



STATE OF NEW JERSEY

In the Matter of Carolyn Inge  
Mercer County Corrections Center

CSC DKT. NO. 2018-1209  
OAL DKT. NO. CSV 16368-17

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: NOVEMBER 2, 2018    BW

The appeal of Carolyn Inge, County Corrections Officer, Mercer County Corrections Center, 15 working day suspension, on charges, was heard by Administrative Law Judge Susan L. Olgiati, who rendered her initial decision on September 28, 2018. 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 October 31, 2018, 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 Carolyn Inge.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 31ST DAY OF OCTOBER, 2018



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 16368-17

AGENCY DKT. NO. 2018-1209

**IN THE MATTER OF CAROLYN INGE,  
MERCER COUNTY CORRECTIONS CENTER.**

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**Mark W. Catanzaro, Esq.**, appearing for appellant Carolyn Inge (The Law Offices of Mark W. Catanzaro, attorneys)

**Stephanie Ruggieri D'Amico**, Assistant County Counsel, appearing for respondent, Mercer County Corrections Center (Paul Adezio, County Counsel)

Record Closed: August 14, 2018

Decided: September 28, 2018

**BEFORE SUSAN L. OLGATI, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Carolyn Inge, a Mercer County Corrections Officer, appeals the disciplinary action imposed by respondent, Mercer County Corrections Center (County) seeking a fifteen working day suspension for Conduct Unbecoming a Public Employee in violation of N.J.A.C. 4A:2-2.3(a)(6); Neglect of Duty in violation of N.J.A.C. 4A:2-2.3; and Other Sufficient Cause (Insubordination; intentional disobedience or refusal to accept reasonable order, assaulting or resisting authority, disrespect or use of insulting or

abusive language to supervisor) in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically by refusing to comply with an order given by her supervisor. Appellant denies the allegations.

### **PROCEDURAL HISTORY**

On November 16, 2015, the County served appellant with a Preliminary Notice of Disciplinary Action. On October 3, 2017, a departmental hearing was held in the matter. On October 18, 2017, the County served the appellant with a Final Notice of Disciplinary Action suspending her for fifteen working days to be served from November 3, 2017, through November 23, 2017. She filed a timely notice of appeal, and on November 2, 2017, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13.

On April 6, 2018, the County filed a motion for summary decision. On April 16, 2018, the appellant filed a letter brief in opposition to the motion. By Order dated May 29, 2018, the Motion for Summary Decision was denied and the matter was scheduled for hearing.

The matter was heard on July 30, 2018, and the record remained open until August 14, 2018, to allow for written summations. The record closed on that date.

### **FACTUAL DISCUSSION AND FINDINGS**

#### **I. Undisputed Facts**

The following facts are not in dispute:

1. Appellant is a Corrections Officer employed by the Mercer County Corrections Center.
2. On November 6, 2015, appellant was assigned to work as the jail entrance officer during the 3:00 P.M to 11:00 P.M. shift

3. Appellant's duties included responsibility for the mail and processing money orders.
4. On November 6, 2015, appellant was ordered by her supervisor, Sergeant Michael Murzda, to pick up a money order that had been left over from the prior shift.
5. She did not pick up the money order as directed.
6. After talking with Sergeant Murzda, appellant asked another officer to pick up the money order for her.

## II. Testimony

### For respondent:

**Michael Murzda** , is a Sergeant with the Mercer County Corrections Center. On November 6, 2015, petitioner was working as the jail entrance officer whose responsibilities include processing excess mail from the previous shift and relieving other officers. On that evening, Murzda received a call advising that an inmate had given the unit a money order<sup>1</sup>. Murzda learned from Officer Paige, that Paige had asked appellant to pick up the money order but she refused.<sup>2</sup> Murzda contacted appellant and ordered her to pick up the money order. She refused. Murzda explained that he did not remember the exact words they used, but that appellant argued it was not her responsibility but rather was the responsibility of the prior shift. Murzda and appellant "went back and forth" for a while. Murzda ordered appellant to pick up the money order because she was the next jail entrance officer on duty and as such, it was her responsibility to pick up and process same. Murzda told appellant she needed to pick up the money order; then she hung up on him.

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<sup>1</sup> Inmates receive money orders from outside the Corrections Center for use to purchase items at the commissary. The money orders must be logged in and deposited into the inmate's account.

<sup>2</sup> Paige is not a supervisor of appellant. His request that she pick up the money order was not an order.

