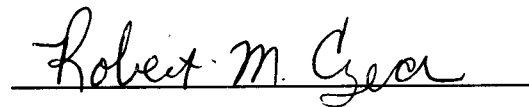




Re: Russell Hicks

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  
DECEMBER 21, 2016

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a solid horizontal line.

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Assistant 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. CSR 13494-12

AGENCY DKT. NO. N/A

**IN THE MATTER OF RUSSELL HICKS,  
CAMDEN COUNTY.**

---

**Stuart J. Alterman, Esq.** for appellant Russell Hicks

**Antonieta Paiva Rinaldi, Esq.,** for Camden County

Record Closed: October 11, 2016

Decided: October 27 2016

**BEFORE LAURA SANDERS,** Acting Director and Chief ALJ:

**STATEMENT OF THE CASE**

Correction Officer (CO) Russell Hicks (the appellant) appeals the action by the Camden County Correctional Facility (the County, or respondent), terminating his employment on grounds of conduct unbecoming, neglect of duty, and other charges for using excessive force on an inmate, failing to secure the inmate in his cell, and providing false statements about the incident. CO Hicks contends that the inmate was creating a disturbance, that he acted reasonably to quell the disturbance, and that he did his best to provide an accurate account of events in his reports and in testimony.

## **PROCEDURAL HISTORY**

On August 8, 2012, the County served CO Hicks through personal service with a Preliminary Notice of Disciplinary Action (PNDA) dated August 8, 2012. He waived a departmental hearing and by Final Notice of Disciplinary Action dated September 18, 2012, he was terminated, effective August 8, 2012. CO Hicks appealed the termination to the Office of Administrative Law (OAL), where the appeal was filed on September 25, 2012. (N.J.S.A. 40A:14-202(d)). The hearing was commenced before Administrative Law Judge John Russo on July 11, 2013. Following one adjournment by the ALJ and two by the petitioner, the next date of February 26, 2015, was established. In November 2014, ALJ Russo granted petitioner's recusal motion of February, and the matter was transferred to the undersigned. Following consultation with the parties, the hearing was started afresh, and was held on February 12, February 22, March 28, March 31, May 9, and May 16, 2016. The record was left open for transcripts and briefs, and closed on October 11, 2016. Petitioner waived back pay pursuant to N.J.S.A. 40A:14-201(b)(2).

## **FACTUAL DISCUSSION AND FINDINGS**

The general outlines of the event are undisputed. On June 8, 2012, around 10:30 a.m., CO Hicks was working an overtime shift in the medical section of C block of the Camden County jail. First, he escorted the nurse who administers medication, and unlocked doors so that the prisoners could come to the day room to meet her. Lunch arrived almost immediately thereafter. As an inmate named R.L. was entering the day room from a connecting corridor, he was shouting to CO Hicks that he was too loud and should shut up. A scuffle between CO Hicks and the inmate then occurred in the dayroom, with other inmates present.

Despite the existence of a video, the parties disagree as to what occurred from the point in time at which R.L. appears in the room to the last view, when he is taken back to his cell. The biggest disputes concern first, whether the inmate provoked CO Hicks; and second, whether the officer attacked the inmate from the rear, or,

alternatively, made an unsuccessful attempt at putting him in an acknowledged variety of hold that would have given him control of the inmate.

The video shows CO Hicks standing in front of a closed glass door leading to some other cells, watching an inmate bringing food trays into the day room and arranging them on a table. The appellant looks suddenly to his right, where R.L. enters from another corridor. R.L. passes CO Hicks, heading toward the table on which the food was placed. He arrives at the table, puts a Kool-Aid cup in one hand and reaches for a food tray. Meanwhile, CO Hicks has come up behind him. The officer uses his right hand to push the side of R.L.'s face away from him, while at the same time bringing his left hand up under the man's arm. The inmate goes down sideways, taking the officer with him, then comes back up, and for the next minute or two, CO Hicks and the inmate are pushing each other around the room, as the appellant seeks to gain control of R.L.

