

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF FEBRUARY, 2022

Deirdre' L. Webster Cobb

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Civil Service Commission

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 07425-20

AGENCY DKT. NO. 2021-128

**IN THE MATTER OF RYAN MC HUGH,
BURLINGTON COUNTY JAIL.**

Arthur J. Murray, Esq., for appellant Ryan McHugh (Alterman & Associates, LLC, attorneys)

Primitivo J. Cruz, Esq., for respondent Burlington County Jail (Malamut and Associates, LLC, attorneys)

Record Closed: December 22, 2021

Decided: January 3, 2022

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE

Appellant Ryan McHugh (McHugh) appeals the decision of his employer, respondent Burlington County Jail (BCJ), to impose a fourteen-working-day suspension and demotion from the position of County Correctional Police Lieutenant to the position of County Correctional Police Sergeant for charges of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), for violations of the Burlington County Department of

Corrections Policies and Procedures Manual (DOC Manual), Sections 1001, 1020, 1021, 1036, 1038, 1147 and 1148.¹

PROCEDURAL HISTORY

On May 29, 2020, BCJ issued a Preliminary Notice of Disciplinary Action (PNDA) notifying McHugh of the charges against him. (R-1.) McHugh requested a departmental hearing, which was held on June 11, 2020. On June 30, 2020, BCJ issued a Final Notice of Disciplinary Action (FNDA), which sustained charges of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause pursuant to N.J.A.C. 4A2:2-2.3(a)(12), for violations of the DOC Manual, Sections 1001, 1009, 1020, 1021, 1036, 1038, 1147 and 1148.

The appellant timely requested a hearing and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on August 12, 2020, as a contested case. N.J.S.A. 52-14B-1 to -15 and 14F-1 to -13. Due to the ongoing COVID-19 emergency, the parties agreed to appear for hearing by remote audio-video platform Zoom Video Communications (Zoom). The matter was heard on May 5 and 10, 2021. The record remained open for the parties to provide post-hearing submissions. Due to unexplained delays (not attributable to either party) in receipt of the hearing transcripts, briefs were filed on December 17 and 22, 2021, and the record closed on December 22, 2021.

FACTUAL DISCUSSION AND FINDINGS

The issues in this case are: whether on May 17, 2020, appellant made disparaging, berating and degrading remarks toward two subordinates directly under his control; whether on May 17, 2020, appellant attempted to reassign, threatened, disrespected, demoralized and/or embarrassed the alleged target(s) of his alleged

¹ McHugh was originally also charged with a violation of DOC Manual, Section 1009, but respondent withdrew that charge post-hearing. Respondent County of Burlington's Written Summation (December 22, 2021), at 7-8.

remarks; and, if any or all of the above are true, whether the penalty imposed by respondent on appellant is appropriate.

Respondent presented three witnesses; appellant testified on his own behalf and presented one witness. The following is not meant to be a verbatim report of the testimony and evidence presented in this matter but is intended to summarize the portions of the testimony and evidence found to be relevant to the above issues.

Undisputed Facts

There is no dispute as to certain background facts; accordingly, I **FIND** the following as **FACTS**:

The alleged incident(s) occurred on May 17, 2020, in or near Center Control at the BCJ. Center Control is the “main hub” of the jail, a booth surrounded by windows, in which correctional officers sit at desks with computers and monitors. At all times, the Count Officer (the officer in charge of counting the inmates) and a supervising officer are present in Center Control. No civilian employees are permitted in Center Control; correctional officers cannot enter unless someone opens the locked door from the inside.

On May 17, 2020, McHugh was the “Lieutenant Shift Commander,” the most senior officer in the jail. As it was a Sunday, there were no other members of the BCJ administration present.

On May 17, 2020, McHugh and Officers Anthony Nocito, Gary Kminek and Gary Woods worked in Center Control at the time of the alleged incidents. All incidents involved in this matter, other than the reporting on the incidents, took place in the open area in Center Control.

McHugh does not contest the charges sustained against him with respect to his conduct toward Officer Gary Kminek (as described in the FNDA), but he challenges all allegations regarding his conduct toward Officer Anthony Nocito. Further, McHugh contends that the penalty imposed by BCJ is not appropriate.

Testimony

Anthony Nocito (Nocito), has served at BCJ as a County Correctional Police Officer for close to five years. He is thirty-six-years-old; this is his first job in law enforcement. He has known appellant for a number of years, has socialized with him outside work, specifically in a horseshoes league in 2019. Nocito stated that prior to May 17, 2020, he never had any problems with McHugh.

On May 17, 2020, Nocito was assigned to Center Control as the Count Officer, a position to which he became eligible through a bid procedure. When positions or shifts become available, a bid is listed and any correctional police officer can apply. Bids are awarded based on seniority. After being awarded the bid, Nocito was not guaranteed that he would be assigned to any specific job on any given day, but would be assigned to jobs within his bid position.

Nocito stated that on the morning of May 17, 2020, he worked the 6:00 a.m. to 6:00 p.m. shift and was in Center Control with appellant, Sergeant Gary Woods (Woods), and one or two other officers. All the officers first engaged in what Nocito called "light banter." Tr. (May 5, 2021) (T-1), at 13. This was not unusual despite the difference in the various officers' ranks.

Although Nocito does not know whether the BCJ regulations permit music to be played inside Center Control, it is a frequent occurrence and Nocito had music playing. McHugh asked Nocito to turn down his music because McHugh was listening to a church service on his computer.

Nocito stated that he knows of nothing he did to anger McHugh or cause McHugh to act differently toward him, but later in the morning, McHugh began to make “ugly, unprofessional” comments toward Nocito. T-1 at 13. McHugh made fun of millennials (including Nocito), said Nocito was gay for wearing skinny jeans, and eventually accused Nocito of “sucking Sergeant J. Williams’ dick.” T-1 at 13. This latter comment was in reference to Sergeant Joseph Williams (Williams), another BCJ employee who was not at BCJ that day (and the colleague who had invited both Nocito and McHugh to play horseshoes). McHugh continued to make these comments to Nocito for approximately thirty to forty-five minutes.

