



**STATE OF NEW JERSEY**

In the Matter of Maurice Jackson  
 Central Reception and Assignment  
 Facility, Department of Corrections

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

CSC DKT. NO. 2020-834  
 OAL DKT. NO. CSR 14204-19

**ISSUED: MAY 3, 2023**

The appeal of Maurice Jackson, Correctional Police Sergeant, Central Reception and Assignment Facility, Department of Corrections, removal, effective September 12, 2019, on charges, was heard by Administrative Law Judge Dean J. Buono, who rendered his initial decision on March 29, 2023. Exceptions were filed by and on behalf of the appellant and replies were filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made a thorough and independent evaluation of the record, including the exceptions and replies, the Civil Service Commission (Commission), at its meeting on May 3, 2023, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision and his recommendation to uphold the removal.

As indicated above, in its *de novo* review of the record, the Commission reviewed the exceptions filed by the appellant and finds them unpersuasive. The Commission makes the following comments.

In his initial decision, regarding the penalty, the ALJ stated:

Here the appellant has been employed as a correction officer since 2001. The mitigating factors are nonexistent. The aggravating factors, however, are significant. Appellant has a disciplinary history that consists of two prior suspensions. (reference omitted). Here he used his

position as a corrections officer in order to gain favor with the Ewing Township police, cursed at the officers and used a homophobic slur to refer to one of the officers, in addition to kicking holes in the bathroom walls of the Ewing Township police station. Appellant does not dispute these facts.

Having weighed the aggravating and mitigating factors and the proofs presented, I **CONCLUDE** that appellant's misconduct was so egregious as to warrant removal, and respondent's action of removing the appellant from his position is appropriate. Appellant failed to adhere to the code of conduct, which applies while on and off duty. Appellant violated these rules of conduct and also failed to conduct himself in a manner required for the special position of trust he holds as a correction officer with police powers.

The Commission wholeheartedly agrees.

In this regard, similar to its assessment of the charges, the Commission's review of the penalty is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). This is especially true for supervisory law enforcement personnel.

Clearly, the appellant's egregious misconduct in this matter warrants removal from employment. While the appellant had been employed for a lengthy period of time, his actions in this matter fall well short of what is expected of a supervisory-level law enforcement employee and certainly are likely to undermine the public

trust. As such, the Commission finds the penalty of removal neither disproportionate to the offenses nor shocking to the conscious.

**ORDER**

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Maurice Jackson.

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 3<sup>RD</sup> DAY OF MAY, 2023



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Allison Chris Myers  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 14204-19

AGENCY DKT. NO. N/A

**IN THE MATTER OF MAURICE JACKSON,  
CENTRAL RECEPTION AND ASSIGNMENT  
FACILITY.**

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**Cedric Ashley, Esq.**, for appellant, Maurice Jackson (Ashley Law Firm, LLC, attorneys)

**Jana R. DiCosmo**, Deputy Attorney General, for respondent, Central Reception and Assignment Facility (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: February 24, 2023

Decided: March 29, 2023

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

**STATEMENT OF THE CASE**

Appellant, Maurice Jackson (Jackson), an employee of respondent, Department of Corrections Central Reception and Assignment Facility (DOC-CRAF), appeals from the determination of respondent that he be terminated for incidents that occurred on January 16, 2020. Respondent argues that he violated: N.J.S.A. 52:13d-23 - Uniform Ethics Code; N.J.A.C. 4A:2-2.3(a)(6) - conduct unbecoming; N.J.A.C. 4A:2-2.3(a)(12) -

other sufficient cause; Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; E-2 - intentional use or misuse of authority or position. The appellant denies the allegations and contends that he acted appropriately.

### **PROCEDURAL HISTORY**

On February 27, 2019, the DOC-CRAF issued a Preliminary Notice of Disciplinary Action removing appellant from his post. On September 12, 2019, the DOC-CRAF issued a Final Notice of Disciplinary Action sustaining the charges and terminating him from employment. Appellant filed a timely notice of appeal.

This matter was appealed to the Office of Administrative Law (OAL) on September 30, 2019. N.J.S.A. 40A:14-202(d). Due to the Covid-19 pandemic, hearings were held on March 9, 2020, and March 3, 2022, via Zoom teleconferencing. At the request of the parties, the record remained open until February 24, 2023, for the parties to submit closing summations and the record closed on that date.

