



## STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

 In the Matter of Matthew Calio,  
 Camden County, Department of  
 Corrections

Court Remand

CSC Docket No. 2019-1598

ISSUED: FEBRUARY 11, 2019 (ABR)

The Superior Court of New Jersey, Appellate Division, has remanded the Civil Service Commission's (Commission) decision upholding the 30 calendar day suspension of Matthew Calio, a County Correction Officer with Camden County, for reconsideration of the penalty. *See In the Matter of Matthew Calio*, Docket Nos. A-5183-16T3 and A-5189-16T3 (App Div. Dec. 11, 2018). The court did not retain jurisdiction. Copies of the Appellate Division's decision and the Commission's decision of the 30 calendar day suspension, *In the Matter of Matthew Calio* (CSC, decided July 13, 2017), are attached.

The relevant facts of this matter are thoroughly discussed in the attached decisions. The Commission upheld the imposition of a 30 calendar day suspension based upon the Administrative Law Judge's (ALJ) determination that the charges of insubordination, conduct unbecoming a public employee, neglect of duty, other sufficient cause, and violations of Camden County Correctional Facility General Rules of Conduct (GRC) regarding violations in general, conduct unbecoming a public employee, neglect of duty, insubordination and security were sustained. It is noted the ALJ determined that the appointing authority did not meet its burden of proof with regard to the inattentiveness to duty charge.<sup>1</sup> With regard to the penalty, the ALJ noted that the appellant had been previously reprimanded on two occasions for neglect of duty and had received a three and a 15-day suspension for conduct unbecoming a public employee. In light of the record in the matter, including the appellant's disciplinary history, the nature of his job

<sup>1</sup> The ALJ did not address the charge of "et al."

duties and the nature of the underlying charges, the ALJ recommended that the 30 calendar day suspension be upheld. Upon its review of the record, the Commission adopted the ALJ's Findings of Fact and Conclusion and upheld the 30 calendar day suspension.

The appellant appealed that decision to the Appellate Division.<sup>2</sup> The Appellate Division upheld the charges with the exception of the charge of other sufficient cause. Specifically, it found the Commission erred in upholding that charge as it had adopted the ALJ's findings that the appellant had received insufficient notice that the Final Notice of Disciplinary Action (FNDA) included violations of Post Order 8 and General Orders 73 and 74. Therefore, it remanded the matter to the Commission to reconsider the penalty in light of its decision.

Despite the opportunity to do so, neither the appellant nor the appointing authority has submitted arguments on remand.

## CONCLUSION

The Appellate Division remanded this matter to the Commission for reconsideration of the proper penalty against the appellant in light of its determination that there was insufficient evidence to sustain the charge of other sufficient cause. It is noted that the Appellate Division affirmed the Commission's decision to sustain the remaining eight charges against the appellant. Although the appointing authority imposed a 30 calendar day suspension based upon 11 charges, it is emphasized that the Commission's review in determining the proper penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the 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. In assessing the penalty in relationship to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history.

In balancing the nature of the appellant's offenses with his disciplinary history, the Commission finds that the appropriate penalty is a 30 calendar day suspension. In assessing this penalty, the Commission notes that the appellant was found to have violated rules and regulations pertaining to insubordination, conduct unbecoming a public employee, neglect of duty, and six of the appointing authority's

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<sup>2</sup> The appellant also appealed the imposition of a 180-day suspension to the Appellate Division which was consolidated with the instant matter. In its decision, the Appellate Division upheld the 180-day suspension. Therefore, that discipline will not be discussed in this matter.

rules and regulations. Further, the appellant's record includes, in part, a three and a 15-day suspension for neglect of duty in 2015. The appellant's 15-day suspension resulted from charges that included, in part, conduct unbecoming a public employee, neglect of duty, and violations of GRCs regarding conduct unbecoming a public employee, neglect of duty. As a law enforcement officer, the appellant was required to comply with the lawful orders of his superior. *See Steven Palamara v. Township of Irvington*, Docket No. A-6877-02T1 (App. Div. March 30, 2005) (The appellant was required to comply with an order of his superior, even if he believed the orders to be improper or contrary to established rules and regulations). The appellant's failure to comply with Captain Taylor's lawful orders, in the paramilitary setting of a county correctional facility, is especially egregious since the ability to follow orders is crucial to promoting the safety and welfare of the public. Accordingly, the record does not evidence any reason to modify the penalty imposed by the appointing authority and previously sustained by the Commission. Therefore, based on the totality of the record, including the nature of the offenses and the appellant's prior disciplinary history, the 30 calendar day suspension is amply supported and consistent with the concept of progressive discipline.

### ORDER

The Civil Service Commission finds that the appointing authority's action in imposing a 30 calendar day suspension was justified.

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 6<sup>TH</sup> DAY OF FEBRUARY, 2019

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
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Attachments

c: Matthew Calio  
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Pamela N. Ullman, DAG  
Clerk, Superior Court of New Jersey, Appellate Division

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NOS. A-5183-16T3  
A-5189-16T3

IN THE MATTER OF MATTHEW  
CALIO, CAMDEN COUNTY  
DEPARTMENT OF CORRECTIONS.

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Submitted November 14, 2018 – Decided December 11, 2018

Before Judges Gilson and Natali.

On appeal from the New Jersey Civil Service Commission, Docket Nos. 2016-3090 and 2016-3565.

William B. Hildebrand, attorney for appellant Matthew Calio.

