



STATE OF NEW JERSEY

 :
 : FINAL ADMINISTRATIVE ACTION
 : OF THE
 : CIVIL SERVICE COMMISSION

 In the Matter of Brian Pio,
 Salem County Sheriff's Office

 CSC Docket No. 2020-2193
 OAL Docket No. CSR 07219-20
 (on remand from CSR 11423-19)

ISSUED: April 27, 2022

The appeal of Brian Pio, a County Correctional Police Officer with the Salem County Sheriff's Office, of his removal effective July 19, 2019, on charges, was heard on remand by Administrative Law Judge Jeffrey R. Wilson (ALJ), who rendered his initial decision on March 10, 2022. Exceptions were filed on behalf of the appellant.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 27, 2022, adopted the ALJ's Findings of Fact as set forth in the initial decision. Based on those findings, the Commission reaffirmed its January 15, 2020, decision modifying the appellant's removal to a six-month suspension. *See In the Matter of Brian Pio* (CSC, decided January 15, 2020) (*Pio I*).

DISCUSSION

The main issue in this matter is whether the additional evidence presented by the appointing authority was sufficient for the Commission to reconsider its reduction of the penalty in *Pio I*. In this regard, the Commission granted the appointing authority's request for reconsideration of *Pio I*, where it presented new evidence it purported to be germane to the penalty imposed on the appellant. *See In the Matter of Brian Pio* (CSC, decided July 29, 2020) (*Pio II*). In that determination, the Commission remanded the matter to the Office of Administrative Law (OAL) to allow the ALJ to conduct additional fact-finding on the new evidence.

At the OAL, and per *Pio II*, the ALJ permitted the testimony of two individuals who reported an allegation that a newly admitted inmate had made a threat against the appellant as he believed the appellant was racist based on the underlying incident from *Pio I*. The ALJ thereafter forwarded his findings to the Commission for review.

The Commission has thoroughly reviewed the ALJ's initial decision and finds that the new evidence does not change its opinion that the proper penalty for the appellant's infraction was a six-month suspension. The fact that one inmate may have somehow found out that the appellant had made racial comments, and thereafter, issued a verbal threat based on those comments, is insufficient to find that the originally imposed six-month suspension was inappropriate. In this regard, as indicated in *Pio I*, based on the appellant's minor disciplinary history as well as his more than 10 years of service, removal for the infraction was not appropriate. Specifically, the Commission stated that while the appellant's comments to the inmate "were completely inappropriate and are not condoned, it does not agree that they were so egregious as to warrant removal without following the tenets of progressive discipline. The Commission notes that the appellant was not in a supervisory role when speaking to his co-worker and the inappropriate comments were made in a singular incident. Further, the appellant apologized for his comments." While the new evidence certainly raises safety and security concerns, the appointing authority is equipped to deal with such inmate threats for myriad allegations, and that evidence by itself does not disqualify the appellant from employment nor place him or the facility in such a tenuous position as to call for his removal absent the actual misconduct calling for that penalty. Moreover, along with the reduced penalty, the Commission ordered the appellant to undergo diversity training. Per the unrefuted exceptions in this matter, he has completed that training and there have been no further incidents for the approximately 18 months since the appellant's reinstatement. Finally, as indicated in *Pio I*, the Commission recognizes that appellant's conduct is unacceptable and emphasizes that, in imposing a six-month suspension, the most severe penalty permitted in lieu of removal, it is not acting to minimize the seriousness of the offense. The Commission is mindful that this penalty should serve as a warning to the appellant that future offenses may result in his removal from employment.

ORDER

The Civil Service Commission reaffirms its January 15, 2020, determination that the appointing authority's action in removing the appellant was not justified. Therefore, the Commission modifies the removal to a six-month suspension.

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 27TH DAY OF APRIL, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. CSR 07219-20

AGENCY DKT. NO. 2020-2193

(On Remand of CSR 11423-19)

**IN THE MATTER OF BRIAN PIO
SALEM COUNTY, SHERIFF'S OFFICE.**

Christopher A. Gray, Esq., for appellant, Brian Pio (Sciarra & Catrambone, L.L.C., attorneys)

Joseph DiNicola, Jr., Esq., for respondent, Salem County (Sheriff's Office), DiNicola and DiNicola, L.L.C., attorneys)

Record Closed: March 9, 2022

Decided: March 10, 2022

BEFORE **JEFFREY R. WILSON, ALJ**:

STATEMENT OF THE CASE / PROCEDURAL HISTORY

Appellant, Brian Pio, (Pio), a Corrections Officer, (CO), appealed his removal, effective July 19, 2019, for conduct unbecoming a public employee and for violating Salem County Correctional Facility (SCCF) Rules and Regulations. The respondent, Salem County, alleged that on April 8, 2019, the appellant made harassing, racial comments to another CO.