Nocito did not understand why he was being picked on, essentially, and he did not tell McHugh that he was going over the line. Because he was uncomfortable, Nocito asked another officer, Officer Gary Kminek (Kminek), to relieve him and went to the officers’ break room. (Nocito knew that Kminek was also trained as a Count Officer and therefore, was able to take over for him.)

Nocito identified the formal report on this incident that he wrote and submitted to the Administration Department on May 20, 2020. (R-11.) In the report, Nocito wrote, in pertinent part:

I believe then [McHugh] really crossed the line of unprofessionalism when he stated that I was gay and repeatedly told me to stop sucking Sergeant Joseph William’s dick. I was highly offended and at that point I asked officer [sic] G. Kminek to come in to Center Control and relieve me briefly . . . I wanted to remove myself from the current situation that was going on in Center Control.

[R-11.]

Nocito wrote the report on the instruction of Lieutenant Pyaegbaye Blango (Lt. Blango). Nocito submitted the report on his next scheduled work day, so that it would go straight to Administration and not sit in an in-box. Further, Nocito knew that any

reports submitted on May 17, 2020, would have been given to McHugh, as the most senior officer at BCJ that day.

McHugh did not tell Nocito that he would be reassigned from Count Officer on his next shift, but Nocito heard McHugh tell this to Woods. Nocito agreed that the lineups are generally developed by a sergeant and it was unusual for a lieutenant to make such decisions.

Nocito was not interviewed by BCJ Internal Affairs (IA), but he testified at McHugh's departmental hearing. Nocito has not had any issues with McHugh since May 17, 2020.

Sergeant Gary Woods (Woods) has served at the BCJ since February 2006; he was promoted to sergeant in May 2015. He had no law enforcement experience prior to 2006. McHugh and Woods served together as correctional police officers; Woods was promoted to sergeant before McHugh, and then McHugh was promoted again to lieutenant. Prior to May 17, 2020, Woods never had issues with McHugh.

Woods confirmed that he was in Center Control on May 17, 2020, and agreed that the discussion among the officers started as light banter. Woods only heard part of this because he was in the corner, eating. The light talk escalated into a "verbal . . . back and forth" between McHugh and Nocito, and became "an all out verbal assault" by McHugh on Nocito that lasted for forty to forty-five minutes. T-1 at 64. Woods heard McHugh call Nocito and others of his generation gay and heard McHugh say that Nocito sucked Williams' dick. In particular, Woods recalls the language McHugh used. "If he said it one time, he said it twenty times and it got absolutely abusive." T-1 at 119. Woods heard Nocito ask McHugh for the discussion to stop at 11:00, but McHugh's comments about Nocito and Williams "was continuous" until "Nocito excused himself to take a break." T-1 at 66.

After Nocito walked out of Center Control, McHugh approached Kminek (who was seated at a desk) and told him to stand up; Kminek did so slowly, and Woods could tell that he was embarrassed. T-1 at 68. McHugh said, "now that's a good officer." Ibid. Then, McHugh told Woods he wanted Kminek, rather than Nocito, assigned as Count Officer on the next shift (which was May 20, 2020). Woods responded that he would have to check with Williams before doing so. At hearing, Woods stated that he questioned whether McHugh's order was appropriate given the exchange that he had witnessed between McHugh and Nocito, but conceded that the order was lawful.

Woods stated that the playing of music in Center Control is permitted, though not done often. He could not recall music playing on May 17, 2020, but did recall that McHugh watched a church service on the computer. He did not hear McHugh ask Nocito to turn down music.

Woods stated that Lieutenant Robert Clugsten (Clugsten) was the most senior officer at BCJ on May 17, 2020.² After the above incidents, Woods briefed Clugsten and asked to leave early. Later, Woods texted Clugsten to notify him that he, Woods, would write up an incident report. Woods identified the report, which he typed on May 17, 2020, while at home, and turned in at his next shift, on May 20, 2020. (R-10.) Woods stated that he intended his report to be accurate, and in several instances used quotation marks to indicate the actual words said by McHugh. But, in the report, he did not use the words "sucking" or "dick," nor did he explain that he was not including statements he deemed offensive. In the report, Woods refers to McHugh's "up and down behavior" throughout the weekend, but only gave examples from the incidents in Center Control. Woods wrote, in pertinent part:

[F]ollowing miscellaneous discussion, [McHugh] began lashing out at [Nocito]. This verbal tirade turned in to a flat out verbal assault over the period of about forty five minutes. This lashing included accusing [Nocito] of wearing "skinny

² Neither party made note of Woods saying Clugsten was in charge and everyone else saying that McHugh was in charge.

jeans," "being gay," his generation "being soft" . . . and ridicule for his allegiance/friendship with [Williams].

[R-10.]

Besides Clugsten, Woods spoke with Williams about the incidents.³ He was not interviewed by IA. He testified at the Departmental hearing and gave the same version of the incidents there as in the OAL hearing.

Woods stated that it was not easy for him to report on a senior officer, he had never done so before, but he took an oath to protect junior officers, like Nocito and Kminek. His job is to protect inmates from officers and it is his duty to intervene if a superior officer crosses the line with other officers. For this reason, he texted Nocito and Kminek (from his personal cell phone to their personal cell phones) later to apologize. Woods stated that McHugh's conduct was very distracting and not conducive to the mission of the jail; McHugh's persistence and the continuous nature of his conduct made it worse.

