



STATE OF NEW JERSEY

 DECISION OF THE
 CIVIL SERVICE COMMISSION

In the Matter of Pavel Butrim,
 Hudson County, Department of
 Corrections

CSC DKT. NO. 2021-1514
 OAL DKT. NO. CSV 04325-21

ISSUED: AUGUST 24, 2022

The appeal of Pavel Butrim, County Correctional Police Officer, Hudson County, Department of Corrections, 60 working day suspension on charges, was heard by Administrative Law Judge Ernest M. Bongiovanni (ALJ), who rendered his initial decision on July 6, 2022. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting of August 24, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

Since the 60 working day suspension has been modified to a 30 working day suspension, the appellant is entitled to 30 days of mitigated back pay, benefits and seniority pursuant to *N.J.A.C. 4A:2-2.10*. However, he is not entitled to counsel fees. *N.J.A.C. 4A:2-2.12(a)* provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

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 are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified and modifies the 60 working day suspension to a 30 working day suspension. The Commission further orders that the appellant be granted 30 days of back pay, benefits, and seniority. 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. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay 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 AUGUST, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. CSV 04325-21

AGENCY REF. NO. 2021-1514

**IN THE MATTER OF PAVEL BUTRIM,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS.**

Arthur J. Murray, Esq., (Alterman and Associates, attorneys) for appellant

Donald Gardner, Esq., (Deputy County Counsel) for respondent

Record Closed: April 22, 2022

Decided: July 6, 2022

BEFORE ERNEST M. BONGIOVANNI, ALJ:

STATEMENT OF THE CASE

Pavel Butrim (Butrim or appellant) challenges the Final Notice of Disciplinary Action (FNDA) dated March 2, 2021, imposing a sixty-day working suspension for Incompetency, in violation of N.J.A.C. 4A:2-2.3 (1) Insubordination in violation of N.J.A.C. 4A:2.2-3(a)(2) Conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(6), Neglect of Duty, in violation of N.J.A.C. 4A:2-2.3(7) and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12), and for violating Hudson County Department of Corrections, Rules and Regulations, Chapter 3, Performance of Duties, 3.1 and 3:1.6 (e, f (Insubordination) and Chapter 5, Disciplinary Action 5:1.1 (b.d.)

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13 to the Office of Administrative Law, where it was filed on May 12, 2021.

The hearing was held on October 18, 2021, and October 28, 2021. Closing briefs were requested and transcripts ordered. The last closing brief permitted was filed April 22, 2022, at which time the record was closed.

ISSUES

From the evidence at the hearing, and as clearly stated in appellant's post-hearing brief, Butrim admits the charges of "Neglect of Duty" and "Conduct Unbecoming a Public Employee" (Appellant's post hearing brief, 7-9, citing Butrim's testimony.) However, he seeks dismissal of the charges of violating the Department's rules and regulations as they are, it is argued, lesser included offenses of the N.J.A.C. charges of "Conduct Unbecoming" and "Neglect of Duty." Further, Butrim claims there is no basis for the finding of "Incompetency." Moreover, he seeks dismissal of the charge of "Other Sufficient Cause" claiming that no substance, independent of the other N.J.A.C. charges and Hudson County Rules violations has been established by the evidence. Butrim seeks the imposition of a lesser penalty, suggesting that a 15-day suspension is adequate as the 60-day suspension allegedly violates principles of progressive discipline and is otherwise unduly harsh.

FACTUAL DISCUSSION AND FINDINGS

The following essential facts are virtually undisputed. On October 19, 2020, Butrim, a Hudson County corrections police officer for 16 years, was working as a "floater" at the Hudson County Jail, "C 500 West" sector. The most dangerous prisoners at the jail are housed there. As Pavel was new to the 6:00 a.m. to 2:00 p.m. day shift, he had no permanent station but was most frequently on duty in the kitchen area. On the date in question, Pavel was familiar with the C 500 West sector, or "tier."

having worked there 2-3 times in the previous six months. According to Butrim the only difference between this sector of the jail and others is that “anywhere they (prisoners) go, they are escorted by another officer.” As testified to by Captain Mark Yurecko, at the time, the jail was in a period of transition owing to COVID restrictions. For a while, the jail had been on lockdown 24/7. The jail was then transitioning to allow recreation periods once again for the inmates. Both Yurecko and Butrim testified that at the relevant time, in C500 West, prisoners from Tier 2 would be allowed recreation periods while prisoners from Tier 1 were locked in, and vice versa. The only exception would be prisoners who had gained reputations for reliability and were used for assistance at mealtime and cleaning up. They might go from one Tier to the other without escort. It is unquestioned, however, that prisoners from one cell are not permitted to enter another cell, except for worker prisoners, deemed trustworthy enough to deliver meals, who are permitted to enter the cell for that limited purpose but only with a corrections officer close at hand escorting the worker prisoner.

