

often take off their shirts to ensure that no blood evidence would appear on thereon. Appellant was standing at the doorway of the office and saw A.M. take off his shirt. The removing of the shirt was enough for A.M. (sic) to see that there was a problem in the office, and appellant should have opened the door and secured the room or removed the inmate or called for help. He did none of those things. His lack of action made it so that the two elderly women had to walk around the desk, and walk past the irate inmate, in order to escape from the office. Appellant's inaction put both Dr. O'Shea and Ms. Sweeney at risk of physical harm. It was Officer Yuhas, not appellant, who removed the inmate from the office, and only after Dr. O'Shea had to call out to Yuhas to help them. It was a fortunate result that nobody was injured as a result of the incident.

Based on the above, the ALJ upheld the charges of incompetency, inefficiency or failure to perform duties and neglect of duty. However, he did not find the appellant guilty of conduct unbecoming a public employee, stating that the appellant's actions did not rise to the level found in the standards to sustain that charge.

In its *de novo* review, the Commission agrees with the ALJ regarding the charges of incompetency, inefficiency or failure to perform duties and neglect of duty, but disagrees that the appellant was not guilty of conduct unbecoming a public employee. Generally, the standard to establish conduct unbecoming a public employee is that the conduct adversely effects the morale or efficiency of a governmental unit or has the tendency to destroy public respect in the delivery of government services. *Karins v. City of Atlantic City*, 152 N.J. 532, 554 (A998); see *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960). Here, the ALJ specifically found that the appellant failed to act/neglected his duty which put civilian employees of a State correctional facility in danger. Clearly, such inaction could tend to adversely effect the morale or efficiency of a governmental unit or have the tendency to destroy public respect in the delivery of government services. In this regard, surely the public would have a negative perception of a Senior Correctional Police Officer who did not adequately perform his duties regarding an inmate, which led to a dangerous situation for civilian employees. Such a perception, would, at least, erode its confidence in the correctional facility.

Regarding the penalty, the ALJ recommended reducing the suspension, stating, in part, while the appellant's "behavior might have placed the civilian employees and inmate in jeopardy, nothing was submitted to prove that appellant's violations jeopardized the integrity of the GSYCF or brought dishonor to the NJDOC." The Commission disagrees with the proposed reduction in penalty. Similar to its assessment of the charges, the Commission's review of the penalty is *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).

The appellant's misconduct in this matter cannot be minimized. Moreover, the Commission has additionally found the appellant guilty of conduct unbecoming a public employee. Regardless, even without the inclusion of that charge, the appellant's infractions are worthy of the originally imposed 45 working day suspension. Where a Senior Correctional Police Officer neglects his duties in such a manner as to create a situation that may result in injury or worse, a serious penalty must be imposed to impress upon the employee the inappropriateness of that conduct. As such, the Commission finds no reason to modify the suspension and finds that the 45 working day suspension originally imposed is neither disproportionate to the offenses nor shocking to the conscious.¹

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 45 working days was justified. The Commission therefore affirms that action and dismisses the appeal of Charles Williams.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ The Commission also notes that the ALJ ignored the appellant's "substantial" previous disciplinary history as it was based on dissimilar misconduct. Regardless, the Commission finds that the 45 working day suspension is the proper penalty without regard to progressive discipline.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF MAY, 2023

Allison Chris Myers

Allison Chris Myers
Acting 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 14158-19

AGENCY DKT. NO. 2020-905

**IN THE MATTER OF CHARLES WILLIAMS,
GARDEN STATE YOUTH CORRECTIONAL
FACILITY, DEPARTMENT OF CORRECTIONS.**

Michael Tirado, Vice-President, PBA Local 105, for appellant pursuant to
N.J.A.C.1:1-5.4(6)

Kathleen Krieger, Esq., Legal Specialist, for respondent pursuant to N.J.A.C. 1:1-
5.4(a)(2)