Captain Teechey Blango (Capt. Blango) has served at BCJ for twenty-two years, and as Administrative Captain since 2018. In this position, he supervises IA, the Operations Unit, and the Identifications Unit. His twin brother, Lt. Blango, is the head of the IA Unit.

Capt. Blango identified the investigation report dated May 27, 2020, written by Lt. Blango regarding the incidents at issue here. (R-8). Capt. Blango reviewed the investigation report at the time it was submitted to him and the warden. (The version of the investigation report maintained in the BCJ electronic system was marked as Exhibit R-9.) Capt. Blango is familiar with the incident reports submitted by Nocito, Woods and Kminek, (R-12)⁴, and stated they were used by Lt. Blango to develop the investigation

³ The hearsay statements of Clugsten regarding his direction to Woods after hearing Woods's verbal description of the incident is corroborated by Woods following Clugsten's directions and submitting the written report. Respondent did not present Williams as a witness.

⁴ Kminek did not appear at hearing; according to respondent, he is no longer employed at BCJ.

report.⁵ The charges found in the PNDA were proposed by IA to Capt. Blango and the warden. The proposed penalty in the FNDA was recommended by the departmental hearing officer; the warden approves or rejects proposed discipline (and in this case, approved it).

In May 2020, BCJ was not required to follow the New Jersey Attorney General guidelines for the operation of its IA Unit, but Capt. Blango said BCJ did its best to follow these guidelines for IA investigations. T-1 at 166. For example, McHugh received a target letter as required by the guidelines. Neither the complainants—Nocito and Kminek—nor McHugh were interviewed and, therefore, their statements were not taped as they would be now pursuant to the guidelines. McHugh was told of the allegations made against him, though he did not see the incident reports, and was directed to submit his own report. T-1 at 170.

Capt. Blango identified the following statement of principles from the DOC Manual:

These rules and regulations are compiled for the information, guidance, compliance and conduct for all custody employees of the Burlington County Correctional Department.

[R-4.]

Capt. Blango read into the record the following portion of the DOC Manual, Section 1001, and stated that it is a general principle of the DOC Manual:

In order that all persons committed to our jails be made aware that they must conform to all existing policies, rules and regulations, staff unity is necessary. Under no circumstances should any officer or employee make disparaging remarks about other employees at any time. This behavior diminishes unified authority and can often

⁵ Capt. Blango stated that neither Nocito nor Kminek were charged with untruthfulness as a result of the allegations they detailed in their incident reports.

contribute to a breakdown of discipline, control and the security of the institution. The maintenance of proper discipline is of vital importance in the proper administration this jail and must never be a personal issue.

[R-4.]

Capt. Blango read into the record the following policies, Sections 1020 and 1021, from the DOC Manual:

A superior officer shall set an example, act as a role model and trainer, display good leadership and apply superior managerial talents while performing supervision that further promotes the training and development of good correctional skills in all subordinates.

All officers shall be responsible to conduct themselves in the utmost professional manner at all times in representation of the jail administration.

[P-6.]

According to Capt. Blango, the alleged incidents between McHugh and Nocito, and in particular the statements allegedly made by McHugh to Nocito, violated these policies. "There is horseplay . . . but there are . . . certain lines that we just shouldn't cross," said Capt. Blango. T-1 at 142. The comment regarding Nocito's sexual orientation was not appropriate, nor was the statement that Nocito sucked Williams' dick. According to Capt. Blango, a superior officer has a higher obligation: "we are role models, as the policy says. We're trainers, and we want to make sure that we are free from harassment and bullying." Further, superior officers have to make sure "light banter . . . doesn't cross that line, and if it does, it's our duty and responsibility to stop it." T-1 at 144-45.

Further, Capt. Blango stated that McHugh's conduct toward Nocito violated Section 1038, which provides:

No officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the department.

[P-6.]

Capt. Blango stated that the BC DOC has a policy that covers informal banter between male and female officers and between officers and subordinates; this policy is covered in bi-annual training in cultural diversity, sexual harassment, and harassment. The anti-harassment policy, Section 1147, was identified by Capt. Blango and read into the record, in pertinent part:

No employee shall intimidate, threaten, ridicule, mock, deride or belittle any person.

Employees shall not make offensive or derogatory comments, either directly or indirectly to any other person. Employees shall not make offensive comments at any time directly or indirectly based on race, color, gender, religion, ethnicity, physical disability or sexual orientation. Such harassment is a prohibited form of discrimination under State and Federal Employment Law and is considered misconduct subject to disciplinary action by this department.

[P-7.]

According to Capt. Blango, the statements allegedly made by McHugh to Nocito and the commands McHugh gave to Kminek violated DOC Manual, Sections 1147 (harassment), 1020, 1021, and 1001. T-1 at 157.

Capt. Blango identified the BC DOC workplace violence policy, DOC Manual Number 1148, and read it into the record, in pertinent part:

The County of Burlington remains committed to providing a workplace that is safe, secure and free of harassment, threats, intimidation and violence for all employees. It is every employee's duty to maintain a safe workplace. To ensure a safe workplace and to reduce the risk of violence,

all employees should review and understand all provisions of this workplace violence policy. Consistent with this policy, threats or acts of violence, including intimidation, harassment, and/or coercion which involve or affect county employees or which occur on county property will not be tolerated. This policy applies to the conduct of an employee while functioning in the course and scope of employment as well as off-duty conduct that has a potential adverse impact on a County employee's ability to perform the assigned duties and responsibilities.

[R-15.]

According to Capt. Blango, McHugh violated this policy when he attempted to threaten and intimidate Woods into replacing Nocito with Kminek on the May 20, 2020, assignment log. McHugh also violated this policy when he ordered Kminek to stand up in an intimidating manner. Capt. Blango noted that a lawful order is defined in the DOC Manual, but a retaliatory order is not a lawful order. (See R-4, at 3-4.)