CO Hicks testified that when he first heard R.L. shouting, he thought there might be a disturbance. Then on seeing the inmate, he asked him, "What did you say?" The inmate replied, "Shut the fuck up; you're too loud," to which CO Hicks responded, "If you don't like loud, don't get in jail." As R.L. passed CO Hicks, heading toward the food, he shot the officer a look and said, "Fuck you," again.

At that point, the appellant thought the inmate was belligerent enough that he could start a serious incident at any second. So he came up behind him with the intention of getting control of him through a technique known as a gooseneck hold. What that requires is getting the other person's arm raised at an angle with one hand, while using the other hand to force the palm of the person's hand down toward the floor. The name relates to the fact that the hold makes the other person's lower arm and hand look like a gooseneck. The position causes enough discomfort to force the person down and give the officer control.

Officer Hicks made the first act a strong push of R.L.'s head toward the side, because he wanted to get the inmate's face away from his. Not many months before, during an altercation, an inmate took a significant bite out of his face, which left a

sizeable scar. So here, CO Hicks wanted to get the head away, as he sought to get hold of the arm and control the rest of the man's movements. Because he missed the arm grab, the inmate was able to slide away and pop up, which in turn caused CO Hicks to have to make several additional efforts to get control. Someone called a help code, and when the first additional officer arrived, CO Hicks immediately disengaged – pushing the inmate away from him, while telling Officer Janell Barr to get the prisoner into lockup. He did so because sometimes the mere presence of a new officer will be enough to cause an inmate to comply. He also was aware that in a code situation, the incoming officers are very likely to get physical with an inmate unless it is immediately obvious that the person is now going to comply.

CO Hicks's incident report states that after the initial exchange of words, the inmate R.L. "turned to me and stated, 'You heard me. I said fuck you!' At that point I grabbed (R.L.) around his upper body to place him in a(n) escorting position in order to place him back in his cell. (R.L.) began to pull away and we became tangled up between the wall and the table in 2 South C-Block dayroom floor. I then began to push said inmate towards his cell, again he pushed away, and I then grabbed hold of his jumper and tried to maintain control. At this time, other officers arrived on post to help secure (R.L.)...." (R-3.) CO Hicks defended this account as consistent with his personal recollection of what happened, and also said that he had no idea that the incident was a big deal until the County called and told him not to work overtime on the weekend and that he was to stay away from inmates. He testified that he was unaware of any general order requiring him to call a supervisor before going to a hands-on situation, and would have complied if there had been such an order. (Tr. March 31, 2016, at 52.)

He was interviewed by Internal Affairs officers on August 1, 2012. It had been almost two months since the incident, and CO Hicks unsuccessfully requested an opportunity to review the videotape. In the interview, which was recorded, he said that the inmate walked past him, then turned around and looked at him, saying, "Fuck you," and that in response, he grabbed the inmate's wrists and upper arm and told him he was being placed in a cell for his actions toward Hicks. He also said that the inmate turned and faced him all the way, which caused him to re-engage by grabbing R.L.'s upper shirt. He also described the rest of the incident. (R-12, at 6,7.) CO Hicks said the

reason he wanted the videotape was the passage of the time, the fading of his memory, and the fact that even immediately after the incident, he could not recall every piece of it because so much happened so fast. He maintained steadfastly that he tried his best to be honest in the situation, and that there was no doubt in his mind that the inmate had provoked him enough to warrant an escort hold and the movement back to his cell. The fact that the hold worked out poorly does not alter the appropriateness of the original decision.

CO Hicks also contends that he was targeted for standing up in public freeholder meetings over a proposal to privatize the jail – meetings at which he held up pictures of his son, who had recently died – and pointed out all the overtime that caused him to miss spending time with the boy. He also said that at one point an inmate told him, “Heard your son died, Hicks. Too bad I was not the one who did it.” He conceded that he never told anyone at the jail about the inmate comment.