Record Closed: November 19, 2021

Decided: March 20, 2023

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Appellant, Charles Williams (Williams or appellant), an employee of respondent, Garden State Youth Correctional Facility (GSYCF), was charged with administrative charges resulting in a forty-five working day suspension, arising from an incident on May 15, 2019 (the Incident). Appellant was accused of failing to act when an inmate allegedly became aggressive and threatened the life of a doctor and police officers, failing to submit a report in a timely manner, and failing to submit an accurate report. Appellant was charged with: N.J.A.C. 4A:2-2.3 (a) 1. Incompetency; Inefficiency or failure

to perform duties; 6. Conduct unbecoming a public employee; 7. Neglect of Duty; 12. Other sufficient causes, HRB 84-17, as amended, B.2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons or property; B.9 Incompetence or inefficiency; C.8. Falsification; Intentional misstatement of material facts in connection with work; employment application, attendance, or in any report, investigation or other proceeding; C11. Conduct unbecoming an employee; D.7. Violation of administrative procedures and/or regulations involving safety and security; E1. Violation of a rule, regulation, policy or procedure.

PROCEDURAL HISTORY

On June 24, 2019, appellant was issued a Preliminary Notice of Disciplinary Action (PNDA) with the above-referenced charges. On August 23, 2019, a departmental appeal hearing was held, and on September 6, 2019, appellant was served with a Final Notice of Disciplinary Action (FNDA). The FNDA confirmed a disciplinary penalty of a forty-five working day suspension.

Appellant filed a timely notice of appeal, and the Division of Appeals and Regulatory Affairs of the Civil Service Commission transmitted the case to the Office of Administrative Law, where it was filed on October 7, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. After delays caused by the Covid-19 pandemic, a hearing was conducted on October 19, 2021, and October 20, 2021, via Zoom due to the ongoing Covid-19 pandemic protocols. After written summations were received from the parties, the record closed on November 19, 2021, and the date for issuance of this Initial Decision was extended until February 9, 2023, and extended nunc pro tunc until March 27, 2023.

FACTUAL DISCUSSION

Joint Stipulation of Facts

1. Charles Williams was hired by the New Jersey Department of Corrections (NJDOC) in March 1996 as a Correctional Police Officer and promoted to Senior Correctional Police Officer in September 1997.
2. On May 15, 2019, Officer Charles Williams was assigned to work Inside Sanitation at Garden State Youth Correctional Facility.
3. On May 15, 2019, Officer Charles Williams' duty area included Dr. Alice O'Shea's office.
4. On May 15, 2019, Dr. O'Shea was treating an inmate/patient inside of her office.
5. On May 15, 2019, Social Worker Beverly Sweeney was inside of Dr. O'Shea's office while the inmate/patient was being treated.
6. Officer Charles Williams was standing in the doorway of the office while the inmate/patient was being treated.
7. During the medical appointment the inmate became agitated and tore off his shirt.
8. On May 29, 2019, Officer Williams authored a Special Custody Report regarding the May 15, 2019, incident.
9. On June 11, 2019, Officer Williams was interviewed and provided written answers to written interview questions. Officer Williams' union representative was present in the room with Officer Williams.

10. On June 24, 2019, Officer Williams was issued a Preliminary Notice of Disciplinary Action ("PNDA") with the following charges: NJAC 4A:2-2.3 (a) 1. Incompetency. Inefficiency or failure to perform duties; 6. Conduct unbecoming a public employee; 7. Neglect of Duty; 12. Other sufficient causes, HRB 84-17, as amended, B.2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons or property; B.9 Incompetence or inefficiency; C.8. Falsification; Intentional misstatement of material facts in connection with work; employment application, attendance, or in any report, investigation or other proceeding; (C11) Conduct unbecoming an employee; (D.7) Violation of administrative procedures and/or regulations involving safety and security; E/1. Violation of a rule, regulation, policy procedure.

11. On August 23, 2019, a departmental appeal hearing was held.

12. On September 6, 2019, Charles Williams was served with a Final Notice of Disciplinary Action ("FNDA") indicating a disciplinary action of a forty-five (45) day suspension.

13. The sustained charges were: NJAC 4A:2-2.3 (a) 1. Incompetency. Inefficiency or failure to perform duties; 6. Conduct unbecoming a public employee; 7. Neglect of Duty; 12. Other sufficient causes, HRB 84-17, as amended, B.2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons or property; B.9 Incompetence or inefficiency; C.8. Falsification; Intentional misstatement of material facts in connection with work; employment application, attendance, or in any report, investigation or other proceeding; (C11) Conduct unbecoming an employee; (D.7) Violation of administrative procedures and/or regulations involving safety and security; E/1. Violation of a rule, regulation, policy procedure. Notice of Appeal from that Final Notice of Disciplinary Action ("FNDA") was filed and served on October 7, 2019.