Capt. Blango described the training provided to correctional officers upon promotion, whether to sergeant, or from sergeant to lieutenant. He stated that in both cases, newly promoted officers spend two weeks shadowing an officer in their new position.

Appellant Ryan McHugh is forty-one-years-old, married, with two young sons. He was hired by BCJ in March 2003, as a correctional officer. He was promoted to sergeant in 2015, and promoted to lieutenant in 2018. The warden of BCJ promoted McHugh to lieutenant on a provisional basis; he served in the position for about one year before he could take the Civil Service exam. After passing the exam, McHugh became permanent in the position.

Since 2003, McHugh has received harassment in the workplace training every two years. Since being promoted to sergeant five years ago, McHugh has received the same harassment in the workplace training. He stated that a shift commander is

expected to keep harassment, if identified, from continuing and that on May 17, 2020, he was the shift commander. Tr. (May 10, 2021) (T-2), at 105-06.

Prior to the incidents at issue here, McHugh had not received discipline for any violations of statute or regulation relating to sexual harassment or sexual orientation, or any protected category. He was not disciplined for violations of statute or regulation relating to discrimination or retaliation. He was suspended in 2009 for fifteen days due to violation of time and attendance policies, specifically "missing sick call notification." (J-1; T-2 at 80.)

McHugh has known Woods for about fifteen years. McHugh described their relationship as a "work relationship, spoke to him here and there[,] and that he had never had any issues with Woods, whether as a fellow sergeant or when supervising him. T-2 at 80-81.

McHugh has known Nocito for five years. McHugh stated that they have a good working relationship and confirmed that they both participated in a horseshoes league after work. McHugh stated that as a supervising officer, he had not had problems with Nocito prior to May 17, 2020, and had not sought to have Nocito disciplined for any reason at any time and Nocito had not sought to have McHugh disciplined prior to May 17, 2020. T-2 at 82-83.

McHugh has known Kminek for about five years. McHugh stated that they have a good relationship and recalled one occasion in which they socialized outside work. McHugh stated that as a supervising officer, he had not had problems with Kminek, had not sought to have Kminek disciplined for any reason, and Kminek had not sought to have McHugh disciplined prior to May 17, 2020.

On May 17, 2020, McHugh worked the 6:00 a.m. to 6:00 p.m. shift. He served as Lieutenant Shift Commander, meaning that he was the highest officer in the facility.

His duties included maintaining security, controlling the facility, ensuring the safety of inmates and employees, and advising administration of any problems.

McHugh stated that playing of music is not permitted in Center Control, but confirmed Nocito's statement that that rule is often relaxed and McHugh permitted it on May 17, 2020. McHugh stated that he used both the terms "skinny jeans" and "being gay" while the officers were engaged in light-hearted banter about music. T-2 at 85-86. Specifically, McHugh recalled saying that "all the rappers that [Nocito] likes, they're all gay and he wears skinny jeans." T-2 at 86. McHugh did not call Nocito gay, but he conceded that he should not use the phrase "being gay" in the workplace, even when directed at a third-party, such as a music genre. Ibid.

McHugh admitted that he used the term "soft" when describing Nocito's generation; this comment was also made in the context of a conversation about music. T-2 at 87. McHugh stated that he saw nothing wrong with that comment at the time but in retrospect, realizes it was wrong. Ibid.

McHugh stated that he did not accuse Nocito of "sucking Williams's dick," that he said nothing like that. Ibid.

The sole issue between McHugh and Nocito on May 17, 2020 was, according to McHugh, that Nocito played music too loudly in Center Control and did not turn it down despite three requests/orders from McHugh to do so. T-2 at 88-89. Because Nocito wasn't following orders, McHugh decided the best way to deal with his insubordination was by reassigning Nocito from Center Control (as Count Officer) on his next shift, May 20, 2020. This was a type of "informal discipline," one that McHugh had used many times previously. He stated his belief that such informal corrections are a better response to an infraction that does not merit formal discipline, such as this one. T-2 at 90, 91, 94. McHugh did not inform Nocito of the fact of, or the basis for, the informal discipline. He conceded at the hearing that he told no one at the time of his reasons for

taking Nocito “off the count” and did not include this information in his incident reports. T-2 at 102, 109-110; see also R-13.

McHugh disputed Woods’ recollection of the exchange between them regarding reassigning Nocito. He did not threaten Woods, but he did discuss the chain of command and reiterated what would happen to Woods if he did not follow McHugh’s order. If Woods had wanted to question the legitimacy of the order, he could have asked to speak to McHugh in private, but Woods did not do so. Though he later realized he treated Kminek inappropriately, and apologized to him on May 20, 2020, McHugh was trying to prove a point to Woods about the chain of command. He disputes that he raised his voice with anyone other than Woods.

McHugh identified the reports he wrote on May 25, 2020, after being contacted by Lt. Blango and Lt. Ptzinski of IA.⁶ (R-13.) They told McHugh about the reports filed by Nocito and Kminek, asked if he made the statements being attributed to him, and directed him to write the reports. McHugh stated that the information in the reports was true at the time and is still true, T-2 at 100, and agreed that he did not include information in either report regarding Nocito’s failure to comply with orders to turn down the loud music he was playing in Center Control. T-2 at 102.

While McHugh was the only witness not to use the term “light-hearted banter,” he did state that it was wrong for him to engage in casual conversation in Center Control, wrong to use the word “gay,” and wrong to use Kminek to make a point to Woods. T-2 at 95.

In the FNDA, BCJ states that McHugh’s actions “diminished authority and staff unity.” McHugh disagrees, as all officers are trained professionals and will not allow casual conversations or contact to get in the way of doing their jobs. Proof is that nothing bad occurred as a result and/or following the events of May 17, 2020.