The appellant also relied on a hearsay statement from the inmate. In a recorded interview on June 9, 2012, R.L. recounted the same initial exchange with Hicks, including the profanity and the comment about staying out of jail. R.L. said in response to that comment, as he passed Hicks, he mumbled “Fuck you,” or “What the fuck,” and was getting Kool Aid and food, and then he was not sure precisely what Hicks did, he thought maybe he was trying for a choke-hold. (R-7, at 4, 5, 6.)

Gary Merline, who was admitted as an expert in use of force and in excessive force, testified on behalf of the County. Merline emphasized that in evaluating the appropriateness of force, it is the perception of the person who is making the decision that matters. In making a report on the use of force, Merline said, officers are supposed to articulate and document “their perception of any danger (and) why they did what they did.” (Tr. March 28, at 18.) He noted that CO Hicks’s incident report never cites to an immediate need or establishes the presence of an immediate threat. If there is no immediate threat, Merline said, then the officer has many alternatives to the use of force. These include calling for backup, contacting a supervisor, or using a radio to seek assistance prior to the use of force. (*Id.* at 59.) Cursing alone, he said, is not a reason for force. “There has to be some overt action of the inmate that would put you in

physical concern for your well-being. Just being cursed at in a jail, unfortunately, is a rather common occurrence.” (*Id.*, at 30.) He personally did not see anything on the video to suggest that the inmate either verbally or physically threatened CO Hicks. Although he acknowledged that it was possible R.L. said something through only a partially opened mouth, Merline did not see a hand move, nor did he see a head turn. Additionally, even if CO Hicks had given a verbal command to the inmate to do something other than get food, it was incumbent on the officer to give the inmate a chance to comply. Here, there appears to be no opportunity for R.L. to do so. Seeing at most, verbal provocation, Merline said that any kind of force was not warranted. If R.L. was refusing to follow commands, the right course was to call for back-up, so more than one correction officer was in the room. Merline discounted the importance of the scuffle that followed CO Hick’s original moves, because at no point was the inmate relieved of the requirement to do what the officer told him to do. Merline said the issue was the decision to use force in the first place. Merline also said that as regards the goose-neck hold, CO Hicks’s initial physical movements against the prisoner did not look like any escort hold with which he is familiar.

Emanuel Kapelsohn, who was admitted as an expert in use of force in law enforcement environments and defensive tactics, testified on behalf of CO Hicks. Kapelsohn pointed to the exchange of words at about 10:35:30-31. CO Hicks then approached the inmate from behind, put one hand on the side of the inmate’s neck, and then pushed him away, while at the same time, bringing his arm up under the inmate’s arm. At 10:35:39, in Kapelsohn’s view, R.L. is not shown falling; what he is doing is sliding sideways and down to avoid the officer. At 10:35:41, CO Hicks can be seen trying to pull the inmate back up to his feet, and at 10:35:47, they are facing each other. As regards the moment at which CO Hick’s hand can be seen shooting out (10:35:47-48), Kapelsohn said that R.L.’s arm was coming up quickly, and Hick’s movement is not a punch, but a right-hand block. In response to the movement, which does not touch R.L., the inmate drops his arm again.

Kapelsohn acknowledged that the video played at regular “real-time” speed, “gives an initial impression that the officer is attacking the inmate and, Oh God, this looks terrible and so forth.” (Tr. May 9, 2016, at 80.) However, upon examination more



slowly in detail, looking at foot positions and body mechanics, balance and lack-of-balance, "You see ... it's not (an attack). It's ... an attempt to control somebody," which happened not to succeed. (Ibid.) Kapelsohn noted that after the officer initiated the control technique, it was incumbent on the inmate to cooperate. The fact that CO Hicks continued to handle him was a reasonable escalation of force in the face of the inmate's continued physical resistance. Kapelsohn said that in his opinion, there was no point in repeating orders to an inmate who already has resorted to the use of repeat profanity in the face of commands. Belligerent, noncompliant cursing can set off problems in the jail environment. While CO Hicks moved to physical force with the gooseneck attempt, skipping over physical control, which would be just touching the inmate's arm and saying, "Here, come with me, I'm going to lock you up now," the officer's actions were appropriate because the inmate already had shown he was "not going to be compliant." (Id. at 83-84.)