### **FACTUAL DISCUSSION**

#### **Testimony**

##### **Respondent**

**Officer Ricardo Sookhu** testified that he is a veteran of the United States Air Force and as of the date of his testimony, spent the last seventeen years as a traffic officer in the Ewing Township Police Department.

Prior to January 16, 2019, he had no prior contact with Maurice Jackson. Sookhu stated that he activated his bodycam video during the interaction with Maurice Jackson and his companion. (R-3.) He was shown the video and asked to comment at various points. Jackson repeatedly stated that he was "on-the-job" and that the other officer was "a little aggressive." At 8:16, in the video Jackson can be heard saying

"youz locking up a cop . . ." At 19:34, Jackson said "you guys are . . . She is a cop . . . We would never lock up her own people . . . This mother\*\*\*\*\* is dirty . . . Respect us . . . We look out for each other . . . she's a f\*\*\*\*ing cop . . . you are treating her like sh\*\*." Then he stated, "can I talk to a brother because you're obviously not listening." (24:10) This was interpreted by Officer Sookhu as Jackson wished to speak to a black officer. Then at 24:50, Jackson told the officers "don't arrest her."

On cross-examination, Officer Sookhu stated that Jackson did not obstruct the ministrations of the law. However, he could smell alcohol on Jackson's breath and his eyes were bloodshot and he was using foul language toward the officers.

**Major David Arce** is assigned to Central Reception and Assignment as the administrative major for the Department of Corrections. He testified that the New Jersey Department of Corrections has rules of conduct for law enforcement personnel. (R-7.) He testified as to Sections 1 and 2 and stated that Jackson used his official position to gain favor with the Ewing Township officers. Arce also spoke about the rules of professional conduct in Article 3 of the same document, specifically, Sections 2 and 3. Arce indicated that Jackson specifically violated these two sections.

The Department of Corrections is governed by a handbook of information and rules. (R-8.) He indicated that this mirrors the same language as in the rules and regulations because the Department of Corrections had a need for ethical conduct. It is important for the Department of Corrections employees to maintain conduct out of the office because "we get paid by the taxpayer, so we need to act with proper ethics." Arce was questioned about the Department of Corrections' directive number COM: 03.003. (R-9.) He stated that this is a directive from the Department of Corrections Commissioner on conduct, especially since officers in the Department of Corrections are police officers. Specifically, the policy dictates that they are held to a higher standard in the public side because "you're an officer 24 hours a day." Article 7 specifically states that "no state officer or employee shall knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct which violates his or her trust as a state officer or employee."

Regarding Central Reception and Assignment Facility Level 3 internal management procedure (R-10), Arce testified that Jackson's status as a supervisor was very relevant in the assessment because he is held to a higher standard than a "line officer." Jackson was a supervisor. On page 15 of this document regarding Title 10, Jackson did not maintain a high degree of self-control because he was getting loud with the officers and then accused them of lying and using vulgar language. In fact, he referred to Sergeant McGee as a "f\_\_\_, clown and dirty."

Major Arce was questioned about the Department of Corrections Human Resources Bulletin 84-17. (R-11.) In that document the table of offenses was referred to and it was stated that Jackson used his position to gain favor with the Ewing Township police officers. Respondent was seeking removal in this case because of the "totality of the circumstances." "The motion is not appropriate because of the totality of the circumstances . . . trust is not there."

On cross-examination, Arce testified that Jackson did receive commendations over the years. He was questioned on whether Jackson was ever charged with the actual crime surrounding this incident. He was also questioned on the policy date of many of the documents. It was unclear whether or not they were valid for 2019. Also, he testified that the IMP Internal Management Procedure #577 (R-10) refers to internal operations at a correctional facility, not outside of work. Policy ADM.O10.001 (R-9) has not been updated since 2010. Nevertheless, there was some suggestion by counsel for Jackson that when referring to (R-9 at 3, #7) Jackson was not acting "knowingly" at the time of this incident. The suggestion was that the decision to terminate Jackson had nothing to do with the events of that particular day but actions that took place inside the facility itself.

Nevertheless, Major Arce remained steadfast that Jackson's behavior was so egregious that it warrants removal. He failed to listen to the officers so much that they had to call for backup. As soon as the officers arrived on the scene Jackson announced that he was "on-the-job." On the video it showed Jackson getting out of his car and immediately approaching McGee and was told to get back. Jackson referred to the

officers as a fag, clowns and accused them of lying. He used vulgar language and told the officers not to touch the car. Jackson asked to speak with an officer and personally cursed at him.