**Michael Kownacki** has been a Captain with the Mercer County Corrections Center since January 2018. As Captain, he is responsible for disciplinary charges. He did not draft the charges against appellant<sup>3</sup>, but had reviewed same. Appellant had a prior 2013 discipline consisting of a Final Notice of Disciplinary Action for insubordination which imposed a three day suspension. (R-3)

Kownacki believed the current charges to be consistent with progressive discipline. The Mercer County Public Safety Table of Offenses and Penalties, provides for a fifteen day suspension for a second infraction, (also known as "Step Two" violation) for insubordination. Id. Kownacki explained that it did not matter where appellant was at the time she received the order from Murzda. The order was given and she needed to follow it. If a lawful order is given, it must be followed.

**For Petitioner:**

**Carolyn Inge** is a Corrections Officer with the Mercer County Corrections Center. On November 6, 2015, she was working as the jail entrance officer. Her duties in this position included finishing the mail, entering money orders, and relieving other officers who were going on break. On November 6, 2015, when she received the call from Murzda, she was relieving Officer Smith in Control Room One (CR-1). She did not sign the log book for CR-1, as required, when she relieved Officer Smith that evening. She told Murzda that she didn't like picking up money orders from the previous shift. She explained that the reason she didn't like to do this was because she cannot confirm where the money orders had come from. She suggested that other officers, (contrary to rules/regulations) sometimes bring in money orders for inmates. She did not want anyone to think that she had brought in the money order.

Appellant told Murzda that she could not pick up the order at the time of his call because she was relieving an officer in CR-1. She told Murzda she would pick up the money order when she was done relieving another officer. Upon questioning by this ALJ, Appellant stated that Murzda replied it was "no problem." Appellant claims she did not

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<sup>3</sup> The October 18, 2017 FNDA was prepared prior to Kownacki's promotion to Captain.

refuse Murzda's order and she did not hang up on him. After speaking with Murzda, she contacted Officer Smith and asked him to pick up the money order. He brought it to her and she processed the money order. She did not advise Murzda that she had asked another officer to pick up the money order for her.

**Findings:**

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As to the credibility of the witnesses, I cannot accept the testimony of the appellant as credible. She admitted that she refused to pick up the money order when Paige, a fellow, non-supervising officer, asked her to do so. She also acknowledged that she did not like to take responsibility for money orders that had come from a previous shift. Her actions in refusing to comply with Sergeant Murzda's order are consistent with her prior refusal to pick up the money order and her expressed dislike for taking responsibility for same. Her actions are further consistent with her expressed belief that it was not her responsibility, and her opinion that this was something that should have been done by the prior shift.

Additionally, her explanation that she does not like to take responsibility for money orders from a previous shift because she was unable to verify the source of the money order and was concerned that she might be viewed as the source of same, simply does not make sense. She was told by Murzda that the money order had been left over from the prior shift. She was being ordered by her supervisor to pick it up. This being the case, there is no rational reason for appellant to believe that she might be viewed as the source of the money order.

Additionally, appellant's testimony that Murzda replied it was "no problem" in response to her alleged statement that she could not pick up the money order when directed but would pick it up later, is not only contrary to Murzda's testimony and incident report, it is also inconsistent with her own incident report. In her November 11, 2015, report, prepared just six days after the incident, appellant makes no mention of Murzda's alleged "no problem" reply.

Finally, appellant's testimony is best described as motivated by her desire to avoid discipline.

Conversely, Sergeant Murzda testified credibly. His testimony was forthright, consistent, and probable under the totality of the circumstances. He acknowledged that three years after the incident he did not recall the exact words of his conversation with appellant. He testified that he told her to pick up the money order, she argued with him that it was not her responsibility, and then hung up. Murzda's testimony as to these issues is consistent with his report which was prepared on November 6, 2015, the same date of the incident.

Finally, while Captain Kownacki was also credible, his testimony was limited to his review of the discipline and the appropriateness of the penalty. He had no direct knowledge of the facts that gave rise to the charges against the appellant.

After having the opportunity to review the evidence and consider the testimony of the witnesses, I **FIND** the following additional **FACTS**:



1. The appellant received a reasonable order from her supervisor, Sergeant Murzda and she did not comply.
2. Appellant failed to provide a reasonable excuse for not complying with the order.
3. After arguing that the directive was not her responsibility, appellant hung up on her supervisor.