In Kapelsohn's view, the video is inconclusive on crucial facts. One is 10:35:31-32 where Hicks is looking at R.L., and the inmate very likely could be making eye contact with him. Since the video has no sound, no independent verification of who said what is available. It is possible R.L. did turn his body slightly, which would have been clear to the officer but not to the video camera at that distance. It does show Hicks coming up behind R.L., which Kapelsohn said, "is the classic position of advantage, coming up behind someone who doesn't even know you're coming up behind them yet." (Id. at 106.) Moreover, at that point in time, CO Hicks was in an excellent position to hurt the inmate but did not. "It's an attempt to physically control someone and get them in their cell." (Ibid.)

Kapelsohn also testified that after a fight, people can have difficulty with recalling details. "You can't remember everything, even a minute after a fight that happened." (Id. at 146.)

Captain Karen Taylor was an administrative lieutenant at the jail at the time of the incident. She had recommended to the warden, who has since retired, that termination charges be filed against CO Hicks because she did not see the required elements in the situation for the use of force, she felt that the determination to use it reflected poor

judgment, the potential liability for use of excessive force is enormous, and lastly, she felt that the officer's recounting of the incident was not consistent with the video. Anytime an officer is found guilty of lying, it damages his credibility in any future legal proceeding. In her view, the inmate had a very limited opportunity to comply with any order CO Hicks may have given.

General Order 13, which is entitled "Use of Force, Including Deadly Force," states in the Guidelines Section, in A. Permissible Force, that force may be used "f. To enforce facility regulations or in situations where a ranking supervising officer believes that the inmate's failure to comply constitutes an immediate threat to facility security or personal safety." In D. Alternatives to Force, it states that "Whenever possible, alternative methods to resolve a conflict should be exhausted before force is used, for example, when an inmate refuses to obey an order, force should never be the first response. Employ the following techniques:

- A. Act and speak in a deliberate manner
- B. Keep a safe distance
- C. Listen to the inmate and ask for his/her cooperation
- D. Explain the consequences of the inmate's behavior
- E. Request the assistance of a supervisor and additional staff

General Order 13 goes on to explain in a section that outlines the continuum of force available, that "Physical Contact" is "routine or procedural contact with an individual that is necessary to effectively accomplish a legitimate law enforcement objective. Examples ... include but are not limited to, holding the arm of an individual during escort...." Physical force is "employed when necessary to overcome an individual's physical resistance to exertion of the authority of the custody staff member ...." Taylor testified that in her view, CO Hicks had used excessive force, which is a problem because "our job is for care and custody, not abuse of inmates." (Tr. February 22 at 14.)

The Camden County Department of Corrections General Rules of Conduct state that "Any act of omission or commission indicating the failure to perform or the negligent performance or compliance to any rule, ...or standard operating procedure ...

shall be considered neglect of duty.” Taylor testified that in her view, CO Hicks neglected his duty by failing to follow the General Order on use of violence, and that he failed to be truthful in his report. Rule 3.6 Departmental Reports, prohibits “knowingly entering or causing to be entered any inaccurate, misleading, false or improper information in a departmental report.” It also forbids an incomplete or unresponsive report.

Taylor said that in her opinion, CO Hicks violated General Order 73, Personal Conduct of Employees, by not complying with the rules, (number six), not providing full disclosure in the investigation (number six), and by falsifying his report (number eleven). General Order 74, Professional Code of Conduct, also was implicated because it prohibits “actions which are intended to embarrass, humiliate, or shame a person, or do anything intended to incite another to violence,” (number thirteen), “be decorous in their language and conduct (and) refrain from actions ... that bring discredit to the department.” (number fourteen.) Finally, with regard to procedure and the Procedural Code of Conduct within General Order 74, officers may not “knowingly exceed their authority in the enforcement of the law,” or “willfully mistreat or give inhumane treatment to any person under their custody,” or “willfully ... sign any false statement ....”