Testimony for respondents

Lieutenant **Frank DiNatale**, conducted the administrative investigation of the Incident. He interviewed SCPO Charles Williams, Dr Alice O'Shea, Beverly Sweeney, Kenneth Vaughn, and Sergeant Brossa.

Dr. O'Shea and Ms. Sweeney were in Dr. O'Shea's office on May 15, 2019, treating a mental health inmate-patient. Inmate A.M. became aggressive, ripped off his shirt and yelled, "I am going to kill Dr. O'Shea and beat up the cops." Appellant was standing in the open doorway of the office and neither did nor said anything. When O'Shea and Sweeney left the office, Dr. O'Shea called for Officer Yuhas to come to their aid. Yuhas addressed A.M. outside of the office. The women reported appellant's failure to act to Dr. Kenneth Vaughan, the Rutgers Health employee who supervised Sweeney.

Appellant's Special Report was dated May 29, 2021, two weeks after the Incident. Appellant stated in his report that he was aware that A.M. was acting strange, and for that reason he chose to keep watch just outside Dr. O'Shea's office. Appellant reported that A.M. became agitated and tore off his shirt, and that appellant then immediately entered the room and removed Dr. O'Shea, then with Yuhas he transported A.M. to a holding cell. Appellant's report stated that Dr. O'Shea thanked him for removing the inmate.

Yuhas was the only other Law Enforcement Officer (LEO) who witnessed the Incident. DiNatale attempted to interview Yuhas but was unable to because Yuhas had retired. Yuhas wrote a report the same day as the Incident. Yuhas reported that Dr. O'Shea called for him and that he escorted A.M. out of Dr. O'Shea's office, without mentioning any other personnel assisting him. Yuhas' report was consistent with what was reported by O'Shea and Sweeney. DiNatale believed his investigation to be complete even without interviewing Yuhas.

Dr. Alice O'Shea had been treating inmate A.M. She and Sweeney (A.M.'s therapist) saw him on the day of the Incident due to a report that he had not been taking

his medications. Appellant was standing in the doorway to her office. A.M. seemed psychotic when he arrived and became agitated and louder and shouted that he was going to "beat up the cops and kill Dr O'Shea." A.M. then stood up and tore off his shirt and threw it on the ground. An inmate tearing off a shirt in an aggressive manner means he is "ready for a fight;" inmates do it to not get blood on their shirts which could evidence that they were in a fight. O'Shea feared serious injury, and she and Sweeney ran out of the office, past the inmate and appellant, and called for Officer Yuhas. Appellant stood there and did nothing, with his hands at his side, and did not say anything. Yuhas came running in response, calmed A.M. down and escorted him out of her office. Appellant did no talking at all. Dr. O'Shea did not thank appellant. She never asked appellant for help.

Dr. O'Shea reported this to Kenneth Vaughn right after the Incident and wrote a report dated May 29, 2019, two weeks after the Incident. (Exhibit J-4.) Prior to writing the report, Dr. O'Shea reported the Incident to her supervisor, Dr. Jordan Lieberman, as well as to Dr. Vaughan.

Beverly Sweeney was seventy-one years old. She was present in the office with Dr. O'Shea and inmate A.M. She was employed by Rutgers Health as a mental health clinician assigned to GSYCF. Dr. O'Shea wanted Sweeney present because inmate A.M. was doing poorly and Sweeney was the inmate's regular therapist. Sweeney was standing in the back of the office, with her cane, near where Dr. O'Shea was sitting. Appellant was standing in the open doorway.

During the appointment A.M. became irate, and began yelling loudly, saying that he was going to "kill Dr. O'Shea and beat up the cops." When the inmate started to take off his shirt, it was a sign that she needed to run from the office. She managed to get past the inmate while his hands were in the air and he was trying to get his shirt off. Appellant did not respond in any way, except that he moved so that she could get out of the room. Appellant gave no directions to either Dr. O'Shea or Sweeney, and did not speak to A.M. or come into the office. Dr. O'Shea ran out next and called for Officer Yuhas. Yuhas responded quickly and ordered A.M. to leave the office. A.M. left the office. Dr. O'Shea did not thank appellant.