### **LEGAL ANALYSIS AND CONCLUSIONS**

In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

Appellant's status as a correction's [law enforcement] officer subjects her to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They 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." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

In the present matter, appellant is charged with Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A:2-2.3(a)(6); Neglect of Duty; in violation of N.J.A.C. 4A:2-2.3(a)(7); and Other Sufficient Cause (Insubordination) in violation of N.J.A.C. 4A:2-2.3 (a)(12)

**A. Conduct Unbecoming**

“Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has 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, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

Here, appellant acknowledged that she was ordered by her supervisor to pick up a money order that had been left over from the prior shift. She admitted that she did not pick up the money order as directed. Appellant also admitted that she did not like to take responsibility for money orders from another shift. It is incumbent upon the appellant to comply with an order from her supervisor. She cannot argue with her supervisor over the directive, and she cannot refuse to comply simply because she does not like to do a particular task. Further, it is irrelevant where appellant was at the time of the order. If she was unable to immediately comply with the order she should have complied as soon as she was able. She cannot ignore the order by asking another officer to perform the task for her. Compliance is essential to the morale and efficiency of a governmental unit. Compliance, or lack thereof, adversely impacts the operations of the Corrections Center

as maintenance of strict discipline is essential in para-military settings such as the Corrections Center.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and that such charge must be **SUSTAINED**.

**B. Neglect of Duty**

Neglect of duty has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, 2009 N.J. AGEN LEXIS 112, OAL DKT. No. CSV 5072-07. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

Here, appellant acknowledged that processing money orders is part of the duties of the jail entrance officer. She acknowledged that she received an order from her supervisor to pick up a money order that had been left over from the previous shift, and that she did not do it herself. By her own admission, appellant neglected to perform an act required by her job.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes Neglect of Duty, in violation of N.J.A.C. 4A:2-2.3(a)(7), and that such charge must be **SUSTAINED**.

**C. Other Sufficient Cause - Insubordination**

Here, the appellant is charged with insubordination specifically, failure to obey a direct order. (Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

"Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Appellant acknowledged that she did not get the money order as directed by Sergeant Murzda. Rather, she argued that it was not her responsibility, hung up the phone, and thereafter, asked another officer to pick up the money order for her.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes Other Sufficient Cause, Insubordination, in violation of N.J.A.C. 4A:2-2.3 (a)(12), and that such charge must be **SUSTAINED**.

## PENALTY

The Civil Service Commission's review of penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority.

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, 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. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid.

Typically, numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record are considered. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990).

Here, appellant is charged with a second infraction (also known as a "Step 2" violation) of N.J.A.C. 4A:2-2.3 (a)(12) Other Sufficient Cause, (Insubordination). In addition to the present charge of insubordination arising from the November 6, 2015, incident, appellant has a prior 2013 charge of insubordination. That prior charge resulted in the imposition of a three day suspension. The Mercer County Public Safety Table of Offenses and Penalties provides that the penalty for a second infraction of insubordination is a fifteen day penalty.

In mitigation, appellant has been a Corrections Officer for eight years and her only other discipline occurred five years ago. This however, does not outweigh the appellant's failure to comply with an order from, and disrespectful conduct towards, her supervisor. As this is appellant's second infraction for insubordination and the proposed penalty is consistent with respondent's table of progressive discipline, it is reasonable.

Accordingly, I **CONCLUDE** that the penalty of a fifteen working day suspension is appropriate, and must be **SUSTAINED**.

### **DECISION AND ORDER**

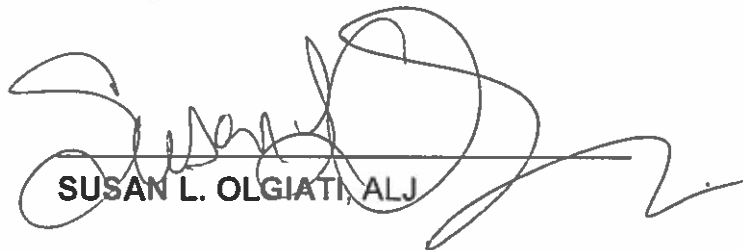
I **ORDER** that the charges of Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A:2-2.3(a)(6); Neglect of Duty in violation of N.J.A.C. 4A:2-2.3(a)(7), and Other Sufficient Cause (Insubordination), in violation of N.J.A.C. 4A:2-2.3(a)(12), are sustained, and that the action of the respondent appointing authority imposing a fifteen working day suspension on appellant is hereby **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. 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.

September 28, 2018  
DATE

  
SUSAN L. OLGIATI, ALJ

Date Received at Agency: 9/28/18

Date Mailed to Parties: 9/28/18

SLO/vj

**APPENDIX**  
**LIST OF WITNESSES**

**For Appellant:**

Carolyn Inge

**For Respondent:**

Michael Murdza

Michael Kownacki

**LIST OF EXHIBITS**

**For Appellant:**

P-1 Incident Report by Inge, November 11, 2015

**For Respondent:**

R-1 Incident Report by Murdza, November 6, 2015

R-2 FNDA, 10/18/17

R-3 FNDA, 9/23/13

R-4 Mercer County Public Safety Table of Offenses and Penalties—Correction  
Center

R-5 Log Book for E-Tour

R-6 Log Book for C-Tour