**Chiqueena Lee** is employed by the Department of Corrections as acting ethics liaison in the employment section. She was shown the Uniform Ethics Code for the State of New Jersey to which all employees of the State of New Jersey must comply. She testified that Jackson violated provision numbers 4 and 5 of the general standards of conduct because "no State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his trust as a state officer or employee or special state officer or employee." Also, "no State officer or employee should use or attempt to use his or her official position to secure unwarranted privileges or advantage for him/herself or others." It was clear that Jackson announced himself as law enforcement when he recited that he was "on-the-job." Jackson attempted to influence the Ewing Township officers by exclaiming that he "would never lock up a cop."

Ms. Lee indicated that there does not have to be any intent to violate the ethics rules.

**Patrolman Mathew Wherley** has been an Ewing Township police officer in the patrol division for the last seven years. He was shown a bodycam video of the incident of January 16, 2019. Although the video at the time of the showing did not have audio, the undersigned viewed the video with audio and video as it was admitted into evidence. Nevertheless, Wherley testified that the bodycam footage was his own bodycam and he recalled that after the vehicle pulled over another vehicle (occupied by Jackson) pulled in front. It was at that time that the officers called for backup. He recalled that during the field sobriety testing for the female, it was his job to keep Jackson away from the scene. He noted that Jackson was irate and "aggressive" trying to go over to where the sergeant was. Also, he was "using vulgar language" and referred to the other responding officer as a "F\*\*\*\*\*" (referring to a homosexual slur).



On cross-examination Jackson then interfered with the field sobriety testing and was not charged with obstruction. However, he was not being aggressive but used vulgar and foul language toward the officers including addressing one officer as a homosexual slur.

**Patrolman Christopher DeAngelo** has been a patrolman with the Ewing Township Police Department for seven years. He was informed of the damage to the bathroom from Lieutenant Rhodes. During the investigation into the damage to the bathroom, DeAngelo viewed the videotape of the scene and Jackson was the only person to go in the bathroom and be in that station all night. DeAngelo contacted the information technologies director who brought up the video and confirmed that Jackson was the only individual who used the bathroom that evening. There were three holes in the drywall. After viewing the video and confirming with Jackson's driver's license that he was the only user and occupant of that restroom, a charge was filed against Jackson for criminal mischief. Also, due to the fact that Jackson was an officer, DeAngelo notified the Bureau of Professional Standards.

### **Appellant**

**Maurice Jackson** testified that he has an "impeccable" work history with the Department of Corrections. He has been employed with the Department since 2001 and moved up to sergeant while working at Mountainview facility. In 2016 he arrived at the Central Reception and Assignment Facility (CRAF) and was involved in an incident that concerned a supervising officer. He complained about a major and about officers roughing up inmates. Jackson did not approve. A lieutenant told other officers not to listen to Jackson because "they weren't use to having black supervisors" that speak their mind. He filed for five complaints including one against Major D'Amico for harassment because "he didn't like" Jackson and tried to speak to administration about his actions but they did not listen. Another complaint involved several black supervisors who wanted to have a "sit down" about racially motivated actions. Still other complaints involved Jackson being investigated for signing overtime slips, an incident with a radio and Jackson doing "fence checks" which he should not have to do because he is a

supervising officer. As a result of all these instances, and prior to January 16, 2019, Jackson filed a lawsuit alleging racial bias, harassment, and disparate treatment.

On January 16, 2019, Jackson admitted that he was there and "certain things happened." He claims he "didn't seek special treatment as a corrections officer . . . Corrections officers are on-duty 24/7 unlike regular police."

On January 16, 2019, Jackson left his birthday party, and he was the last one to leave because he is a "father" to all the officers. He was traveling in front of McGee who was also leaving the party. However, he instructed McGee to pull around and in front of Jackson's vehicle, but a motor vehicle stop was executed by the Ewing Township Police Department on her vehicle. The officers told him to leave, and he said, "I'm not going to I'm my brother's keeper." He explained that he never attempted to walk toward the officers and said to them "we are on-the-job." He admitted to being "annoyed because of the situation" and using "language that may have been inappropriate."

Interestingly Jackson testified that he had seen different types of charges for different types of conduct and here especially with white and black officers there is disparate treatment against black officers. "I don't believe I did anything to receive the ultimate punishment . . . I didn't do anything other than have a dispute with officers."