Christopher A. Orlando, County Counsel, attorney for respondent Camden County Department of Corrections (Howard L. Goldberg, First Assistant County Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent Civil Service Commission (Pamela N. Ullman, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Correctional Officer Matthew Calio (Calio) appeals from two July 17, 2017 final decisions of the Civil Service Commission (Commission) suspending his employment from respondent Camden County Department of Corrections (Department). The first decision suspended Calio for thirty days based on Administrative Law Judge (ALJ) Dean J. Buono's finding that he disregarded a superior's order to ensure all inmate kitchen workers remained within the confines of the kitchen. The second decision suspended Calio for 180 days, an increase from the original 150-day suspension levied by the Department, based on the ALJ's findings that Calio failed to pat-down search inmates properly more than eighty times in a five-hour period.

We issue a single opinion disposing of these two appeals, which were calendared back-to-back, because they present similar legal issues. With respect to the Commission's decision imposing a thirty-day suspension, we affirm in part, reverse in part, and remand for the Commission's reconsideration of the penalty imposed. As to the Commission's decision imposing a 180-day suspension, we affirm.

#### I.

We discern the following facts from the evidence adduced at the hearings before the ALJ. During the course of Calio's approximate sixteen-year career

as a correctional officer at the Department, he received numerous awards for exemplary service. He was also reprimanded on a number of occasions unrelated to the incidents at issue for neglect of duty and suspended twice for conduct unbecoming a correctional officer.

During all relevant times, Calio was a kitchen officer, responsible for maintaining the "care, custody and security of . . . inmates," who worked in the kitchen and for ensuring the safety of civilian kitchen workers. In August 2015, when Calio maintains he was on vacation, then-Captain Karen Taylor (Taylor)<sup>1</sup> observed inmates who worked in the kitchen sitting on milk crates in the hallway. She characterized the conduct as a "disruption" and "creat[ing] a safety concern" for both the inmates and the officer. Specifically, Taylor testified the behavior was "not conducive to . . . security" when inmates are outside the kitchen door because there are "life and death situations in a [c]orrectional [f]acility" and "there's a lot of contraband" in the kitchen that inmates could remove and transport throughout the facility.

Calio testified that on August 19, 2015, while he was on duty, Taylor informed him that inmates had been "reckless in the hallways," "there was a lot

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<sup>1</sup> Taylor was promoted to the position of Warden during the course of this litigation in October 2016.

of disarray in the kitchen," and a "lack of control with the inmates running up and down the hallway and doing . . . things that were not appropriate." Taylor stated she unequivocally ordered Calio that she "wanted all the inmates inside the kitchen" working and "did not want any inmates out in the hallway . . . sitting on the [milk] crates for safety reasons."

Taylor instructed Calio to write her order in the kitchen "Pass [o]n Book" so the officers who relieved Calio would be aware of "[her] directives and what [she] wanted to be followed." Calio acknowledged that "[t]he function of the Pass [o]n Book is . . . if there's an order to be followed . . . you put it in the Pass [o]n Book" so a relieving officer would be aware of the directive.

Soon after their August 19, 2015 conversation, Calio wrote the following in the Pass on Book: "per [Captain] Taylor[,] [a]ll [i]nmates [m]ust be in the kitchen." Another officer's entry that day provided, "[n]o kitchen workers in hallway/doorway," and "[p]er Captain Taylor[,] [a]ll inmates must be in kitchen." Taylor testified that because she did not instruct the relieving worker to make the entry, she speculated that Calio must have told him what to write.

At the end of her shift on August 24, 2015, Taylor noticed an inmate sitting on a milk crate outside the kitchen door. The inmate was working as a "tray runner," whose duties and functions included putting carts of food trays



onto an elevator. Taylor conceded that, "while [the tray runner is using the elevator] it [is] obviously necessary for him to be outside the kitchen." She also testified that upon noticing the runner sitting outside of the kitchen, she went to the shift commander's office, "spoke with the Lieutenants . . . and brought up the video on the camera system . . . ." After watching the video "for about ten minutes" she told her subordinate, Lieutenant Sweeten, that she wanted "him to recommend disciplinary action for . . . Calio's disregard of a direct order."

Calio testified that he did not intend to violate Taylor's order, and in fact believed he was complying with it. He maintains that he simply misunderstood the order's application to tray runners as he thought the order was directed to inmates who either were not working, or were working exclusively inside the kitchen, but not to an inmate whose work also required him to intermittently leave the kitchen. Calio stated he was on vacation when the hallway misconduct giving rise to Taylor's order occurred and suggested that circumstance contributed to his misunderstanding.

On September 21, 2015, the Department issued a preliminary notice of disciplinary action against Calio charging him with: insubordination, contrary to N.J.A.C. 4A:2-2.3(a)(2) and Camden County Correctional Facility (CCCF) General Rule of Conduct (GRC) 1.4; conduct unbecoming a public employee,

contrary to N.J.A.C. 4A:2-2.3(a)(6) and GRC 1.2; neglect of duty, contrary to N.J.A.C. 4A:2-2.3(a)(7) and GRC 1.3; other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12); inattentiveness to duty, contrary to GRC 2.10; (breach of) security, contrary to GRC 3.2; violations in general under GRC 1.1; and a final charge characterized as "et al." (September charges).

