations concerning Castro's disparaging remarks to her should not be accepted as fact since the record contains no corroboration of her assertions.

10. I **FIND** appellant's conduct to be contrary to the stated policy of the Department to provide a secure and safe environment for those entering or housed in the facilities under its jurisdiction. This policy specifically includes Northern State Prison. It is designed to prevent the introduction of contraband into the secured areas by requiring all who would enter, including employees, to submit to being searched before entering.

11. I **FIND** that McGee was fully aware that she was not permitted to enter the prison area without completing the search procedure; consequently, her attempt to gain entry without clearance constituted a deliberate breach of the safety and security procedures required by the Department.

12. I **FIND** that the entire incident took place between 1:30 p.m., the start of the second shift, and 2:30 p.m., the time appellant wrote her Special Custody Report, a period of something less than one hour.

#### **DISCUSSION OF LAW AND CONCLUSIONS**

Appellant is charged with insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2) and (HRB) 84-17 (as amended) C-9. I **FIND** that by virtue of Department policy, Castro was placed in a supervisory position with respect to appellant, and authorized to order her to perform the requirement to sign the Failure to Clear report. I **FIND** that McGee willfully refused to follow the departmental policy as Castro ordered her to do, and used disrespecting and abusive language to him as her supervisor. For these reasons, I **CONCLUDE** that she is guilty of insubordination pursuant to N.J.A.C. 4A:2-2.3(a)(2)

and (HRB) 84-17 (as amended) C-9. I further **CONCLUDE** that she is subject to major discipline pursuant to N.J.A.C. 4A:2-2.3(a)(2), and discipline pursuant to (HRB) 84-17 (as amended) C-9.

Appellant is charged with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and (HRB) 84-17 (as amended) C-11. I **CONCLUDE** that McGee's verbal abuse of a superior officer, her refusal to complete the required pre-entrance search of her person and her attempt to enter the prison area without clearance in disregard for the procedures implemented by the Department to secure the safety of the prison by preventing the introduction of contraband constitute conduct unbecoming a public employee. For this reason, I **CONCLUDE** that she is subject to major discipline pursuant to N.J.A.C. 4A:2-2.3(a)(6), and discipline pursuant to (HRB) 84-17 (as amended) C-11.

The final charge against McGee is other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11). Having concluded that appellant's conduct was in violation of HRB 84-17 (as amended) C-9, and HRB 84-17 (as amended) C-11, I **CONCLUDE** that her conduct violated departmental rules, regulations, procedures and policies, in violation of HRB 84-17 (as amended) E-1. I **CONCLUDE** that this constitutes other sufficient cause for purposes of N.J.A.C. 4A:2-2.3(a)(11), and that she is subject to major discipline pursuant to N.J.A.C. 4A:2-2.3(a)(11).

#### PENALTY

In order to determine the appropriate penalty to be imposed, appellant's prior disciplinary history may be taken into consideration. McGee's prior disciplinary record shows that she had no prior offenses.

HRB 84-7 (as amended): The NJDOC Disciplinary Action Policy contains a Table of Offenses and Penalties which includes a gamut of proposed penalties for the specific violations for which appellant has been found guilty. These are:

C-9: Insubordination — 1st offense — official written reprimand to removal.

C-11: Conduct unbecoming — 1st offense — 3 days to removal.

E-1: 1st offense — official written reprimand to removal.

In the present case, within a period of less than one hour, McGee adamantly refused to conform to the legitimate orders of her supervisor, then verbally disrespected and abused him. She illegally attempted to enter the prison area without clearance, in disregard of the regulations designed to promote the security of the facility and the safety of its occupants. McGee is a law enforcement officer. Allowing her to engage in this type of conduct without consequences sets a questionable example for other members of the prison staff and members of the public seeking access to Northern State Prison. I find her conduct sufficiently egregious to permit the imposition of a significant suspension even in the absence of a prior disciplinary history.

I, therefore, **CONCLUDE** that McGee's offenses warrant a thirty-day suspension.

### ORDER

Accordingly, it is **ORDERED** that Keisha McGee is hereby suspended for thirty days from her position as senior correction officer at Northern State Prison, effective immediately.

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.

March 21, 2013  
DATE

Edith Klinger  
EDITH KLINGER, ALJ, *va*

Date Received at Agency:

3/21/13  
Ann Distler

Date Mailed to Parties:

MAR 22 2013

DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

id

**APPENDIX**

**LIST OF WITNESSES**

**For Appellant:**

Deborah Foster  
Keisha McGee

**For Respondent:**

Alvaro Castro  
William Coughlin  
Bruce Kerner

**LIST OF EXHIBITS IN EVIDENCE**

**For Appellant:**

None

**For Respondent:**

- R-1 Preliminary Notice of Disciplinary Action and Final Notice of Disciplinary Action
- R-2 Special Custody Report of Castro, dated November 6, 2011
- R-3 Incident Investigation and Report of Kerner, dated December 1, 2011
- R-4 Interview Questions of Abdus-Sabur, dated November 17, 2011
- R-5 Interview Questions of Coughlin, dated November 17, 2011
- R-6 Interview Questions of Velez, dated November 17, 2011
- R-7 Interview Questions of Lomax, dated November 17, 2011
- R-8 Interview Questions of Foster, dated November 17, 2011
- R-9 Interview Questions of Castro, dated November 17, 2011

- R-10 Interview Questions of McGee, dated November 17, 2011
- R-11 Interview Questions of Johnson, dated November 17, 2011
- R-12 Special Custody Report of McGee, dated November 6, 2011
- R-13 Special Custody Report of Velez, dated November 6, 2011
- R-14 Weingarten Administrative Rights form signed by McGee, November 23, 2011
- R-15 NSP Failure to Clear Lobby Frisk Machine Report (blank)
- R-16 Internal Management Procedure — Security at Facility Entry Points
- R-17 Law Enforcement Personnel Rules and Regulations
- R-18 NJDOC Human Resources Bulletin 84-17, as amended, Disciplinary Action Policy
- R-19 Disciplinary Summary for McGee