The threshold question is whether the level of provocation presented to CO Hicks was sufficient to warrant a physical response by him. I am persuaded by CO Hicks’s testimony, supported by the hearsay statement of the inmate, and I **FIND** that R.L. did use profanity a second time as he passed CO Hicks on his way to the table to get food. I **FIND** that he did not turn and face the officer directly. R.L. may well have shifted his eyes toward CO Hicks, which would not have been evident on the video, but there is no appreciable movement of his hand or body to suggest he was doing anything but shooting off his mouth, and even that, not in a way clearly visible on the video. I **FIND** that throughout the entire incident, the actions of the other inmates are limited to staying out of the way.

With regard to returning the inmate to his cell, I **FIND** the video speaks for itself. Upon arrival of other officers, CO Hicks backed away from the inmate, and it was other officers who saw R.L. returned to his cell.

The second question is whether CO Hicks lied in his reports and lied to Internal Affairs. I **FIND** that the reports are inaccurate. The one dated June 8, 2012, states that “Inmate Lawrence turned to me and stated, You heard me...” and “At that point I grabbed (him)....” (R-3.) I **FIND** that the inmate did not turn to him. Rather, he walked away, and a short space of time later, CO Hicks grabbed him from the back, at a point at which the inmate was picking up food and drink. He made a similarly inaccurate statement to Internal Affairs, when he said the inmate turned around and looked at him. (R-12, page 6.)

But the related question, whether CO Hicks actually lied requires a credibility determination, “the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). In conducting that evaluation, a trier of fact may consider,” the interest, motive, bias, or prejudice of a witness.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (citation omitted), certif. denied, 10 N.J. 316 (1952). Certainly, one cannot discount CO Hicks’s motive, which is to support his actions and avoid discipline. Nonetheless, I am persuaded that, while erroneous, he did perceive a higher level of threat than appears on the video, which he described as the man turning toward him in some way. The images clearly show the initial head-push, which only makes sense in light of CO Hicks having been bitten once. As the picture evidences, the shove itself is obviously at odds with the stated intent of grabbing an arm to get control, and as Merline said, it looked like no hold he had ever seen. Still, however awkward and unsuccessful the act, I am convinced that in Hicks’s own mind he was attempting to gain control of a disobedient inmate. His statement to Internal Affairs came two months after the event, which is a long time to remember small details of an event that moved very fast in the first instance. Additionally, as he noted, at the time it happened, he did not appreciate the magnitude of the event, which gave him little reason to replay it repeatedly in memory at the time just after it happened. Therefore, I **FIND** as **FACT** that although his accounts were not accurate, they were not actions aimed at hiding the truth from his employer.

## LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Here, as a result of the incidents, CO Hicks is charged with (1) conduct unbecoming, (2) neglect of duty, and (3) other sufficient cause, namely the violation of rules of conduct involving departmental reports and use of force.

The first question is whether CO Hicks used excessive force, which in turn, triggers most of the other charges. CO Hicks contends his actions fell within GO 73's definition of Permissible Force, which may be used "in situations where a ranking supervising officer believes that the inmate's failure to comply constitutes an immediate threat to facility security or personal safety." Merline testified that profanity alone does not rise to an immediate threat. The inmate had to be significantly failing to comply with some order, and even then, the first response should have been one of the alternatives, which included calling other guards. If profanity alone is enough, profanity is so common, every situation would merit force, which is clearly not the intent of the guideline. While Kapelsohn testified that the level of force was merited, he did acknowledge that CO Hicks skipped a step in the use of force continuum by not applying physical contact, such as a touch on the arm accompanied by a directive to go to the cell before moving to the control hold. CO Hicks testified that he was near the end of a full shift of overtime after a full first shift, and it is possible that sheer tiredness caused a misperception of the situation. Similarly, the face-biting incident, which was not too long before this, likely raised his level of defensive reaction to inmate actions. Nonetheless, I **CONCLUDE** that CO Hicks did use excessive force in this situation.