## II.

Shortly after the August 2015 incident, on September 2, 2015, Taylor learned Calio was improperly performing pat-down searches of inmates. Taylor watched nearly five hours of video of Calio's pat-down searches from that day. During those five hours, Taylor observed him incorrectly perform over forty searches and in more than forty additional instances, noted he failed to perform any search at all. On September 9, 2015, Taylor issued a supervisor's staff complaint to Calio notifying him that charges would be forthcoming for his September 2, 2015 pat-down searches and for failing to clean kitchen trays properly.

On October 1, 2015, the Department issued Calio a preliminary notice of disciplinary action for incidents involving the September 2, 2015 improper pat-down searches; for false, misleading, and untruthful statements in his written rebuttals to the September charges; and for failing to inspect liquid and food

containers, cups, and inmate trays. He was also charged with incompetency, inefficiency, or failure to perform duties, contrary to N.J.A.C. 4A:2-2.3(a)(1); insubordination, contrary to N.J.A.C. 4A:2-2.3(a)(2) and GRC 1.4; conduct unbecoming a public employee, contrary to N.J.A.C. 4A:2-2.3(a)(6) and GRC 1.2; neglect of duty, contrary to N.J.A.C. 4A:2-2.3(a)(7) and GRC 1.3; inattentiveness to duty, contrary to GRC 2.10; (breach of) security, contrary to GRC 3.2; other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12); violations in general under GRC 1.1; violations of CCCF General Orders #73, #74, and #79 and CCCF Post Order #8; and a final charge of "et al." (October charges).

On February 17, 2016, the Department issued a final notice of disciplinary action sustaining the September charges and imposed a thirty-day suspension without pay. The Department issued a separate final notice of disciplinary action sustaining the October charges and imposed a 150-day job suspension without pay on March 25, 2016. Calio filed timely appeals of both disciplinary actions and the cases were transferred to the Office of Administrative Law (OAL) for a hearing.

On May 30, 2017, the ALJ issued decisions with respect to the September and October charges. As to the September charges, the ALJ sustained the charges of insubordination, conduct unbecoming, neglect of duty, breach of

security, violations in general, and other sufficient cause; dismissed the charge of inattentiveness to duty; and upheld the imposition of a thirty-day suspension without pay.

With respect to the October charges, the ALJ sustained the charges of incompetency, inefficiency, or failure to perform duties, insubordination, conduct unbecoming, neglect of duty, breach of security, violations in general, and violations of the General Orders and the Post Order, but dismissed the charges of inattentiveness to duty and the general charge of “et al.”; and issued the modified suspension of 180 days without pay.

On July 17, 2017, in two separate determinations, the Commission accepted and adopted the ALJ's findings of fact and legal conclusions and affirmed the suspensions. These appeals followed.

On appeal, Calio argues that the ALJ's findings supporting the Commission's September charges are not supported by credible evidence and are instead based on "critical factual errors." Specifically, Calio contends the ALJ's finding that "on August 24, 2015, [then-Captain] Taylor noticed inmates sitting outside [the] kitchen and 'disrupting activities'" lacks credible evidentiary support because, according to Calio, those disruptive activities preceded Taylor's August 19, 2015 order and occurred while he was on vacation. He also

maintains that the thirty-day suspension was excessive. With respect to the October charges, he contends the increase in penalty from 150 to 180 days is also excessive and unsupported by the record.

### III.

Our review of an administrative agency decision is limited. In re Herrmann, 192 N.J. 19, 27 (2007). We defer to final agency determinations unless the agency's decision is "arbitrary, capricious, or unreasonable, or [ ] not supported by substantial credible evidence in the record as a whole." In re Stallworth, 208 N.J. 182, 194 (2011) (alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). An appellant bears the burden of establishing that the agency's decision is unreasonable, capricious, or arbitrary. See Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 210 N.J. Super. 276, 285 (App. Div. 1986).

To determine whether a decision is arbitrary, capricious, or unreasonable, we consider: (1) whether the agency's decision followed relevant law; (2) whether substantial credible evidence in the record supported the decision; and (3) whether in applying the law to the facts, the administrative agency clearly erred. Stallworth, 208 N.J. at 194. Evidence is considered substantial when the evidence forms "a reasonable basis for the agency's action" or if reasonable

minds would accept the evidence "as adequate to support the conclusion" reached. Zachariae v. N.J. Real Estate Comm'n, 53 N.J. Super. 60, 62 (App. Div. 1958). If an agency decision satisfies this criteria, we accord substantial deference to the agency's fact-finding and legal conclusions, acknowledging "the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). We will not substitute our judgment for the agency's even though we might have reached a different conclusion. Stallworth, 208 N.J. at 194.

Our deference to agency decisions "applies to the review of disciplinary sanctions as well." Herrmann, 192 N.J. at 28. "In light of the deference owed to such determinations, when reviewing administrative sanctions, the test . . . is whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." Id. at 28-29.

#### IV.

With respect to the September charges, which we discuss in Section V, the Commission had ample evidence to adopt the ALJ's findings that Calio committed the charges of insubordination, conduct unbecoming, neglect of duty, breach of security under GRC 3.2, and other sufficient cause under N.J.A.C.

4A:2-2.3(a)(12). However, as discussed in section VI, we conclude the Commission, after adopting the ALJ's findings that Calio received insufficient notice that the September charges included alleged violations of Post Order 8 and General Orders 73 and 74, improperly considered those post and general orders in sustaining the charge of violations in general under GRC 1.1. Because Calio does not challenge the decision sustaining the October charges, we address in Section VII the Commission's modification of Calio's suspension for those violations from 150 to 180 days.