In the FNDA, BCJ states that McHugh created a “discriminatory and hostile work environment.” Though he concedes that the use of the phrase “being gay” was inappropriate, McHugh disagrees that he created a discriminatory and hostile work environment as he only attributed “being gay” to rappers, not to any person who works at BCJ.

In the FNDA, BCJ states that McHugh's actions led to a “breakdown of discipline, control and security.” McHugh disagrees; preventing superior officers from using such informal discipline as he used on May 17, 2020, would lead to a greater breakdown of security.

With respect to the penalty proposed in the FNDA, McHugh stated that he should be disciplined for inappropriate treatment of Kminek, using the term “gay” in the workplace, and for engaging in banter with subordinates. This discipline, however, should not include a demotion from the rank of lieutenant to sergeant. McHugh has worked hard for his promotions and has received no major discipline in his eighteen-year career.

Edmond C. Cicchi (Cicchi) testified on behalf of appellant. He identified his resume, which details his professional experience and affiliations, and his educational background. (P-1.) Cicchi described his experience in law enforcement, including serving as deputy warden and warden at Middlesex County (New Jersey) Jail. In those positions, he was involved in all aspects of employee discipline and since retiring in 2013, Cicchi has been retained as an expert by public employers and employees and appears regularly in court. Over respondent's objection,⁷ Cicchi was accepted as an expert in county peneology and administration of county correctional facilities including employee discipline, with the limitation that Cicchi did not work in Burlington County during his law enforcement career.

⁶ Though the timeline is unclear, McHugh acknowledged receipt of a “target letter” and that he knew his rights and obligations and that he was the subject of an IA inquiry.

⁷ Specifically, respondent objected on the grounds that expert testimony is unnecessary in an OAL proceeding given the familiarity of most judges with the Civil Service Commission regulations and the merits of discipline. T-2 at 13.

Cicchi identified the report he wrote in this matter after being retained by appellant. (P-2.) To do so, he reviewed all documents supplied to him by appellant, and interviewed McHugh as to the events of May 17, 2020. His interview with McHugh was conducted by telephone; Cicchi stated that no one from the law firm retained by appellant participated, was present, or gave advice to McHugh during this interview. Cicchi did not interview Nocito, Woods, Kminek, Capt. Blango or Lt. Blango, though he stated that when performing assignments such as this one, he would “usually interview the relevant people that were involved in [the events that resulted in charges] as to what exactly happened[.]” T-2 at 16. Cicchi reached four separate conclusions:

1. Although there is some overlap in the versions of the events of May 17, 2020, Cicchi cannot establish what actually happened as there is no recording, and in his experience, he will only issue findings regarding a dispute over facts when there is audio or visual proof. Based on what he read and heard, Cicchi concludes that when McHugh used the word “gay,” he was not referring to anyone’s sexual preferences, though McHugh admitted to Cicchi that he called Nocito gay. It was a poor choice of words. The banter between officers of different ranks should not have occurred at all, but this was a one-time event and could be corrected without the imposition of major discipline.⁸
2. McHugh was the senior officer and therefore, was authorized to assign or reassign job duties to subordinates as he saw fit. Woods had the right to question an order but he should not have done so in front of Kminek. Cicchi ignored, or did not believe, Woods’ claim that McHugh gave this order to retaliate against Nocito.
3. McHugh acted unprofessionally toward, and showed disrespect to, Kminek. Cicchi has no reason to doubt Kminek’s report. There is no excuse for this

⁸ Given that Cicchi did not accept Nocito’s version of events, he termed the forty to fifty-minute episode as “banter” and while it should not have happened, Cicchi understands how it can happen in the jail, when those involved are “sitting in units for long periods of time.” T-2 at 20, 33.

behavior. McHugh should have taken Woods outside of Center Control for this discussion.

4. McHugh should be disciplined for the unprofessional discussion (the banter) with Nocito and the abusive treatment of Kminek, but this merits minor discipline and retraining, not major discipline. In reaching this conclusion, Cicchi considered McHugh's disciplinary record which includes no major discipline and no allegations of using language which is sexually or gender discriminatory or derogatory. While no one should speak to subordinates in a derogatory manner, in Civil Service, discipline is progressive and there was no progression used here.

Cicchi stated that to support a demotion, conduct must be egregious and such egregious conduct (of which Cicchi gave no examples) could support a demotion even if the employee's record is otherwise impeccable. Here, though, there is no proof in the disciplinary record that McHugh had ever been disciplined for ridiculing or harassing subordinates.

With respect to retraining, Cicchi stated that retraining, such as on new policies and "in employee relations and ways to handle supervision," should be conducted on a regular basis to ensure professional operations. T-2 at 33-34. He termed the two weeks McHugh spent shadowing senior officers on promotion to be inappropriate and inadequate. There is no way to ensure the senior officer in such a case is doing his job correctly. T-2 at 35. Cicchi noted that there are courses available on how to manage employees.

DISCUSSION AND FINDINGS

Based on the testimonial and documentary evidence, resolution of the disputed issues requires an evaluation of the varied accounts of the events of May 17, 2020, including a determination of credibility. Credibility is the value that a finder of the facts

gives to a witness' testimony. It requires an overall assessment of the witness' 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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

Nocito and Woods claim that what began as light-hearted banter between officers of different ranks devolved into close to an hour of verbal abuse of Nocito by McHugh, including accusations regarding Nocito's sexual orientation and sexual behavior in which Nocito routinely engaged (with another officer who was not present). On the other hand, McHugh claims that "light-hearted banter" characterizes all communications in Center Control on May 17, 2020, except for the multiple times he asked (possibly, ordered) Nocito to turn down the music, each of which request was ignored by Nocito. (Here too, McHugh likely would not term as "light-hearted" his later statements to Woods and Kminek.)

