



STATE OF NEW JERSEY

In the Matter of Ramogi Goding
Hudson County, Department of
Corrections

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-1438
OAL DKT. NO. CSR 00159-19

ISSUED: APRIL 24, 2019 BW

The appeal of Ramogi Goding, County Correction Officer, Hudson County, Department of Corrections, removal effective September 12, 2018, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on March 7, 2019 reversing the removal. Exceptions and a reply to exceptions were filed on behalf of the appellant and exceptions were filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions filed by both parties and reply filed by the appellant, the Civil Service Commission (Commission), at its meeting on April 24, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Ramogi Goding. The Commission further orders that appellant be granted back pay, benefits, and seniority from September 12, 2018 to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF APRIL, 2019



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
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT.NO. CSR 00159-19

AGENCY DKT. NO. N/A 2019-1438

**IN THE MATTER OF RAMOGI GODING,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS.**

Frank Cioffi, Esq., on behalf of appellant (Sciarra & Catrambone, LLC)

**John Collins, Esq., appearing on behalf of respondent (Hudson County Law
Department)**

BEFORE KIMBERLY A. MOSS, ALJ:

Record Closed: March 5, 2019

Decided: March 7, 2019

STATEMENT OF THE CASE

Appellant, Ramogi Goding (Goding or appellant), appeals his removal by respondent, Hudson County Department of Corrections (Hudson), on charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause. The charges result from a random drug test of August 16, 2018, in which respondent alleges appellant tested positive. At issue is whether Goding engaged in the conduct, and, if so, whether

it constitutes conduct unbecoming a public employee, neglect of duty and other sufficient cause that warrants removal.

PROCEDURAL HISTORY

On September 14, 2018, Hudson served Goding with a Preliminary Notice of Disciplinary Action. A departmental hearing was held on October 12, 2018. Hudson served Goding with a Final Notice of Disciplinary Action on November 8, 2018, sustaining charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause. Goding requested a hearing and forwarded simultaneous appeals to the Civil Service Commission and the Office of Administrative Law (OAL). The appeal was filed with the OAL on December 20, 2018. The hearing was held on March 5, 2019. During the hearing respondent wanted to place in evidence a toxicology report from the New Jersey State Toxicology laboratory (State Lab). Since respondent had no witnesses from the State lab to testify about the report, I did not allow the report into evidence. The record closed on March 5, 2019.

FACTUAL DISCUSSION

Having reviewed the testimony and evidence and credibility of the witnesses, I make the following **FINDINGS of FACTS**.

Hudson must do one random drug test of its employees annually. It has a drug free work place policy that was distributed to its employees. The Attorney General has a Law Enforcement drug testing policy. Erika Patterson (Patterson) is a lieutenant in the Hudson County Prosecutor's Office, who is on loan to Hudson working in its internal affairs office. On August 18, 2018, Ronald Edwards (Edwards), Director of Hudson, called for random drug tests of ten percent of the officers which equaled thirty-three officers. Patterson, Gabriel Diaz (Diaz) and Keith McMillion (McMillion) went to the juvenile center to set up the testing procedures. Four tables with chairs were set up in the juvenile center. Each chair had a medical sheet/ drug advisory form, envelope for the medical sheet and two sample bottles.

An excel spread sheet with the name of the officers was printed out. The names were cut and put into a plastic bag. The names were chosen by Diaz and McMillion from the bag for the random drug test. Hudson's drugfree workplace alcohol and drug testing policy states that for random testing an individual shall be selected by a computer based random number generator with neutral criteria. Hudson did not follow this policy. Patterson stated that Hudson did not have a computer based random number generator with neutral criteria software.

The administration of the testing began at 5:00 a.m. Diaz explained the random drug testing policy to the officers who were chosen to give a random urine sample. They were advised how to fill out the medical sheet to include prescription and over the counter medications. The medical sheet was then put into an envelope and the officer put his social security number on the envelope. The officers were told that they had to fill one specimen bottle. They could fill both specimen bottles. They were told the only way to dispute a positive test would be to fill both urine bottles prior to the testing. The Hudson Drug Free Workplace Alcohol and Drug testing guidelines states that donors have the option of providing a second sample. If the donor chooses not to submit a second sample, the donor shall sign a waiver of this option. Goding did not fill the second sample bottle. Goding did not sign a waiver forgoing the second sample. He was not given a waiver to sign.

Diaz, McMillion and Patterson gave the instructions. Diaz gave the instructions to Goding. Goding was on vacation and had to return from vacation to give the sample. Goding was escorted by an officer to the restroom to give the urine sample. Diaz was the monitor who oversaw Goding giving the sample, however, he was not present when Goding gave the urine sample. Patterson filed out a Law Enforcement Drug Testing chain of custody form for the State Lab. The urine sample had Goding's social security number on it.

Goding's urine specimen was placed in a locked refrigerator on August 16, 2018 at 3:05p.m. The refrigerator is in an office that requires a pass key to enter. Patterson, Diaz and McMillion are the only persons with the pass key.