## V.

### A. Insubordination

Although the administrative code does not define insubordination, we have "observed that it is ordinarily defined as a failure to obey a lawful order." In re Williams, 443 N.J. Super. 532, 548 n.4 (App. Div. 2016) (citation omitted). Further, GRC 1.4 required Calio to "promptly obey all lawful orders of any supervisor" and the "failure or deliberate refusal of any employee to obey a lawful order of a supervisor . . . shall constitute insubordination . . . ."

Obedience requires knowledge of that which is to be obeyed. Perrine v. Broadway Bank, 53 N.J. Eq. 221, 225 (E. & A. 1895) (explaining in the context of a court order, "all that is required to impose the duty of obedience is that the

order shall come to [the person's] knowledge in such manner that [the person] knows what he [or she] is required to do, or to refrain from doing . . ."). Also, it is well settled that "the importance of maintaining discipline" in a correctional facility, in light of "the danger which inheres when order and discipline are disrupted or destroyed in a prison," is a matter "peculiarly within the expertise of the corrections officials." Bowden v. Bayside State Prison (Dep't of Corr.), 268 N.J. Super. 301, 305-06 (App. Div. 1993) (citing Henry, 81 N.J. at 579).

Here, the ALJ determined Taylor was more credible than Calio and concluded that Calio clearly understood Taylor's order to maintain all inmate kitchen workers in the confines of the kitchen. Indeed, Calio admitted as much when he made a clear notation in the Pass on Book. It is equally undisputed that he subsequently permitted a kitchen worker to sit on a crate in the hallway.

Calio's claim that Taylor's order was unclear and he understood it was limited to those workers whose job was exclusively within the confines of the kitchen as opposed to tray runners who must occasionally leave the kitchen to load trays on the elevator is without merit. Calio was not cited for permitting a kitchen worker to leave the kitchen to walk in the hallway to unload trays. Rather, he was cited for permitting an inmate, assigned to kitchen duties, to sit on a milk crate in the hallway of a correctional facility in violation of a direct



order. There is nothing in Taylor's order that prevents tray runners from leaving the kitchen to unload trays. Taylor's order proscribed inmates from stationing themselves in the hallway. The order also requires officers to monitor inmates to ensure compliance with this directive. Further, even if the genesis of the September charges related to events that occurred while Calio was on vacation, the record supports the ALJ's findings that Taylor's order was clear, Calio understood it, and by permitting an inmate to sit in the hallway Calio failed to adhere to the order.

#### B. Conduct Unbecoming

"The determination of what constitutes conduct unbecoming a public employee is primarily a question of law." Karins v. City of Atl. City, 152 N.J. 532, 553 (1998) (citing Jones v. City of Pittsburgh, 476 A.2d 895, 898 (Pa. 1984)). "[T]he phrase is an elastic one[] 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." Id. at 554 (quotation marks and quotations omitted). We agree with the ALJ's observation that "[i]t is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a public

employee disregarding a direct order and allowing inmates in a correctional facility to do as they pleased." We find no basis to disturb the ALJ's finding that disregarding a clear order is sufficient to sustain a charge under N.J.A.C. 4A:2-2.3(a)(6). And, while it was not necessary for the ALJ to have also concluded that Calio permitted the tray runner to "do as [he] pleased" it certainly is a fair characterization from the undisputed facts that Calio failed to carry out his duties as a correctional officer when he permitted the inmate to sit in the hallway, outside the kitchen.

#### C. Neglect of Duty

N.J.A.C. 4A:2-2.3(a)(7) provides that "[a]n employee may be subject to discipline for . . . [n]eglect of duty . . . ." Although the administrative code does not define the phrase, GRC 1.3 provides that personnel is deemed to have neglected his or her duty if he or she failed to comply with a published order, that "causes any detriment to the department, its personnel, any inmate, prisoner, or to any member of the public . . . ." Again, we agree with the ALJ's finding that there is no more "basic example of neglect of duty than the image of a public employee in a correctional facility failing to follow a direct order from a superior."

#### D. Breach of Security

GRC 3.2 provides in pertinent part: "Personnel shall exercise a scrupulous regard for security in their dealings with inmates and with regard to the [CCCF] in general. Any act of commission or omission tending to undermine security shall constitute a breach of security."

The ALJ found "troublesome" the fact that Calio "continues to fail to see the security concern in an inmate seated at such a proximate location to the security desk" before sustaining this charge. Taylor's testimony that inmates working in the kitchen had access to "a lot of contraband" that they could transport throughout the facility furnished a sufficient evidentiary basis for the Commission to conclude Calio failed to exercise a "scrupulous regard for security" and that his actions tended to undermine security.

#### E. Other Sufficient Cause

N.J.A.C. 4A:2-2.3(a)(12) provides that "[a]n employee may be subject to discipline for . . . [o]ther sufficient cause." The ALJ decided "consideration of the charges constituting a violation" of this administrative code provision "will be limited to the regulations, rules and General Orders specifically enumerated in the Final Notice of Disciplinary Action" for the September charges.

Because the ALJ separately addressed the breach of security and inattentiveness to duty charges and already addressed GRC 1.2, 1.3, and 1.4 "within the discussion of violations of [N.J.A.C.] 4A:2-2.3(a)(2), (6) and (7)," the ALJ's other-sufficient-cause analysis centered on GRC 1.1, violations in general.