Butrim acknowledged in his testimony that his responsibilities that day was “to monitor the daily activity for the floor.” On the date of the incidents during morning recreation time for prisoners on Tier 1, while Tier 2 was on lockdown, a prisoner from Tier 1 was allowed to slip into Cell 613 on Tier 2. That cell had two inmates, and entry by another prisoner was unquestionably not permitted. The unauthorized entry occurred while Butrim was in the control room. Yurecko and Butrim disagreed over whether corrections officers are allowed in the control room, where civilians are in charge of opening and closing doors to cells. Butrim claimed officers such as himself would go into the control room to make calls to the records room or library or to conduct “other business.” Whether Butrim was permitted in the control or not, as admitted by Butrim and as shown on the video, he entered the control room and was observed on the video talking. At about 8:27 a.m., after seeing a prisoner requesting to be let into cell 613, Butrim physically pushed the button to allow the cell door to 613 to open. However, instead of continuing to watch the prisoner, as shown on the video, the prisoner watched the control room for a few moments and slipped in through the open door before the automated door closed behind him. As admitted under oath by Butrim:

One of the inmates, which I thought was an [inmate] worker asked me to [allow him] to pass the food-some food to-to another person in the cell six thirteen, which I did allow to happen. Which I should have been more cautious and should have investigated more if he was a worker or not.

It was undisputed that for no reason was a prisoner, including designated tier workers, prisoners who are deemed trustworthy and allowed to do such activities as cleaning assisting in meals and barbering- not assigned to a particular cell be allowed to even enter that cell unless closely monitored by a corrections officer at his side. Notwithstanding this prohibition, Butrim caused the automated door to unlock allowing the unescorted inmate to enter and remain in 613.

The incident was captured on videotape. Butrim having been assigned to "Charlie 500 West ("Charlie" denotes "C" vector or wing) was "responsible for the safety and security of all inmates on the tier." Instead of watching the prisoner and to preventing such unpermitted fraternizing, Butrim ignored the danger of the prisoner's unauthorized entry into Cell # 613. Although Butrim claimed he thought the prisoner who entered the cell might have been a permitted "feeder" bringing a coffee or a meal to an inmate, he admitted that he gave permission for the automated door to be opened (R-9) which allowed the prisoner to enter the cell. On cross examination, Butrim admitted he didn't notice the prisoner slip into 613 because after pressing the button to allow the door to open he continued in conversation with another person in the control room. He also didn't make any note of what happened, in approximately the next 20 minutes, to the prisoner he failed to notice had snuck into cell 613, he just assumed "that he had went back downstairs."

About twenty minutes after allowing the unauthorized entry into cell 613, as testified to by Butrim and verified by a fellow officer Jordan's incident report (R- 13) Butrim allowed cell door 613 to be reopened again, with no officer standing nearby. The unauthorized prisoner than ran out of cell 613 and was chased by another prisoner from that cell and a fight ensued. According to Butrim 10 to 12 officers and several supervisors responded to the fight and OC spray had to be used to stop it. One inmate received an injury above the eye which Butrim believed came from a punch, but which

Captain Yurecko called a puncture wound to the face such as might be caused by a sharpened toothbrush used as a weapon.

Butrim's testimony admitted it was improper for him to permit the automatic door release from Tier 1's control room, without another corrections officer standing close by to the cell door monitoring the action: "I should have been standing by the cell, that would have been more proper for me doing the—the correct way." He further acknowledged that letting the unauthorized prisoner enter cell 613 violated Hudson County policy.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 governs a civil service employee's rights and duties. The act is an important inducement to attract qualified personnel to public service. It is to be liberally constructed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1 N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972) Mastrobattista v. Essex County Park Comm'n., 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of New Jersey is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2 (b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

The public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); Polk, 90 N.J. 550. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro Bottling Co., 26

N.J. 263 (1958). Therefore, the judge must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” Jackson v. Del Lackawanna and W.R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Preponderance may be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

The Charges of incompetency, Insubordination, Conduct Unbecoming and Neglect of duty were overwhelmingly proven by Butrim’s grossly negligent conduct, and his testimony reenforced his rather lackadaisical approach to his position. At one point he suggested a possible excuse for his actions by testifying that all prisoners in the jail have “rights” and are “innocent until proven guilty,” (which begs the questions as to whether all prisoners there are just being held until trial or transfer to another court, which would be strange, as most jails have some prisoners who are serving sentences and have been found (or pled guilty.). Beside that, Butrim didn't seem to know very much about his job and attempted to minimize his conduct by relying on the lack of written procedures at the jail during the height of COVID. I found his testimony on such points to be implausible, and when added to his blithely ignoring the essential rules of guarding these prisoners, his actions constituted Insubordination.