If Nocito's version of these events are true, McHugh's subsequent decision to reassign Nocito on his next scheduled work day could arguably have been a reaction to Nocito's attempt to stop the harassment by leaving Center Control and/or motivated by the same animus McHugh demonstrated in his verbal abuse of Nocito. If, however, McHugh's version of the events are true, his decision to reassign Nocito would more likely have been an informal form of discipline, meant to drive home the message that any lawful order by a superior officer, even one as simple as "turn down the music," must be followed.

Even McHugh's treatment of Kminek,⁹ which McHugh does not dispute,¹⁰ can be viewed in a different light if McHugh's version of the events is accepted. Rather than an

⁹ While it is noted that Kminek did not testify, the report he submitted to Administration on May 20, 2020, was introduced into evidence and does confirm Woods' description of the incident in which Kminek was involved. (R-12.)

example of McHugh treating another subordinate in a disrespectful and demoralizing manner, McHugh's orders to Kminek could be seen as an inartful attempt to show Woods what it means to follow orders. Woods' refusal to reassign Nocito also appears worse if Woods had not been witness to a "verbal tirade" directed at Nocito by McHugh. McHugh's statements to Woods are less a threat of retaliation for Woods' attempt to protect his subordinates and more arguably a reminder of the chain of command.

Further, Cicchi's conclusion that McHugh should only receive minor discipline in this matter is based on his disregard of the allegations made by Nocito and Woods. If Cicchi is wrong, and the behavior McHugh displayed on May 17, 2020, was "egregious," then Cicchi's conclusions bear little weight.

Therefore, the question is whether McHugh's version is credible, that but for Nocito playing his music too loudly, McHugh would not have given Nocito three orders that were ignored, would not have issued informal discipline to Nocito, would not have argued about the use of this discipline with Woods, and would not have used Kminek to show Woods the difference between subordinates who do and do not follow direct orders. For three reasons, I **FIND** that here, McHugh is not credible.

First, if McHugh's version were true, he had great incentive to give his side of the story from the beginning. In his exchange with Woods, McHugh does not accuse Nocito of not following orders and, according to Woods, McHugh accuses Woods of not following orders. In his reports to IA, McHugh does not state that Nocito took advantage of light-hearted banter to keep his music on so loud that it was distracting to his superior officer. There is no mention of his dispute with Nocito over the music in either of the reports McHugh wrote on May 25, 2020. (R-13.) In his departmental hearing, McHugh does not defend his treatment of Woods and Kminek by explaining that Nocito was not following orders and everything that followed was a form of informal

¹⁰ To be clear, though, McHugh claims he did not raise his voice at Kminek and Kminek uses the word "screamed" twice when describing the tenor of McHugh's voice when giving him the "stand up" order. (R-12.)

discipline. It is also troubling that Woods did not even recall that music was playing in Center Control that morning.

Second, McHugh's failure to inform Nocito of the basis for his reassignment makes it hard to understand just how this informal discipline could do any good. At the hearing, McHugh described the informal discipline he used with other subordinates as "counseling." T-2 at 89. Specifically, he stated: "If they did something wrong I would speak to them and explain to them why and explain to them how to do it properly without engaging in any kind of formal discipline." Ibid. No one testified that an informal disciplinary tactic used at BCJ is to require an officer who was taken off a plumb assignment to figure out why on his or her own.

Finally, Nocito had no incentive to make up such an elaborate story on May 17, 2020, and file a report on the alleged incident three days later. No one disputes that Nocito had left Center Control before he knew that his assignment on May 20, 2020, would be changed. Woods and Kminek had no incentive to sign on to Nocito's made-up story, share it with other officers on May 17, 2020, and file reports three days later confirming the story. And, if Nocito and Woods [and Kminek] were going to make up a story, it seems especially risky of them to involve Williams, who was not present and might be interested in checking the stories of everyone who was present.

The only one who changed his story after May 20, 2020 is McHugh.

I FIND the following additional **FACTS**:

1. On May 17, 2020, while serving as the superior officer at the BCJ, McHugh engaged in casual conversation with his subordinates, including discussion of music which Nocito was playing on his computer and/or radio.

2. McHugh made discriminatory, berating, degrading and harassing statements to Nocito regarding his taste in music and clothing and regarding his relationship with Williams.
3. McHugh told Cicchi that he called Nocito "gay." Though he said otherwise at the hearing, McHugh's repeated statements that Nocito and Williams engaged in specific sexual contact is another, rather inartful, way of calling Nocito gay.
4. McHugh continued to make discriminatory and degrading statements to Nocito for approximately thirty to forty-five minutes, despite being asked by Nocito to stop.
5. McHugh did not stop until Nocito left his post in Center Command for a short break.
6. After Nocito left, McHugh ordered Woods to change Nocito's assignment on his next scheduled work day. This action by McHugh was an attempt to reassign, disrespect, demoralize and/or embarrass the target (Nocito) of his remarks.
7. Woods challenged the order to reassign Nocito at the time it was given; Woods did not discuss his objections to this order with McHugh privately.
8. At the hearing, McHugh described this reassignment of Nocito as a form of "informal discipline," but at the time, he did not discuss this informal discipline in any way with any person, including with Nocito and/or Woods.
9. McHugh spoke to Kminek in a disrespectful, demoralizing, and embarrassing manner with no justification.
10. The investigation of the BCJ of the May 17, 2020, incident was conducted consistent with BCJ policies and followed some, but not all of the Attorney

General Guidelines. The Attorney General Guidelines were not mandatory as of May 2020. Appellant presented no documentary evidence or testimony otherwise.

LEGAL ANALYSIS AND DISCUSSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 ("Act"), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). The Act also recognizes that the public policy of this state is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is protected by the Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment, including conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), and for other sufficient cause, which may include failure to obey laws, rules and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12). Major discipline for such an infraction may include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a).