GRC 1.1 provides, in pertinent part: "Any employee who violates any rule, regulation, procedure, order or directive, either by an act of commission or omission, whether stated in this manual or elsewhere . . . , is subject to disciplinary action in accordance with the New Jersey Department of Personnel (Civil Service) rules and regulations." The ALJ noted that "[v]iolations of this rule would seem to be implicated by the appointing authority's allegations of violations of General Orders [73] and 74 as well as Post Order 8," then proceeded to conclude that Calio had violated those general and post orders.

However, as the ALJ acknowledged at the hearing, no general or post orders were "specifically articulated" in the final notice of disciplinary action for the September charges. Rather, those general and post orders were listed only in the October charges. Accordingly, after adopting the ALJ's conclusion that only charges specifically enumerated in the final notice of disciplinary action for the September charges would be considered with regard to the

N.J.A.C. 4A:2-2.3(a)(12) violation, we conclude the Commission mistakenly exercised its discretion in considering in the context of GRC 1.1, the general and post orders that were omitted from the September charges. Dep't of Law & Pub. Safety, Div. of Motor Vehicles v. Miller, 115 N.J. Super. 122, 126 (App. Div. 1971) ("It is firmly established that an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority, and the [d]e novo hearing on an administrative appeal is limited to the charges made below." (citing West New York v. Bock, 38 N.J. 500, 522 (1962))). In sum, we reverse the Commission's decision to the extent it sustained the GRC 1.1 charge. We affirm the Commission's decision regarding the remaining eight charges.

## VI.

As to Calio's argument that his thirty-day suspension was excessive, the Department originally imposed that suspension based on its finding that he committed all eleven of the September charges, including the general "et al." charge and the ALJ and the Commission sustained that discipline based on the determination Calio was guilty of nine of the eleven charges. We have concluded that only eight of the charges are sustainable on this record. Therefore, we deem it appropriate to remand to the Commission for

reconsideration of whether those eight charges justify a thirty-day suspension. The Commission may conclude the eight charges that we have concluded were established justify the same penalty. We remand for the Commission to decide that question in the first instance.

## VII.

With regard to Calio's improper pat-downs, Calio concedes that "discipline is appropriate for an employee who is discovered to be performing poor pat searches," and the video and Taylor's testimony provided ample evidence to support the Commission's findings. However, Calio contends that because his original 150-day suspension was based on three incidents -- his poor pat searches, his failure to check kitchen containers, trays, and cups, and the misleading and untruthful statements in his rebuttals to the September charges --, the Commission erred in adopting the ALJ's decision to increase the suspension to 180-days based solely upon his poor pat-down searches.

N.J.S.A. 11A:2-19 authorizes the Commission to "increase . . . the penalty imposed by the appointing authority, but removal shall not be substituted for a lesser penalty." Further, once the Commission sustains the underlying charges, "it must make a de novo determination of the appropriate disciplinary action." Scouler v. City of Camden, 332 N.J. Super. 69, 74 (App. Div. 2000) (citing

Henry, 81 N.J. at 576-80). Generally, we will defer to that determination unless the Commission abused its discretion. Herrmann, 192 N.J. at 34-35 (quoting Div. of State Police v. Jiras, 305 N.J. Super. 476, 482 (App. Div. 1997)); see In re Restrepo Dep't of Corr., 449 N.J. Super. 409, 426 (App. Div. 2017) (explaining the ultimate question for an appellate court is whether the penalty imposed is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness" (quoting Carter, 191 N.J. at 484)).

Applying these principles, we discern no basis for disturbing the Commission's decision to suspend Calio for 180 days based on his repeated failures to properly search inmates. The Commission's decision is supported by substantial and credible evidence in the record, including Calio's disciplinary record. Further, the penalties imposed do not "shock our judicial conscience."

To the extent not addressed, defendant's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed in part, and remanded for reconsideration of the penalty imposed with respect to the September charges. 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

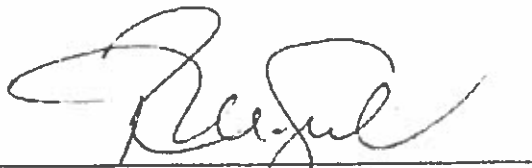




Re: Matthew Calio

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  
JULY 13, 2017



Robert M. Czedh, Chairperson  
Civil Service Commission

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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 04011-16

AGENCY DKT. NO. 2016-3090

**IN THE MATTER OF MATTHEW CALIO,  
CAMDEN COUNTY DEPARTMENT  
OF CORRECTIONS.**

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**William B. Hildebrand, Esq.** appearing for appellant, Matthew Calio (Law  
Offices of William B. Hildebrand, attorneys)

**Antonietta P. Rinaldi, Assistant County Counsel,** appearing for respondent, Camden  
County Department of Corrections (Christopher A. Orlando, County Counsel,  
attorney)

Record Closed: April 13, 2017

Decided: May 30, 2017

**BEFORE DEAN J. BUONO, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Matthew Calio (Calio or appellant), an employee of respondent, Camden County Department of Corrections (DOC), appeals from the determination of respondent that he be suspended for thirty days for an incident on August 24, 2015. Respondent argues that he violated: N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C.

4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause; Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security. The appellant denies the allegations and contends that he acted appropriately.

### PROCEDURAL HISTORY

On September 21, 2015, the DOC issued a Preliminary Notice of Disciplinary Action suspending appellant without pay for thirty days. On February 17, 2016, the DOC issued a Final Notice of Disciplinary Action sustaining the charges and suspending the appellant from his position effective February 18, 2016, through March 18, 2016. Appellant filed a timely notice of appeal.