On cross-examination Jackson stated that he is not a police officer and should not be held to a higher standard here because his conduct was off duty. If he witnessed a crime, he only has a duty to report it, he has no duty to respond. He indicated that he was upset that McGee was being pulled over and exclaimed that "he was on-the-job" to let others know he was an officer. He did not recall what he said to the officers including using foul language and the homophobic slur. Nevertheless, he continued to profess that he did not use his position to his favor.

## FINDINGS OF FACT

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness' story considering its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The testimony of the respondent's witnesses was especially credible and persuasive. Their testimony was clear, concise and was reinforced by the body cam video. It was obvious that they all had concerns about the incident and the actions of Jackson on that date. Also, they had concerns for the lack of respect for the police and his fellow officers. All of this was further bolstered with the presentation of the video of the incident. The video allowed the undersigned to view the unprofessional and inappropriate actions of Jackson first-hand without clouded conjecture. Contrary to Jackson's assertion, it was clear that he attempted to gain favor with the Ewing officers by announcing that he was "on the job."

Conversely, Jackson's testimony was not credible. Jackson's own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. Again, Jackson claims that he never tried to influence the Ewing officers by

announcing that he was "on the job." However, when questioned on why he told the Ewing officers that phrase, he was evasive and attempted to divert the conversation in another direction. The reality is that he told the officers on the scene that they were "locking up a cop" and "we would never lock up our own people" as well as "respect us . . . we look out for each other . . . Don't lock her up." One of the most disturbing comments was "can I talk to a brother, because you're obviously not listening." Jackson claims that he was not attempting to influence the officers however the facts show otherwise, and his comments fall significantly short on believability. Also, it questions his belief and self-proscribed race-based motivation for his firing.

Regarding the issue of Jackson's attempt to shift the blame for this incident on his employer is unavailing and deeply concerns the undersigned. Also, Jackson claimed that he was simply angry and used foul language and a homosexual slur not toward the officers. He said he was simply angry, but it was not directed toward the officers. He described it as a "dispute with the officers." This testimony was not realistic and frankly unbelievable when compared to the unbiased bodycam footage. Unsurprisingly, Jackson was unable to explain the rationale why he kicked holes in the Ewing Township Police restroom.

Jackson testified that he was being fired due to the fact that he reported his supervisors' actions and filed formal complaints against them. This was Jackson's attempt to "sell" his version of the facts to the undersigned. Not only was his recitation of the reasoning of his actions not credible, but it is also not realistic to believe. He minimized his actions that evening to such a degree and explained it in such a way that almost justifies it to him. In fact, Jackson testified that he was not held to the higher standard of a police officer, and he should not be treated as severe because he was not on duty. The comments showed that Jackson has a lack of understanding of his profession as well as no respect for the law in the State of New Jersey. This testimony further detracted from any modicum of credibility.

After hearing the testimony and reviewing the evidence, **I FIND**, by a preponderance of credible evidence, that on January 16, 2019, Jackson used foul language toward Ewing Township police officers and referred to one of the officers with

a homophobic slur. **I FURTHER FIND**, on January 16, 2019, Jackson used the phrase that he was "on the job" in order to gain favor with the Ewing Township officers. **I FURTHER FIND**, on January 16, 2019, Jackson damaged the Ewing Township Police restroom by kicking three holes in the drywall.

### CONCLUSIONS OF LAW

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

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Civil Service Commission requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty, if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

The respondent sustained charges of violations of: N.J.S.A. 52:13d-23 - Uniform Ethics Code; N.J.A.C. 4A:2-2.3(a)(6) - conduct unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - other sufficient cause; Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; E-2 - intentional use or misuse of authority or position.

Initially, Jackson has been charged with a violation of N.J.S.A. 52:13d-23 - Uniform Ethics Code. The code specifically states in Section II number 4 General Standards of Conduct:

No state officer or employee or special state officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his/her acts that he/she may be engaged in conduct violative of his trust as a state officer or employee or special state officer or employee.