Appellant never entered Dr. O'Shea's office. She and Dr. O'Shea reported the Incident to her supervisor, Dr. Vaughan, who reported this matter to the New Jersey Department of Corrections (NJDOC). Sweeney submitted a report. (Exhibit J-5.)

Dr. Kevin Vaughan was the Lead Psychologist, supervising a group of eight Rutgers Health employees, including Sweeney. He and Chief Operating Officer, Julie White, were in a meeting when Dr. O'Shea came in and reported that A.M. had a psychotic episode and needed medication. Dr. O'Shea was out the day after the Incident and he was on leave until May 21, 2019. When he returned, O'Shea and Sweeney came to his office and reported the Incident, and that appellant did not assist or protect them. They said he just stood there watching, like a "deer in the headlights, looking hypnotized." He made notes, and on May 21, 2019, used them to draft an email to Mervin Ganesh, which he sent on May 24, 2019.

Mervin Ganesh was the acting Administrator at GSYCF. The inmate population at GSYCF was primarily twenty-six years old and under; the young men were often violent and prone to acting without considering the consequences. Ganesh was familiar with the Incident. Inmate A.M. was six foot and one inch tall and weighed between 190 and 200 pounds. Dr. O'Shea and Ms. Sweeney were elderly and not physically able to defend themselves.

On the Incident date, Ganesh was notified that inmate A.M. had become aggressive while with the mental health staff and had to be locked up in a holding cell. In the cell, A.M. kicked the gate so hard he broke the gate lock and punched a hole in the sheetrock. Ganesh later became aware of the Incident on May 24, 2019, from an email from Dr. Vaughan. Ganesh immediately forwarded that email to the Major's office, who assigned DiNatale to investigate.

Appellant's neglect of duty consisted of many significant violations which threatened the safety and security of the prison staff and A.M.:

Appellant violated his oath to be truthful in all official reports. Appellant violated GSYCF General Post Order IMP (Exhibit J-8), which required that custody staff take action when they witness a threat to the safety and security of staff, inmates or the prison, by failing to react or provide O'Shea and Sweeney protection after A.M. threatened them and other staff. Appellant waited fourteen days to prepare his Incident report, a violation of the policy's requirement that custody staff prepare reports immediately after emergencies or incidents. Further, NJDOC policies require that all emergent issues requiring immediate attention be reported to Center Control; however, appellant never informed Center Control about the Incident. GSYCF IMP #129, the Inside Sanitation Internal Management Procedure (Exhibit J-9), covers all custody staff assigned to Inside Sanitation, and requires that an officer always use good judgment, and must immediately report emergency situations to Center Control; appellant could have used his radio, blown his whistle or knocked the nearest telephone off its receiver.

The Law Enforcement Personnel Rules and Regulations set forth the responsibilities of all sworn LEOs, both on and off duty. Ganesh set out the pertinent sections: Article I, Section 2: No officer shall knowingly act in any way that might reasonably be expected to create an impression of suspicion among the public that an Officer may be engaged in conduct violative of the public trust as an Officer. Article 1, Section 3: Officers shall be held responsible for the proper performance of duty and for strict adherence to these rules and regulations. Article II, Section 4: No officer shall shirk danger, avoid responsibility or manifest cowardice in the performance of duty. Article II, Section 5: An officer on duty shall promptly report incidents in progress, respond to the scene as appropriate, and take action when the situation requires. Failure to take action when the situation requires it constitutes neglect of duty. Article II, Section 6: An officer shall promptly report in writing through the chain of command all crimes, misconduct or unusual incidents which come to the officer's attention during the performance of duty. Article II Section 7: No officer shall make, or cause to be made, any false or misleading statements. No officer shall intentionally omit or misrepresent facts or information known to the officer. Article II Section 8: No officer shall make false or misleading reports.

Appellant displayed cowardice by failing to protect O'Shea and Sweeney. Neither should have had to exit the office by moving past the inmate after the inmate issued a direct threat to inflict violence. A.M. removing his shirt was warning that violence might ensue. Appellant failed to submit his report immediately, but instead took two weeks, and he submitted a report that conflicted with other reports submitted.