The appellant filed a timely appeal of the removal and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL, where it

was filed on July 23, 2019, and deemed defective because it did not include the Final Notice of Disciplinary Action (FNDA). On August 12, 2019, the FNDA was received and the appeal was deemed perfected, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13.

Oral argument on motions in limine were heard telephonically and decided on September 24, 2019, September 27, 2019, October 1, 2019, and October 15, 2019. The fair hearing commenced on October 3, 2019, and continued on October 8, 2019, and October 16, 2019. The hearing concluded on October 17, 2019, and the record closed. The respondent filed a motion for reconsideration that was heard and denied telephonically and off the record, on October 29, 2019. The undersigned ALJ issued the initial decision on December 2, 2019.

In the initial decision this ALJ determined that the respondent met its burden of proof with regard to all charges. In determining the penalty, this ALJ concluded that the appellant's actions were so egregious as to justify removal. This ALJ indicated that the appellant's racially charged statements and his evasiveness to the investigator adversely affected morale and would tend to destroy public respect for the delivery of government services.

Upon its de novo review of the record, the Civil Service Commission (Commission) agreed with this ALJ's determination regarding the charges but did not agree with the recommendation to uphold removal. Accordingly, the Commission imposed a six-month suspension and ordered the appellant to attend diversity training. (J-3.)

The respondent petitioned the Commission for reconsideration of its decision, which modified this ALJ's initial decision. (J-1.) In its request for reconsideration, the respondent proffered that there is new information that the Commission did not consider that would make it apparent that removal should be upheld. Specifically, the respondent presents an incident report prepared by Richard Langley, (Langley), County Correctional Police Officer, signed on October 14, 2019, the date of the incident.

The Commission now finds it appropriate to remand this matter to the OAL for additional factfinding surrounding Langley's incident report. The respondent should be provided the opportunity to offer competent evidence and to call witnesses to testify about the incident or verify the incident report. Further, the appellant will be permitted to offer evidence or testimony in rebuttal of the evidence or testimony presented by the respondent. In its remand order, issued July 31, 2020, the Commission noted that after the additional proceedings at the OAL are complete, the Commission will be in a position to determine whether it should reconsider Pio's disciplinary penalty. (J-1.)

The matter was heard on March 2, 2022. The record closed on March 9, 2022, upon receipt of the USB drive containing Exhibit P-1.

FACTUAL DISCUSSION AND FINDINGS

The following facts of this case are not in dispute; therefore, I **FIND** as **FACT**:

1. Richard Langley (Langley) has been employed as a CO at the SCCF, since 2005.
2. On October 14, 2019, Langley was working in the booking unit. Sometime, during his shift, Langley received a new admission, by the name of Christopher Hill (Hill). Langley was familiar with Hill from prior bookings.
3. Langley prepared an incident report (R-1), detailing his discourse with Hill. He dated the incident report October 14, 2019, but is not sure of the actual date he prepared the report. He was directed to prepare the report by his superiors.
4. Aside from preparing an incident report, Langley took no other action relative to the incident with Hill.
5. Christopher Simmermon (Simmermon) is employed as an investigator by the Salem County Sheriff's Office.

6. Simmermon was directed by the warden to conduct an investigation into the October 14, 2019, incident involving Langley and Hill.
7. Simmermon interviewed Langley on August 3, 2020, and Hill on August 5, 2020. Both interviews were audio recorded.
8. Simmermon prepared a supplemental Internal Affairs investigation report (R-2), detailing his interviews.
9. Aside from preparing his report and conducting the interviews with Langley and Hill, Simmermon took no further action relative to the incident of October 14, 2019.
10. The audio recording of Simmermon's interview with Hill was played into the record and entered into evidence, with no objection, as (P-1.)

Testimony

Langley testified on behalf of the respondent. On October 14, 2019, while processing Hill in the booking unit, Hill asked Langley if he knew where the racist officer was that said someone cannot work in booking. Hill thought the officer's name was Pio and remarked that Pio needs to be punched in the face.

Langley was alarmed by Hill's query. He interpreted Hill's statements as a threat to be taken seriously, especially in the prison environment. Langley was aware that Pio worked in the SSCF but was off at that time. Langley was concerned not only for Pio, but for the reaction from other inmates that may lead to inmate assaults upon correction officers.