Also, in Section 5, it reads that no State officer or employee or special State officer or employee should use or attempt to use his/her official position to secure unwarranted privileges or advantage for him/herself or others. The sections at issue here are self-explanatory. As recited to earlier, Jackson attempted to gain an advantage by using his position as a corrections officer to gain favor with the Ewing Township police officers in an attempt to alleviate the situation that his companion was experiencing with her arrest by using the phrase that they were "on the job." This is inappropriate. Jackson used the phrase that he was "on the job" to the Ewing Township officers solely in order to gain favor. Any reasonable individual in the general public would perceive Jackson's actions as an attempt to use his position as a corrections officer as a "get out of jail free card." This is inappropriate and will not be tolerated by the undersigned. Accordingly, **I CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a violation of the Uniform Ethics Code. Charges of violation of Uniform Ethics Code N.J.S.A. 52:13d-23 are hereby **SUSTAINED**.

Respondent also sustained charges against appellant for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a corrections officer attempting to get another corrections officer out of being arrested for driving under the influence. Aside from using his position as a corrections officer to help his friend from getting arrested, Jackson's actions by cursing, demeaning and using homophobic slurs toward the officers is intolerable and unacceptable. Not to mention kicking holes in the bathroom wall. **I CONCLUDE** that appellant's actions constitute unbecoming conduct. The charges of violating conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6) are hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause). Specifically, appellant is charged with violations of the Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; E-2 - intentional use or misuse of authority or position. It is noted that the Preliminary and Final Notices of Disciplinary Action (R-1 and R-2) indicate the sustained charges. **I**

**CONCLUDE** that consideration of the charge constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) will be limited to the regulations, rules and general orders specifically enumerated in the Final Notice of Disciplinary Action (R-2).

The charge of "other sufficient cause," in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violations of Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; and E-2 - intentional use or misuse of authority or position will be addressed separately.

Department of Corrections Human Resources Bulletin 84-17:C-11 conduct unbecoming an employee was discussed at length above. Again, it is difficult to contemplate a more basic example of conduct that could destroy public respect in the delivery of governmental services than the image of a corrections officer attempting to get another corrections officer out of a quasi-criminal charge by using his position as a fellow officer and cursing, demeaning and using homophobic slurs toward them. Finally, to use the type of language Jackson used toward the Ewing police officers in public is intolerable. Not to mention kicking holes in the bathroom wall. **I CONCLUDE** that appellant's actions constitute unbecoming conduct. The charges of violating Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee are hereby **SUSTAINED**.

Department of Corrections Human Resources Bulletin 84-17: E-1 - violation of a rule, regulation, policy, procedure. Here, it is uncontroverted that Jackson violated numerous rules, regulations, policies and procedures of the Department of Corrections. **I CONCLUDE** that appellant's actions constitute a violation. The charges of violating Department of Corrections Human Resources Bulletin 84-17: E-1 - violation of a rule, regulation, policy, procedure are hereby **SUSTAINED**.

Department of Corrections Human Resources Bulletin 84-17: E-2 - intentional use or misuse of authority or position. Appellant conducted himself in a manner that violated standards of good behavior, and the higher level of conduct that is expected of him as a law enforcement officer both on and off duty. As stated earlier, the testimonial



evidence against him was overwhelming but the video evidence was exceptionally compelling regarding his demeanor and inappropriate conduct on that date to gain favor with the Ewing officers to get his friend out of a quasi-criminal charge. Again, this will not be tolerated. As such, I **CONCLUDE** that the respondent has met its burden of proof on the charges of violating Department of Corrections Human Resources Bulletin 84-17: E-2 - intentional use or misuse of authority or position and are hereby **SUSTAINED**.

### **PENALTY**

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980); In re Herrmann, 192 N.J. 19, 33-34 (2007). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid. (Appellant also cites In re Stallworth, 208 N.J. 182, 195-96 (2011), and Feldman v. Irvington Fire Department, 162 N.J. Super. 177 (App. Div. 1978), to support progressive discipline, particularly consideration of the mitigating factors.)

The respondent seeks to impose major discipline, namely, removal, on the appellant for 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, for violation of Human Resources Bulletin 84-17, as amended, Sections C.11 - conduct unbecoming an employee, and E.1 - violation of a rule, regulation, policy, procedure, order or administrative decision.