The Division of Appeals and Regulatory Affairs of the Civil Service Commission transmitted the case to the Office of Administrative Law, where it was filed on March 14, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on October 24, 2016. The record remained open until December 1, 2016, for the appellant to renew a Motion to Consolidate with CSV 05868-2016. The motion was received on December 5, 2016, and denied on February 10, 2017. Closing summations were ordered on April 7, 2017, with an extension granted to the parties until April 13, 2017, and the record closed on that date.

### FACTUAL DISCUSSION

#### Testimony

**Warden Karen Taylor** testified for the respondent that she has been employed by the Camden County Correctional Facility for twenty years and had been appointed Warden on October 23, 2016. At time of this incident she maintained the rank of Captain.

On August 24, 2015, she noticed inmates sitting outside the kitchen and "disrupting activities." She contacted her subordinate officer to address the significant "security concern". She showed a video of the incident wherein Calio remained seated at a hallway desk immediately outside the kitchen. The video also showed an inmate sitting outside of the kitchen door next to Calio's desk, within arm's reach of Calio. (R-3 at 4:48-4:58 inmate on milk crate). She explained that Calio was told a week prior that he was not to allow inmates in the hallway. (R-2). As a result, a complaint was lodged by Lt. Sweeten against Calio. (R-4).

The violations in the complaint include: N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause. The warden explained that the allegations of insubordination were because of the safety concern for inmates in a hallway around the kitchen. Calio was told about this concern on August 19, 2015, in the kitchen passbook and chose to ignore it. (R-4). She explained that it was common for inmates to take advantage of officers and that usually leads to a "bad" end result. He was charged with violations of the C.C.C.F.: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security. (R-6).

With respect to violations of the C.C.C.F. General Orders, she explained the duties of a Kitchen Officer and noted that there was a violation of Order Number 8, which provides the need for security and control for civilians. (R-7). She also indicated violations of the C.C.C.F.'s General Order 73: Personal Conduct of Employees. Pointing to regulation numbers four and twelve, she noted that employees will comply with all departmental rules and regulations and all laws of the United States and the State of New Jersey, and that all employees are responsible to know all departmental policies as well as county policies and act in accordance with them, respectively. (R-8).

Finally, the Warden indicated that all sworn personnel will conduct themselves in accordance with the Constitution of the United States, the New Jersey Constitution and all applicable laws and rules enacted or established pursuant to legal authority. Sworn

personnel are also obligated to follow all other departmental and county policies. By not following the General Orders, Calio was in violation of the C.C.C.F.'s General Order number 74. (R-9).

After the disciplinary charges lodged by Lt. Sweeten were explained to Calio, he apologized and said that the "inmate was working" and that he was permitted to be in the hallway. It was at this time, that he was told about another disciplinary issue regarding his pat-down searches of inmates. He explained that he would improve his pat searches.

Warden Owens was disappointed at Calio because he disregarded her order and the safety concern for the facility. The kitchen is a place where a lot of contraband exists (kitchen cutlery and utensils) and there is a high security risk if any of the contraband should make its way into the general population. It was obvious that he failed to comprehend the gravity of his actions/inactions.

On cross-examination, Warden Taylor testified that on the twenty-fourth, she saw inmates in the hallway and told Lt. Sweeten to address her concern and he did. (R-4). He instructed Calio to put the order in the passbook and not to have inmates in the hallway. (R-2). Also, the person on the crate was a runner. His job as it related to the kitchen was to get trays off the elevator and transfer them to the kitchen staff. She indicated that at one point there were "several inmates" in the hallway, not just the runner, which is unacceptable.

**Matthew Calio** has been a Correction Officer for Camden County for sixteen years. He was hired on March 12, 2001. The facility works on twelve hour shifts.

He introduced a number of character exhibits including: (A-1 Basic Training Certificate), (A-2 Oath of Office), (A-3 Prosecutor's Letters), (A-4 Service Honor), (A-5 Employee of Month), (A-6 Certificate of Appreciation), (A-7 Pay Records (perfect attendance)), (A-8 Attendance Awards), (A-9 Performance Evaluations), (A-10 Warden's Award 5/2001), (A-11 Officer of the Year 10/2011), (A-12 Unemployment

Tribunal), (A-13 Pass Book note from August 19, 2015), (A-14 Certificate of Appreciation), (A-15 Volunteer for 911 request).<sup>1</sup>

In August 2015, Calio was assigned to a kitchen "bid" post. A "bid" post is an officer's personal selection of posting but bid by that officer. On August 19, 2015, he made the first entry in the passbook. That was the result of a discussion with Captain Taylor regarding inmates in the hallway outside the kitchen. It was common for inmates be in the hallway, "playing nerf football" but Captain Taylor wanted everyone in the kitchen for security reasons, even the runner who is always in the vestibule doors.

The common practice at the time was to have the runner in the hallway to make the process of unloading the trays from the elevator. However, he believed, the runner was not blocking the door or goofing off and he is still in "disbelief" that it is a breach of security. Calio was adamant that he "did not agree" with Taylor. He thought when he was given the order that it was meant only for people who weren't working. The runner was working. It was simply a "misunderstanding". He said that he apologized for the "misunderstanding" but believed he was complying with the order. Also, he has already been punished by being assigned to "three south", which is an undesirable post.