Butrim was recently assigned to “Charlie 500 West” (“Charlie” denotes “C” vector or wing) where the most dangerous prisoners at the jail were housed, was “responsible for the safety and security of all inmates on the tier.” Instead of closely watching the prisoner and to preventing unpermitted fraternizing, Butrim ignored the danger of the prisoner’s unauthorized entry into Cell # 613. Although Butrim claimed he thought the prisoner who entered the cell might have been a permitted “feeder” bringing a coffee or a meal to an inmate, he admitted that he gave permission for the automated door to be opened (R-9) which allowed the prisoner to enter the cell. On cross examination, Butrim admitted he didn’t notice the prisoner slip into 613 because after pressing the button to allow the door to open he continued in conversation with another person in the control room. He also didn’t make any note of what happened, in approximately the next 20 minutes, to the prisoner he failed to notice had snuck into cell 613, he just

assumed "that he had went back downstairs." As a rebuttal witness, Captain Yurecko testified that the only reason Butrim should have been in the control room at all would be to "notify a com operator or an officer of something-have something check on a floor card or make phone calls," but from his review of the videos Butrim was simply engaging in conversation with employees within the control room and not performing these tasks which are permitted in the control room. I found Captain Yurecko to be credible, here and throughout his testimony.

Here, appellant in his testimony and in summation admits his conduct constituted of neglect of duty, and conduct unbecoming a public employee. To that I have also found Butrim to be insubordinate, and I now also find his conduct on the date in question was incompetent and I sustain that charge. I need not detail further why such a finding was established other than to point out, it is clear from the great preponderance of the evidence that the facts support no other possible finding but guilt as to those charges. Whether through sheer laziness, inattentiveness or possibly even reckless disregard of his duties, there is no doubt that in violation of clear policy, Butrim endangered prisoners and employees alike by ordering cell door 613 to be opened to allow an unauthorized prisoner into another prisoner's cell, then ordering it open again, without a guard closely attending to the door. This allowed the prisoner to come and go as he pleased and as correctly cited by the Department, either the prisoners already knew they could get away with such conduct because of their observations of Butrim beforehand or certainly could have formed such an opinion after it happened. This encourages defiant behavior by other prisoners which presents a further danger to Butrim's fellow officers and employees. Although appellant was silent during the hearing and in his post hearing argument on the issue of the finding of Insubordination, I find that for the same reasons, the described conduct by Butrim constituted insubordination. From his testimony, Butrim indicated a rather blithe attitude toward practices within the institution and disputed what the practices were if there was no written policy in place. He seemed to indicate he was more tolerant of what prisoners are allowed to do, and argued he was not negligent notwithstanding those prisoners were not following certain protocols on his watch because they are "innocent until proven guilty." Apparently, this belief also led Butrim to tend to ignore or negate mask

and other COVID protocol. Butrim also ignored the reasons why he was supposed to be in the control room and seemed to use it for the purpose of making conversation with the civilian employees in the room.

I cannot agree with appellant's imaginative argument, that such conduct, in violation of the Departments Rules and Regulations for the Custody Staff is prohibited for consideration of disciplinary action because the conduct constitutes "lesser include offenses" of conduct unbecoming a public employee, and neglect of duty, offenses to which Butrim has now pleaded guilty. The sole case cited by appellant in support of this argument, I/M/O Stephen Cesare, (further citation omitted) was undoubtedly mere dicta as reading the entire opinion, attached to appellant's post hearing brief, clearly shows. As noted in the "Conclusion" section of the Initial Decision, pages 9-11, the Administrative Law Judge dismissed charges against a corrections officer of insubordination through improper unauthorized contact with an inmate and undue familiarity with an inmate, *not* because they were "lesser included offenses" of conduct unbecoming and other sufficient causes, charges which the ALJ sustained, but due to lack of evidence. Therefore, this rather paltry precedent cited is no precedent at all. Accordingly, Butrim is guilty of violating Hudson County Department of Corrections, Rules and Regulations, Chapter 3, Performance of Duties, 3.1 and 3:1.6 (e, f (Insubordination) and Chapter 5, Disciplinary Action 5:1.1 (b.d.), notwithstanding that the same conduct can support the findings regarding the NJAC regulations.