The respondent relies principally on the egregiousness of appellant's conduct and the policies and procedures that appellant failed to adhere to in asserting that

progressive discipline is not warranted, and that termination is appropriate for this discipline, particularly because the respondent operates as a paramilitary organization, and, as such, rules and regulations are to be strictly followed. 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. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority are not to be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The charges are particularly egregious, in that a law enforcement officer is held to a higher standard of conduct than other employees, and is expected to act in a responsible manner, honestly, and with integrity, fidelity, and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. E. Jersey State Prison, 97 N.J.A.R.2d (CSV) 166. It is well settled that suspension or removal may be justified where the misconduct occurred off duty; were it otherwise, "the desired goal of upholding the morale and discipline of the force, as well as maintaining public respect for its officers, would be undermined." In re Emmons, 63 N.J. Super. 140.

Appellant seeks a reduction of the penalty from termination to suspension, based on the mitigating circumstances, urging that his conduct does not give rise to the termination and is simply motivated by racist supervisors. Appellant cites cases in support of progressive discipline and cases about civilian civil service employees who avoided removal.

Here the appellant disputes the penalty to be imposed, but not the conduct. The Department seeks removal of the appellant because of the underlying conduct that caused the charges to initially be filed, which ultimately resulted in appellant's charges being dismissed. The fact that the charges were ultimately dismissed is not relevant. "Where the conduct of a public employee which forms the basis of disciplinary proceedings may also constitute a violation of the criminal law, . . . the absence of a conviction, whether by reason of no prosecution or even acquittal, bars neither

prosecution nor finding of guilt for misconduct in office in the disciplinary proceedings.” Sabia v. Elizabeth, 132 N.J. Super. 6, 12 (App. Div. 1974).

Here the appellant has been employed as a correction officer since 2001. The mitigating factors are nonexistent. The aggravating factors, however, are significant. Appellant has a disciplinary history that consists of two prior suspensions. (R-15.) Here he used his position as a corrections officer in order to gain favor with the Ewing Township police, cursed at the officers and used a homophobic slur to refer to one of the officers, in addition to kicking holes in the bathroom walls of the Ewing Township police station. Appellant does not dispute these facts.

Having weighed the aggravating and mitigating factors and the proofs presented, **I CONCLUDE** that appellant’s misconduct was so egregious as to warrant removal, and respondent’s action of removing the appellant from his position is appropriate. Appellant failed to adhere to the code of conduct, which applies while on and off duty. Appellant violated these rules of conduct and also failed to conduct himself in a manner required for the special position of trust he holds as a correction officer with police powers.

**I CONCLUDE** that the action of the appointing authority removing appellant for his actions should be affirmed.

### **DECISION AND ORDER**

**I ORDER** that the charges of N.J.S.A. 52:13d-23 - Uniform Ethics Code; N.J.A.C. 4A:2-2.3(a)(6) - conduct unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - other sufficient cause; Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; E-2 - intentional use or misuse of authority or position be **SUSTAINED**. **I FURTHER ORDER** respondent’s action terminating appellant is hereby **SUSTAINED** and his appeal be **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**, 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 29, 2023

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

March 29, 2023

Date Mailed to Parties:

March 29, 2023

DJB/cb

**APPENDIX**

**WITNESSES**

**For appellant**

Maurice Jackson

**For respondent**

Officer Ricardo Sookhu

Major David Arce

Chiqueena Lee

Patrolman Mathew Wherley

Patrolman Christopher DeAngelo

**EXHIBITS**

**For appellant**

P-1 Jackson Memorandums of Commendation, Certificates Training, Education and Work History (MJ 001-011)

**For respondent**

R-1 Preliminary Notice of Disciplinary Action

R-2 Final Notice of Disciplinary Action

R-3 DVD: Officer Matthew Wherley's bodycam footage, Officer Ricardo Sookhu's bodycam footage, Ewing Police Department lobby surveillance

R-4 Photographs: Ewing Police Department men's restroom wall damage

R-5 Officer Christopher DeAngelo's Investigative Report

R-6 Criminal Summons

R-7 Law Enforcement Personnel Rules and Regulations

R-8 DOC Employee Handbook

R-9 Policy ADM.O10.001: Standards of Professional Conduct

R-10 IMP Internal Management Procedure #577

R-11 HRB 84-17 (As Amended) Table of Offenses and Penalties

- R-12 Uniform Ethics Code
- R-13 Department of Corrections Ethics Code
- R-14 New-Hire Orientation Checklist and Policy
- R-15 Disciplinary History
- R-16 State Ethics Commission Correspondence of June 10, 2019 (authorization for DOC to proceed with discipline for violation of the Uniform Ethics Code, Section 23(d))
- R-17 Training Transcript