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. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); 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). An appeal requires the OAL to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216

N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

Conduct Unbecoming a Public Employee

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. "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. 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).

McHugh's status as a county correctional officer subjects him to a higher standard of conduct than ordinary public employees because when corrections officers fail in their duties, they may imperil others. Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). 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. 317 (App. Div. 1967). Strict discipline of corrections officers is necessary for the safety and security of other corrections officers and the inmates in their charge. Henry, 81 N.J. at 578. As the Appellate Division explained, this higher standard of conduct and behavior is necessary because:

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become "tinderboxes."

[Bowden v. Bayside State Prison, 268 N.J.Super. 301, 306 (App.Div. 1993), certif. denied, 135 N.J. 469 (1994).]

Appellant's conduct on May 17, 2020, when he permitted "light-hearted banter" among colleagues of different rank to devolve into his persistent, derogatory, discriminatory, and harassing comments directed at a subordinate, falls under the purview of conduct unbecoming a public employee under N.J.A.C. 4A:2.3(a)(6). Given that the conduct took place in Center Control, away from the general public and the jail population, it is arguable that this conduct would not "destroy public respect in the delivery of governmental services." But, the language McHugh used with Nocito and his disparaging and humiliating treatment of Kminek could adversely affect the morale or efficiency of a governmental unit. Even if McHugh's treatment of Kminek is considered in the best possible light as an attempt by McHugh to illustrate good behavior, it was still unprofessional, inappropriate and has no place in a correctional setting. I **CONCLUDE** that respondent has met its burden of proving that appellant's actions on May 17, 2020, were conduct unbecoming a public employee in violation of N.J.A.C. 4A:2.3(a)(6).¹¹

Other Sufficient Cause

¹¹ See Appellant's Written Closing Statement, (December 17, 2021), at 36-37.

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined as all other offense caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when “[r]espondent has not given any substance to the allegation.” Simmons v. City of Newark, CSV 09122-99, Initial Decision (February 22, 2006), <https://njlaw.rutgers.edu/collections/oal/>.

In this regard, respondent contends that appellant violated DOC Manual, Sections 1001, 1020, 1021, 1036, 1038, 1147 and 1148, each of which is discussed in turn below.

Section 1001 provides:

In order that all persons committed to our jails be made aware that they must conform to all existing policies, rules and regulations, staff unity is necessary. Under no circumstances should any officer or employee make disparaging remarks about other employees at any time. This behavior diminishes unified authority and can often contribute to a breakdown of discipline, control and the security of the institution. The maintenance of proper discipline is of vital importance in the proper administration this jail and must never be a personal issue.

[R-4.]

I **CONCLUDE** that by the disparaging remarks made to Nocito on May 17, 2020, McHugh violated DOC Manual, Section 1001.

Sections 1020 and 1021, from the DOC Manual provide, in pertinent part:

A superior officer shall set an example, act as a role model and trainer, display good leadership and apply superior managerial talents while performing supervision that further

promotes the training and development of good correctional skills in all subordinates.

All officers shall be responsible to conduct themselves in the utmost professional manner at all times in representation of the jail administration.

[P-6.]

McHugh's actions on May 17, 2020, toward both Nocito and Kminek failed to display appropriate leadership qualities and were unprofessional. I **CONCLUDE** that McHugh violated DOC Manual, Sections 1020 and 1021.

Section 1136 of the DOC Manual provides:

No officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the department.

[P-6.]

McHugh admits that, at least with respect to his interaction with Kminek, he was obligated to apologize and behaved in a manner not fitting for a superior officer. I **CONCLUDE** that McHugh violated DOC Manual, Section 1136, by his actions toward both Kminek and Nocito on May 17, 2020.

Section 1036 of the DOC Manual provides, in pertinent part:

All officers and employees shall be courteous, civil and respectful to their superiors, subordinates, and all other individuals they may have contact with. An officer shall promote professionalism at all times and shall be orderly, maintain decorum, control temper, be patient, and use discretion.

NO OFFICER SHALL:

A. Engage in threatening or assaultive conduct at any times, nor

B. Direct language or conduct in insulting or disrespectful manner.

The language McHugh used with Nocito, his subordinate, on May 17, 2020, was insulting and disrespectful. His behavior toward both Nocito and Kminek showed an absence of discretion. I **CONCLUDE** that as a result, McHugh violated DOC Manual, Section 1036.

Section 1147 of the DOC Manual provides, in pertinent part:

No employee shall intimidate, threaten, ridicule, mock, deride or belittle any person.

Employees shall not make offensive or derogatory comments, either directly or indirectly to any other person. Employees shall not make offensive comments at any time directly or indirectly based on race, color, gender, religion, ethnicity, physical disability or sexual orientation. Such harassment is a prohibited form of discrimination under State and Federal Employment Law and is considered misconduct subject to disciplinary action by this department.

[P-7.]

The statements McHugh made directly to Nocito were ridiculing, offensive, and derogatory. Some of the comments were offensive and directly based on Nocito's alleged sexual orientation (though there was no evidence regarding Nocito's actual sexual orientation). I **CONCLUDE** that by his statements to Nocito on May 17, 2020, McHugh violated DOC Manual, Section 1147.

Section 1148 of the DOC Manual is the prohibition on workplace violence, which states, in part, that "threats or acts of violence, including intimidation, harassment, and/or coercion which involve or affect county employees or which occur on county property will not be tolerated." A violation of Section 1148 is considered "conduct unbecoming a public employee." Here, appellant argues that nothing McHugh said or did on May 17, 2020 rises to the level of the following activities, which are prohibited by

this policy: (1) Workplace Violence; (2) Intimidation; (3) Threat; (4) Physical Attack; (5) Domestic Violence; and (6) Property Damage. (R-15, at 2.)