He believes that he used good judgment on that day and did nothing wrong. He explained that all the corrections officers always performed their duties in the same manner as he had done. He was not insubordinate because he believed "all inmates in kitchen" meant only the inmates who were not working at the time.

### FINDINGS OF FACT

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

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<sup>1</sup> At the hearing, Calio's exhibits were marked "R". However, for ease of this Decision, they have been changed to "A" to represent the Appellant.

requires an overall assessment of the witness's story in light of its rationality, 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).

The testimony of Warden Taylor was especially credible and persuasive. Her testimony was clear and concise. It was obvious that her concerns regarding inmates in the hallway were to promote the safety of the inmates and individuals working in the facility.

Conversely, Calio's testimony was not credible. Calio's own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. It was disturbing that Calio failed to grasp the gravity of his actions. He believes that he used good judgment and did nothing wrong and explained that the corrections officers always performed their duties in that manner. He was not insubordinate because he believed "all inmates in the kitchen" meant only the ones who were not working. These comments deeply concerned the undersigned because it was apparent that Calio did not comprehend the fact that dangerous contraband (knives, forks, spoons, kitchen utensils) exist in the kitchen and pose a significant threat to all personnel and inmates in the facility if it were to find its way into general population. Calio's takes the position that other corrections officers always performed their duties in the same manner, so it is acceptable.

After hearing the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, that on August 19, 2015, Calio made an entry in

the passbook that all inmates must be in the kitchen. I **FURTHER FIND**, on August 24, 2015, Warden Taylor noticed inmates sitting outside kitchen and "disrupting activities." I **FURTHER FIND**, that a video showed an inmate sitting outside the kitchen door next to Calio's desk, within arm's reach of Calio.

### CONCLUSIONS OF LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n., 46 N.J. 138, 147 (1965). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). 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, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Merit System Board requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty, if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104



(App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

The respondent sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(2) (Insubordination); N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty); N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause); Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security.

Regarding the charge of insubordination, to the extent that appellant is charged with violation of Rule of Conduct 1.4, which addresses Insubordination and Serious Breach of Security, consideration of such violation will be addressed in concert with the current analysis. 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).

In the present matter, appellant's disregard of a direct order is evidence of insubordination. His argument that it was simply a "misunderstanding" is not lucid nor comprehensible. He was given a direct comprehensible order and chose his own convenient interpretation. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of insubordination. Charges of violations of N.J.A.C. 4A:2-2.3(a)(2) and Rule of Conduct 1.4 are hereby **SUSTAINED**.

Respondent also sustained charges against appellant for Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)(6). "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 Atlantic 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)). 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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a public employee disregarding a direct order and allowing inmates in a correctional facility to do as they pleased. I **CONCLUDE** that appellant's actions constitute unbecoming conduct, and the charge of such is hereby **SUSTAINED**.

The respondent also sustained charges for a violation of N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty). Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal

standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R. 2d (CSV) 214.

Again, it is difficult to contemplate a more basic example of neglect of duty than the image of a public employee in a correctional facility failing to follow a direct order from a superior officer. I **CONCLUDE** that appellant's actions constitute neglect of duty, and the charge is hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause). Specifically, appellant is charged with violations of the Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security.

It is noted that the Preliminary and Final Notices of Disciplinary Action (R-1) indicate the sustained charges and conclude with the words "et al." Obviously, such amorphous terminology taken literally would constitute insufficient notice to appellant of the charges faced, and would be impossible to prepare to defend. Accordingly, I **CONCLUDE** that the consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause) will be limited to the regulations, rules and General Orders specifically enumerated in the Final Notice of Disciplinary Action (R-1). Additionally, Rules of Conduct 1.2, 1.3, and 1.4 have been addressed within the discussion of violations of N.J.A.C. 4A:2-2.3(a)(2), (6) and (7).

As such, appellant is charged with violating Rule of Conduct 1.1, Violations in General, which is a charge of "Failure to comply with regulations, orders, directives or practices of the department, whether verbal or written by the Warden or his designee." (R-6). The rule provides that:

Any employee who violates any rule, regulation, procedure, order or directive, either by an act of commission or omission, whether stated in this manual or elsewhere, or who violates the standard operating procedure as dictated by departmental practice, is subject to disciplinary action in accordance with the New Jersey Department of Personnel (Civil Service) rules and regulations. Disciplinary actions shall be based on the nature of the rule, regulation, procedure, order, or directive violated, the severity and circumstances of the infraction and the individual's record of conduct.

Violation of this rule would seem to be implicated by the appointing authority's allegations of violations of General Orders 73, and 74 as well as Post Order 8.

Post Order 8 (R-7) addresses the duties of a kitchen officer. Section 4 of this order states that "Provides security and control for civilians."

The record reflects in the testimony and video that a lack of control of the inmate seated in the hallway. Appellant did not fulfill the requirements of General Order 8. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of Post Order 8 and the charge is hereby **SUSTAINED**.

General Order 73 (R-8) addresses "Personal Conduct of Employees." Captain Taylor testified that appellant violated sections 4 and 12, of this order.

Section 4 states that "Employees will comply with all departmental rules and regulations and all laws of the United States and the State of New Jersey." The record reflects that appellant did not comply with the General Order he was accused of violating. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Section 12 states that, "Employees are responsible to know all departmental policies as well as county policies and act in accordance with them." Irrespective of whether the appellant was aware or unaware of the specific requirement of Post Order 8, ultimately it is his responsibility to know. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Based on the foregoing, I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of General Order 73.