Langley first reported the incident to the deputy warden. He did not contact Pio after the incident because it was an active investigation. The facility's administration was to take any/all investigative action.

Langley was acquainted with Pio through their employment at the SSCF. Langley is a member and vice president of the Fraternal Order of Police. Pio is associated with the Police Benevolent Association. He has had no negative contacts with Pio and harbors no ill will against him.

On cross examination, Langley denied he provided Pio's name to Hill, on October 14, 2019. He also denied he told Hill that what Pio did was "f****d up." Langley clarified that Hill stated, "He (Pio) needs to be punched in the face." Hill did not specify who should do the punching.

Sometime after reporting the incident to his superiors, Langley was directed to complete an incident report. He could not recall the actual date he completed the report, but he agreed the incident report was signed off by his superiors on October 28, 2019. Langley was not aware if the facility's administration, or any other entity, filed charges against Hill.

Simmermon testified on behalf of the respondent. In August 2020, he was provided Langley's incident report and directed to investigate the October 14, 2019, incident. On August 3, 2020, Simmermon and Investigator Acton interviewed Langley. Langley's responses to the investigators' questions were consistent with his incident report. The interview was audio recorded and Langley's interview was further memorialized in Simmermon's supplemental Internal Affairs investigation report.

On August 5, 2020, Simmermon and Investigator Acton interviewed Hill at the Penns Grove Police Department. They confirmed Hill's identification through information gleaned from his Inmate Commitment Summary. Hill's interview was audio recorded and further memorialized in Simmermon's supplemental Internal Affairs investigation report. Hill denied all information contained in Langley's incident report.

Aside from preparing his report and conducting the interviews with Langley and Hill, Simmermon took no further action relative to the incident of October 14, 2019. He was not aware if the facility's administration, or any other entity, filed charges against Hill.

Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In-re Estate of Perrone, 5 N.J. 514 (1950.) The court pronounced:

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.

[5 N.J. at 522.]

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, 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.)

Having considered the testimonial and documentary evidence presented, I accept the testimony offered by Langley and Simmermon to be very credible. Their demeanor while testifying was measured and free of any magnification or histrionics. All testimony presented by these two gentlemen was consistent with and corroborated by the documentary evidence. They had no ulterior motive to testify. As there is no real dispute as to their account of the incidents at hand, their testimony in that regard is **FOUND as FACT.**

CONCLUSION

N.J.A.C. 1:1-18.7 reads in pertinent part:

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further

action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered

(b) The judge shall hear the remanded matter and render an initial decision.

Here, the Commission remanded this matter to the OAL for additional factfinding surrounding Langley's incident report. The respondent was to be provided the opportunity to offer competent evidence and to call witnesses to testify about the incident and verify the incident report. Further, the appellant was to be permitted to offer evidence or testimony in rebuttal of the evidence or testimony presented by the respondent. In its remand order, issued July 31, 2020, the Commission noted that after the additional proceedings at the OAL are complete, the Commission will be in a position to determine whether it should reconsider Pio's disciplinary penalty.

Here, the respondent presented two witness that testified about the subject incident and verified the October 14, 2019, incident report. The petitioner did not present any witnesses in rebuttal of the evidence or testimony presented by the respondent. All proposed exhibits were entered into evidence either jointly or without objection. Accordingly, I **CONCLUDE** the additional factfinding directed by the Commission has been completed.

ORDER

Having completed the additional factfinding surrounding Langley's incident report, as directed by the Commission, I hereby **ORDER** that this matter be returned to the Commission for the action deemed appropriate.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision

within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



March 10, 2022
DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JRW/gd/tat

APPENDIX
WITNESSES

For Appellant

None

For Respondent

Richard Langley
Christopher Simmermon

EXHIBITS

Joint Exhibits

- J-1 Remand Order, issued July 31, 2020
- J-2 Request for Stay Order, issued November 6, 2020
- J-3 Decision of the Civil Service Commission, issued January 29, 2020
- J-4 Civil Service Commission letter, dated January 15, 2020
- J-5 Pio- Culture Sensitivity Training, dated of service June 15 and 22, 2020

For Appellant:

- P-1 USB Drive - Interview of Christopher Hill, recorded August 5, 2020

For Respondent:

- R-1 Salem County Correctional Facility Operation/Incident Report, date of incident, October 14, 2019
- R-2 Salem County Sheriff's Office Supplemental Internal Affairs Investigation Report