Conduct unbecoming is a term that encompasses actions adversely affecting the morale or efficiency of a governmental unit or having a tendency to destroy public

respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Here, the fact that the appellant used more force than was warranted by the situation constitutes conduct unbecoming, because as stated by Captain Taylor, the primary job of a corrections officer is care and custody.

The County’s various codes of conduct and orders make clear that violating any rule or general order constitutes neglect of duty. Since one of those general orders relates to excessive force, I **CONCLUDE** that the County has met its burden with regard to neglect of duty. With regard to the failure of the appellant personally to return R.L. to his cell, which is also neglect of duty, the County has proven that occurred due to the same initial error in judgment. However, it is not apparent that appellant’s decision to disengage, when other officers appeared, was a second error in judgment, as he noted credibly that it is common for inmates to come into compliance when new officers enter the situation. I **CONCLUDE** that by showing excessive use of force, the County demonstrated other sufficient cause, namely violation of General Order 74, Professional Code of Conduct, which prohibits “actions which are intended to embarrass, humiliate, or shame a person, or do anything intended to incite another to violence,” and requires refraining from actions ... that bring discredit to the department.”

However, I am not persuaded that CO Hicks violated the various rules and policies that prohibit knowingly providing false reports, for the reasons cited in the credibility determination above.

The remaining issue is penalty. In general, principles of progressive discipline apply in Civil Service proceedings. W. New York v. Bock, 38 N.J. 500, 523 (1962). However, some infractions are so serious that termination is warranted, In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep’t of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as “fairly proportionate” to offense); see also In re Herrmann, 192 N.J. 19, 33 (2007).

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). Both police officers and correction officers represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

CO Hicks’s disciplinary record over the period between his hiring in 1998, and his termination in 2012, is minimal, encompassing five counseling notes, a three-day suspension for not working overtime, a one-day suspension for erroneously releasing an inmate, and a two-day suspension for wearing his duty weapon while in uniform at a public meeting which he attended in his private capacity. There was no dispute that he had served as a special operations group team leader for the County, which required extra training and expertise. Thus, his history with the County mitigates on his behalf.

In general, the Civil Service Commission has terminated officers found to have used excessive force. See, for example, In re Garcia, CSV 09777-07, Initial Decision (July 17, 2008, adopted, CSC (October 8, 2008), <http://njlaw.rutgers.edu/collections/oal/>, (punching an inmate who no longer was resisting); In re Fernandez, CSR 13860-13, Initial Decision (January 30, 2014), adopted, CSC (March 26, 2014) (reacting in anger to verbal comment by prisoner, and throwing him to the ground); In re Howze, CSV 10660-06, Initial Decision (July 1, 2008), adopted, CSC (August 28, 2008) (grabbing handcuffed inmate by the neck, when the inmate, who had started the altercation had stopped, and requiring his superior officer to make repeated efforts at restraint before letting go of the inmate.)

However, the CSC has sometimes taken into account unusual mitigating factors. See, e.g., In re Mincey, Initial Decision (September 24, 2012), adopted, CSC (November 8, 2012), in which a senior correction officer grabbed a Juvenile Justice Commission inmate and threw him on the ground, after the offender had flicked an orange peel into the officer’s face. When the offender squirmed, the officer slapped him in the face. The mitigating factors were a minimal disciplinary record, and the fact that when the incident occurred, the officer did not know what exactly had hit him with a

force hard enough to make his face sting. He was not sure whether other danger to himself or others existed, and he made the decision in a split second. In hind-sight, he acknowledged that he likely over-reacted.