On August 20, 2018, at 9:30a.m. Goding's urine sample was removed from the locked refrigerator and taken to the State Lab by Diaz. Between August 16, 2018 and August 20, 2018, Goding's urine sample was in the locked refrigerator. Hudson does not test urine samples. It contracts with the State Lab to test the urine samples. Goding was suspended on September 12, 2018, for allegedly testing positive for marijuana. There was no testimony from any witness from the State Lab where Goding's urine sample was analyzed. There was no testimony from anyone who analyzed Goding's urine sample. The attorney for Hudson stated that the State Lab would not provide any witness to testify.

LEGAL ANALYSIS AND CONCLUSION

Based on the foregoing facts and applicable law, I **CONCLUDE** that the charges of unbecoming a public employee, neglect of duty and other sufficient cause are not sustained.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

"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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

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.

In this matter there was no testimony from the State Lab that analyzed Goding's urine sample or what process was used to analyze Goding's urine sample. There was no testimony from anyone who analyzed Goding's urine sample that it came back positive for marijuana or any other illegal drug.

I **CONCLUDE** that there was no admissible evidence that Goding tested positive for marijuana or any illegal drug.

Prevailing employees in a civil-service appeal are entitled to an award of back pay, benefits, seniority and reasonable attorney fees "as provided by rule." N.J.S.A. 11A:2-22. Pursuant to its broad authority to adopt rules for effective implementation of a comprehensive personnel-management system, the Civil Service Commission has discretionary power to deduct mitigation from a back-pay award. N.J.S.A. 11A:2-6(d); cf. Mason v. Civil Serv. Comm'n, 51 N.J. 115 (1968) (interpreting predecessor legislation as authorizing the Civil Service Commission to require mitigation of back pay upon restoration to employment).

Goding was suspended on September 12, 2018, and I **CONCLUDE** that Goding is entitled to back pay from that date.

ORDER

Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the determination of the Hudson County Department of Corrections that Ramogi Goding be **REMOVED** from employment is **REVERSED**.

It is further **ORDERED** that Ramogi Goding is entitled to back pay from September 12, 2018.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. 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.

3-7-19
DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:

March 7, 2019

Date Mailed to Parties:

March 7, 2019

ljb

WITNESSES

For Appellant

Ramogi Goding

For Respondent

Michael Conrad

Erika Patterson

Gabriel Diaz

EXHIBITS

For Appellant

- A-1 Preliminary Notice of Disciplinary Action Dated September 14, 2018
- A-2 Notice of Immediate Suspension Dated September 14, 2018
- A-3 Not in Evidence
- A-4 Memorandum of Erika Patterson to Director Edwards Dated August 20, 2018
- A-5 Memorandum of Erika Patterson to Director Edwards Dated September 12, 2018
- A-6 Not in Evidence
- A-7 Attorney General's Law Enforcement Drug Testing Policy Revised April 2018
- A-8 Hudson County Department of Corrections and Rehabilitation Drug Free Workplace: Alcohol and Drug Testing Revised April 11, 2018
- A-9 Not in Evidence

For Respondent

- C-1(a) Preliminary Notice of Disciplinary Action Dated September 14, 2018
- C-1(b) Notice of Immediate Suspension Dated September 14, 2018
- C-2 Hudson County Department of Corrections Random Drug Screening Advisory Dated August 16, 2018
- C-3 Not in Evidence
- C-4 Hudson County Department of Corrections and Rehabilitation Drug Free Workplace: Alcohol and Drug Testing Revised April 11, 2018
- C-5 Electronic Signatures of Ramogi Goding for Policy, Post Orders and Directives
- C-6 Attorney General's Law Enforcement Drug Testing Policy Revised April 2018
- C-7 Memorandum of Erika Patterson to Director Edwards Dated August 20, 2018
- C-8 Urine Chain of Custody Log
- C-9 Law Enforcement Drug Testing Chain of Custody
- C-10 Memorandum of Erika Patterson to Director Edwards Dated September 12, 2018
- C-11 Memorandum of Gabriel Diaz Dated September 26, 2018
- C-12 Memo to Internal Affairs File from Erika Patterson Dated September 12, 2018



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

SALARY PAYMENT

OAL DKT. NO.: CSR 00159-19

**IN THE MATTER OF RAMOGI GODING,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS.**

BEFORE: KIMBERLY A. MOSS, ALJ:

On this date, I issued an initial decision in this matter which recommended that the disciplinary charges against appellant not be sustained. Therefore, pursuant to N.J.S.A. 40A:14-203(b), I **ORDER** the appointing authority to begin paying appellant his base salary and back pay immediately pending issuance of the final decision by the Civil Service Commission.

This Order is effective immediately and shall continue in effect until issuance of the Final Decision in this matter by the Civil Service Commission.

3-7-19

Date

ljb

A handwritten signature in black ink, appearing to be 'K.A. Moss', written over a horizontal line.

KIMBERLY A. MOSS, ALJ