Finally, Butrim was charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Other sufficient cause has been described as any other conduct, not delineated within the regulation, which would "violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Boyd, Cumberland County Dept of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final decision, 2019 N.J. CSC Lexis 621. "Other sufficient cause" is thus conduct otherwise not listed within the eleven causes cited in N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline. 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/>. N.J.A.C. 4A:2-2.3(a)(12) does not define "other sufficient cause", but this phrase has been interpreted to mean violations of rules, regulations, policies and procedures such as Post Orders. In re Calio, 2018 N.J. Super. Unpub. LEXIS 2706. Thus, violations of departmental rules and regulations which may not specifically meet any other NJAC criterion for major disciplinary action has been interpreted as justifying a finding of "other sufficient cause". See e.g., I/M/O Samantha Becker, NJ State Judiciary Gloucester/Cumberland, Salem Vicinage, CSV 02695-20, decided April 4, 2022, which determined that findings the employee committed acts in violation of Canons 1, 2 3 and 4 of the Judiciary Code of Conduct constitute other sufficient cause.

However, I cannot find Butrim guilty of "Other sufficient Causes." N.J.A.C. 4A:2-2.3(a)(12) because there has been no substance to any allegation *independent* of the described actions or inactions by Butrim that lead to the findings that he is specifically guilty of (e.g., Neglect of Duty.) In other words, there was no independent basis established for the "other sufficient causes" charge beyond the same actions of inaction by which the remainder of the charges against Butrim, which are now sustained.

Accordingly, I **CONCLUDE** by the preponderance of the credible evidence that Butrim is guilty of the N.J.A.C. cited violations of Conduct Unbecoming a Public Employee, Neglect of Duty, Insubordination, and also of violation of Hudson County's Rules and Regulations Chapter 3, Performance of Duties, 3.1 and 3:1.6 (e, f (Insubordination) and Chapter 5, Disciplinary Action 5:1.1 (b.d.). As to the charge of Other Sufficient Causes, I **DISMISS** it for lack of evidence. I further **CONCLUDE** that the penalty of 30 working suspension is an appropriate penalty than the 60 days working suspension imposed. Butrim had no major disciplinary actions in a lengthy 16-year career. Further, I find it a mitigating factor that Butrim was new to this particular working shift, and was working in an extraordinarily difficult time under emergency conditions where the prison rules might be modified frequently. Finally, unlike respondent, I have dismissed the "Other Sufficient Cause" charge.

ORDER

It is hereby **ORDERED** that the findings of Incompetency, a violation of N.J.A.C. 4A:2-2.3 (1), Insubordination, in violation of N.J.A.C. 4A:2.2-3(a)(2) Conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(6), Neglect of Duty, in violation of N.J.A.C. 4A:2-2.3(7) and for violating Hudson County Department of Corrections, Rules and Regulations, Chapter 3, Performance of Duties, 3.1 and 3:1.6 (e, f) (Insubordination) and Chapter 5, Disciplinary Action 5:1.1 (b.d.) of Incompetency, are **AFFIRMED** and the charges **SUSTAINED**. The penalty of 60 working days suspension is **MODIFIED** to 30 working days suspension.

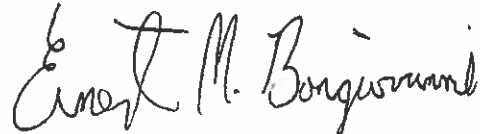
It is further **ORDERED** that the finding of Other Sufficient Cause is **REVERSED**, and that charge is **DISMISSED**.

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**, who 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, 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.

July 6, 2022



DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

07/06/22

Date Mailed to Parties:

07/06/22

id

APPENDIX

LIST OF WITNESSES

For Appellant

Corrections Officer Pavel Butrim

For Respondent

Captain Mark Yurecko

LIST OF EXHIBITS IN EVIDENCE

For Appellant

None

For Respondent

- R-1 Notice of Immediate Suspension, dated November 11/09/20
- R-1(a) Preliminary Notice of Disciplinary Action, dated 11/10/20
- R-1(b) Notice of Violations
- R-2(a) Disciplinary Action and recommendation for a hearing, dated 10/26/20
- R-2(b) and R-2(c) Disciplinary Action, and recommendations continued,
- R-3 Training and Compliance Policy, revised date 7/23/19
- R-4 Duties and responsibilities of the Housing Unit Officer
- R-5(a) through R-(d) Charges and definitions of charges
- R-6 Temporary Recreation Schedule Charlie 500 West
- R-7(a) and R- 7(b) Memorandum by Captain Yurecko, dated 10/23/20
- R-8 Incident report, by Officer Thomas Young, dated 10/23/20
- R-9 Supplemental Incident Report by Pavel Butrim, dated 10/22/20
- R-10 Incident report by Pavel Butrim, dated 10/19/20
- R-11 Incident Report by Com/op D. Jordan, dated 10/19/20

R-12(a)FNDA, dated 3/2/21

R-12(b) FNDA, (continued)

R-13(a) DVD recording of C 500 West from four camera angles.