General Order 74 (R-9) addresses "Professional Code of Conduct." Testimony revealed that appellant violated sections one of this order.

Section 1 states that, "Sworn personnel will conduct themselves in accordance with the Constitution of the United States, the New Jersey Constitution and all applicable laws and rules enacted or established pursuant to legal authority. Sworn personnel are also obligated to follow all other departmental and county policies." The evidence in the record demonstrates that appellant not only violated Post Order 8 but also N.J.A.C. 4A:2-2.3(a)(2) (Insubordination); N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty) and therefore this supports a finding of a violation of this section. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Based on the foregoing, I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of General Order 74.

Having met its burden in demonstrating violations of General Orders 73 and 74, as well as Post Order 8, I **CONCLUDE** that the appointing authority has demonstrated a violation of Rule of Conduct 1.1 Alleged violations of Rules of Conduct 1.2 and 1.4 having already been addressed, I **FURTHER CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, is hereby **SUSTAINED**.

Finally, the respondent sustained charges of 2.10 Inattentiveness to Duty and 3.2 Security.

2.10 Inattentiveness to Duty is defined as "Personnel shall not engage in any activities or personal business which could cause them to neglect or be inattentive to duty." (R-6). I find nothing in the record to support a claim that would substantiate this charge, therefore I **CONCLUDE** that the charge of a violation of 2.10 Inattentiveness to Duty, is hereby **DISMISSED**.

3.2 Security is defined as "[p]ersonnel shall exercise a scrupulous regard for security in their dealings with inmates and with regard to the Correctional Facility in general. Any act of commission or omission tending to undermine security shall constitute a breach of security." (R-6). I find the record to support a claim that would clearly substantiate this charge. The fact that appellant continues to fail to see the security concern in an inmate seated at such a proximate location to the security desk is troublesome. Therefore, I **CONCLUDE** that the charge of a violation of 3.2 Security, is hereby **SUSTAINED**.

### PENALTY

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, *supra*, 38 N.J. 523-24. Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct.

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. 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).

The record reflects that appellant has been reprimanded on two occasions for Neglect of Duty and suspended on two occasions for Conduct Unbecoming. The first

suspension was for Three days and the second for Fifteen days. Despite this fairly unremarkable disciplinary record, it is noted that a single charge of Incompetency, Inefficiency or Failure to Perform Duties by itself, can be sufficient grounds for termination in the absence of any other disciplinary history. Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (NOTE: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

"In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn't balance the books, after the auditors tried three times to show him how).

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that "[t]he [MSB's] application of progressive discipline in this context is misplaced and contrary to the public interest." The court determined that Klusaritz's prior record is "of no moment" because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

Considering the foregoing, the respondent seeks a Thirty-Day suspension. Considering the record in the present matter including the appellant's disciplinary record, the nature of the job duties and the nature of the charges, I **CONCLUDE** that the respondent's action suspending appellant for Thirty Days without pay was justified.

**DECISION AND ORDER**

I **ORDER** that the charges of N.J.A.C. 4A:2-2.3(a)(2) (Insubordination); N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty); N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause) be **SUSTAINED**. I further **ORDER** that the charges of violating Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination and 3.2 Security also be **SUSTAINED**. The charge of 2.10 Inattentiveness to Duty is hereby **DISMISSED**. I **FURTHER ORDER** respondent's imposition of a Thirty-Day suspension without pay 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. 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.

May 30, 2017  
DATE

  
\_\_\_\_\_  
DEAN J. BUONO, ALJ

Date Received at Agency:

5/30/17

Date Mailed to Parties:

5/30/17

/vj

**LIST OF WITNESSES:**

**For Appellant:**

Matthew Calio

**For Respondent:**

Warden Karen Taylor

**LIST OF EXHIBITS:**

**For Appellant:**

- A-1 Basic Training Completion Certificate
- A-2 Oath of Office
- A-3 Prosecutor Letters
- A-4 Service Honor (five years)
- A-5 Memorandum: Employee of the Month, dated August 20, 2009
- A-6 Certificate of Appreciation (ten years)
- A-7 Excerpts from Pay Records
- A-8 Perfect Attendance Awards
- A-9 Performance Evaluations 2014
- A-10 Warden's Award
- A-11 Officer of the Year Award
- A-12 Unemployment Appeals Examiner's Decision
- A-13 Kitchen Pass-on-Notes
- A-14 Certificate of Appreciation
- A-15 Memorandum: Volunteer

**For Respondent:**

- R-1 Preliminary Notice of Disciplinary Action (31A), dated September 21, 2015  
and Final Notice of Disciplinary Action (31B), dated February 17, 2016
- R-2 Notes form Kitchen Pass-On-Book by Calio, dated August 19, 2015
- R-3 Video
- R-4 Supervisor's Complaint Report Authored by Lt. Harry Sweeten, dated  
August 24, 2015
- R-5 General Incident Report (Rebuttal) by Calio, dated August 25, 2015
- R-6 Camden County Department of Corrections Rules of Conduct
- R-7 Camden County Department of Corrections Post Order Number 008  
Kitchen Officer
- R-8 Camden County Department of Corrections General Order Number 73  
Personal Conduct of Employees
- R-9 Camden County Department of Corrections General Order Number 74  
Professional Code of Conduct
- R-10 Calio Chronology of Discipline