Here, the mitigating factors are a similarly minimal disciplinary record since his hiring in August 1998, coupled with the undisputed fact that CO Hicks had trained other officers. The initial encounter was not a punch and as both experts agreed, the fact that he showed poor judgment in initiating the encounter did not alter the inmate's duty to comply after it started. Additionally, the appellant was toward the end of a full second shift, and he had been bitten very badly in the face in a prior incident. However, even if R.L. did curse appellant a second time as he passed by him, R.L. was clearly headed straight for the table, and was peaceably collecting food and drink, showing no signs of aggression at the point that CO Hicks grabbed him from behind. The nexus with reasonable apprehension of compromise to his safety or that of those around the inmate simply was not present. Therefore, I **CONCLUDE** that the County has demonstrated, based on the precedents and upon the policy behind those precedents, that the appellant's termination is within the law and associated regulations.

### **ORDER**

For the reasons cited above, the termination is **AFFIRMED**.

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.

October 27, 2016

DATE

*Laura Sanders*

**LAURA SANDERS**  
ACTING DIRECTOR AND CHIEF  
ADMINISTRATIVE LAW JUDGE

Date Received at Agency:

October 27, 2016

Date Mailed to Parties:

October 27, 2016

**WITNESSES**

For appellant, Russell Hicks

Russell Hicks

Emanuel Kapelsohn

For respondent, Camden County

Joseph Coleman

Gary Merline

Karen Taylor

**EXHIBITS**

For appellant, Russell Hicks

- A-1 Internal Affairs Policy and Procedures
- A-2 Transcript of interview of Sgt. David Smith
- A-3 Transcript of interview of CO Jannell Barr dated July 17, 2012
- A-4 Curriculum Vitae of Emanuel Kapelsohn
- A-5 Report of Emanuel Kapelsohn, The Peregrine Group, dated April 19, 2013

For respondent, Camden County

- R-1 Preliminary Notice of Disciplinary Action dated August 8, 2012, and Final Notice of Disciplinary Action dated September 18, 2012
- R-2 Internal Affairs report by Investigator Joseph Coleman
- R-3 General Incident Report of CO Russell Hicks, dated June 8, 2012
- R-4 General Incident Report of Sergeant David L. Smith, dated June 8, 2012
- R-5 General Incident Report of CO Jannell Barr, dated June 8, 2012
- R-6 Videotape of incident
- R-7 Transcript of recorded interview of Inmate R.L. dated June 9, 2012
- R-8 Memorandum placing CO Hicks on no inmate contact status dated June 9, 2012
- R-9 Letter from Mark K. Chase, assistant prosecutor, Camden County Office of the Prosecutor, dated June 26, 2012

- R-10 Letter from I.L. pursuing charges against CO Hicks, dated July 2, 2012
- R-11 Use Immunity Grant Advisement form signed August 1, 2012
- R-12 Recorded interview of CO Russell Hicks dated August 1, 2012
- R-13 Supervisor's Staff Complaint Report form
- R-14 Rebuttal, General Incident Report, dated August 8, 2012
- R-15 Camden County Department of Corrections Internal Affairs Section Policy, last revision September 1, 2011
- R-16 Camden County Department of Corrections General Order Rules of Conduct, last revision September 1, 2011
- R-17 Camden County Department of Corrections General Order 73, Use of Force, last revision September 1, 2011
- R-18 Camden County Department of Corrections Personal Conduct of Employees Order, last revision September 1, 2011
- R-19 Camden County Department of Corrections Professional Conduct of Conduct Order, last revision September 1, 2011
- R-20 Use of Force Evaluation by Merline Consulting and Training, LLC
- R-21 Curriculum Vitae of Gary Merline
- R-22 Disciplinary History of CO Russell Hicks
- R-23 No exhibit
- R-24 Report Writing test signed by CO Russell Hicks, dated January 14, 1999
- R-25 General Incident Report signed January 14, 1999