Further, appellant notes that Section 1147, quoted above, is the BCJ policy prohibiting harassment in the workplace. Appellant's Written Closing Statement, (December 17, 2021) at 33. The word "harassment" is included in the policy statement of Section 1148, but is not specifically defined, but each of the other terms listed above is defined. (R-15.) Upon review of the DOC Manual, Section 1148, I agree with appellant that this prohibition appears to apply to violent behavior both in and outside of the workplace. I **CONCLUDE** that respondent provided insufficient evidence that appellant violated DOC Manual, Section 1148.

Penalty

In West New York v. Bock, 38 N.J. 500, 522 (1962), the New Jersey Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations, and the like on one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. at 523-24.

"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). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 205 (App. Div. 1993), certif.

denied, 135 N.J. 469 (1994). The question to be resolved is whether the discipline imposed in this case is appropriate.

The appellant's prior disciplinary history includes five incidents which resulted in major discipline between December 27, 2005, and August 4, 2008. Since 2008, he has received minor discipline (letter of reprimand or counseling) six times. (J-1.)

Here, appellant is subject to major discipline for the violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause due to violations of the DOC Manual, Sections 1001, 1020, 1021, 1036, 1038, and 1147. Major discipline for such infractions may include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a). Respondent imposed a fourteen-working-day suspension upon appellant and demoted him from his position as County Correctional Police Lieutenant to County Correctional Police Sergeant, within the discretion permitted the employer as a result of these charges.

Appellant contends that the charges of other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12) due to the violations of DOC Manual, Sections 1001, 1020, 1021, 1036, 1038, and 1147, should be dismissed as lesser included charges under conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). He argues that "the same factual predicate underlies all the charges" brought against him and it "flies in the face of the notion of progressive discipline that the same factual predicate" can serve as the basis for his guilt under additional charges. Appellant's Closing, at 37. Respondent disagrees, stating that merging the charges is inappropriate "as there is violation of multiple policies" by all various action taken by McHugh. Respondent's Summation, at 11. The findings of fact and conclusions of law stated above will not be disturbed, but McHugh's guilt on lesser included charges may be considered in setting the penalty.

Appellant argues that the concept of progressive discipline does not support demotion of McHugh who, prior to the present matter, had not received major discipline for more than 12 years and who "has faithfully served the citizens of his County for 18+ years[.]" Appellant's Closing, at 42. Yet, as respondent notes, some conduct is so egregious, that a penalty should be imposed even when the employee has a "largely unblemished prior record." Respondent's Summation, at 11 (citations omitted). Though the incident lasted less than an hour, McHugh managed to insult and humiliate two subordinates and to rattle a third. While McHugh's concessions with respect to his behavior toward Kminek are commendable, that does not change that his explanation for the reason he mistreated and then informally disciplined Nocito is not credible.

Based upon a consideration of the totality of the evidence, and with due consideration of appellant's prior disciplinary record, I **CONCLUDE** that the penalty of a fourteen-day suspension and demotion from the rank of lieutenant to sergeant is reasonable, appropriate and consistent with the policy of progressive discipline.

ORDER

Respondent **Burlington County Jail** has proved by a preponderance of the credible evidence the following charges against appellant **McHugh** as contained in the FNDA dated June 30, 2020: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause due to the violations of the DOC Manual, Sections 1001, 1020, 1021, 1036, 1038, and 1147. Therefore, I **ORDER** that these that these charges be and are hereby **SUSTAINED**. Accordingly, I **ORDER** that the penalty of a fourteen-working-day suspension and demotion from the position of Correctional Police Lieutenant to Correctional Police Sergeant imposed for the charges 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.

January 3, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/nmn

APPENDIX

WITNESSES

For Appellant:

Ryan McHugh
Edward E. Cicchi

For Respondent:

Anthony Nocito
Gary Woods
Teechey Blango

LIST OF EXHIBITS

Joint:

- J-1 Preliminary Notice of Disciplinary Action, dated May 27, 2020
- J-2 Final Notice of Disciplinary Action, dated June 30, 2020
- J-3 Not introduced
- J-4 Manual of Rules and Regulations, Section 1000-1003, Effective January 1, 2004 with most recent revisions dated June 1, 2018
- J-5 Correction Lieutenant, Section I 005, Effective January 1, 2004 with most recent revisions dated June 1, 2018
- J-6 Agency Rules & Regulations, Sections 1012-1074, Effective January 1, 2004 with most recent revisions dated June 1, 2018
- J-7 Policies and Procedures, Harassment in the Workplace, Section 1147, Effective November 1, 2004 with most recent revisions dated June 1, 2018
- J-8 IA Memo from Lt. Blango to Warden Leith, dated May 27, 2020
- J-9 IA Report by Lt. Blango and Nicholas Ptaszanski, dated May 29, 2020
- J-10 Incident Report by Sgt. G. Woods, dated May 17, 2020

- J-11 Incident Report by A. Nocito, dated May 20, 2020
- J-12 Incident Report by G. Kminek, dated May 20, 2020
- J-13 Two Incident Reports by Lt. R. McHugh, dated May 25, 2020
- J-14 Resume of Edmond Cicchi
- J-15 Correspondence from E. Cicchi to S. Alterman and A. Murray, dated February 11, 2021

For petitioner:

- P-1 Resume of Edmond Cicchi
- P-2 Correspondence from E. Cicchi to S. Alterman and A. Murray, dated February 11, 2021

For respondent:

- R-1 Preliminary Notice of Disciplinary Action, dated May 27, 2020
- R-2 Final Notice of Disciplinary Action, dated June 30, 2020
- R-3 Not introduced
- R-4 Manual of Rules and Regulations, Section 1000-1003, Effective January 1, 2004 with most recent revisions dated June 1, 2018
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