NJDOC was obligated to provide for the safety and security of all its vendor's employees, which would include the Rutgers Health staff. Appellant failed to protect O'Shea and Sweeney.

Ganesh, as Acting GSYCF Administrator, considered the administrative investigation complete despite Officer Yuhas not being available for an interview. Yuhas had submitted a Special Custody Report which was received by the Shift Commander and put into a logbook. Yuhas had just retired and did not make himself available to be interviewed, although one of his former superior officers might have been able to force him to cooperate. DiNatale reached out to Yuhas one time.

Appellant had shown no cowardice in twenty-five years. He had only some attendance issues and one inattentiveness issue. The penalty for a first incident of neglect was within a range of five days suspension through removal.

Testimony for appellant

Senior Correctional Police Officer **John Graham** was a training officer, working under DiNatale, who ran the investigation. He testified that appellant did a "really good job." Appellant got the inmate into a holding cell without force or anyone being injured. Calling a code or blowing a whistle was not required here, as no physical force was engaged against an officer and a code or whistle might have put more officers in harm's way. Unusual incidences, however, do need to be reported. Special needs inmates relate better in a one-to-one situation with guards than when there are many guards. But if there were threatening words used or a direct threat issued, a report must be

written. DiNatale considered the investigation incomplete because Yuhas was not interviewed.

Graham did not witness or have personal knowledge of the Incident. He was not part of the investigation.

Officer **Charles Williams** handled Inside Sanitation for respondent. On the day of the Incident, he was collecting trash. He spoke to Yuhas, who said A.M. was off his medications. When Dr. O'Shea called A.M. into her office, appellant, of his own volition, stopped his collections and followed A.M. to her office and remained there, because he knew A.M. was off his medications. O'Shea's door was closed and appellant watched through the door window. A.M. took off his shirt, appellant opened the door and told O'Shea to leave; O'Shea walked past the inmate. Sweeney was not in the room; she was in the hallway. Appellant heard no yelling and no threats. O'Shea left her office, appellant spoke with A.M., and O'Shea called out for Yuhas, who came and helped him remove A.M. Later O'Shea thanked him.

FINDINGS OF FACT

Credibility:

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in 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 in light of 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). Further, “[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.), cert. den., 10 N.J. 316 (1952). 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).

Frank DiNatale was a knowledgeable witness displaying a great deal of experience. He responded in a succinct, direct manner. He remained calm on cross-examination. I found him to be a credible witness.

Dr. Alice O’Shea started as a calm, knowledgeable witness, she had direct knowledge of the Incident. It was concerning that she never specifically called to appellant for help during the Incident. She testified that she recalled writing another report, from earlier than the May 29, 2019, report, which she claimed did not jibe with the May 29 report but did not produce a copy. On cross-examination she became frustrated and angry and began answering in a smarmy manner, and then stated she could not recall certain details from two years prior. I ultimately did not find her to be a credible witness.

Beverly Sweeney started off displaying good recollection and answering calmly and clearly. But later she testified that she did not know whether Dr. Vaughn was at work that day. She could not recall what she did after A.M. was taken away. She said “I don’t recall—it was two years ago” several times, and thus I did not find her testimony to be credible.

Dr. Kevin Vaughn was a knowledgeable witness, whose knowledge of the Incident was based purely on what had been reported to him. He had no direct

knowledge of the Incident. His testimony did not offer much regarding the issues.

Mervin Ganesh was not a direct witness to the Incident and knew of it by reviewing files and reports. But he was very knowledgeable as to official rules and procedures and answered thoroughly and clearly. He was a credible witness.

John Graham was a knowledgeable witness and testified in a forthright manner, and from personal experience. However, he was unaware that officers could use telephones to report an incident. He became evasive on cross-examination. I did not find him credible.

Appellant **Charles Williams** offered testimony that contradicted much of what respondent's witnesses offered. He admitted that A.M. presented a threat but admitted not calling for backup. He admitted that he should have written his report sooner. His testimony as to whether Sweeney was in O'Shea's office during the Incident contradicted the Joint Stipulation of Facts, in which it was stated that Sweeney had been in the room. It therefore did not make logical sense that appellant ran into O'Shea's office and escorted O'Shea out, because he would have had to escort both O'Shea and Sweeney out of the office.

Appellant testified that he talked A.M. out of O'Shea's office. However, there was no mention of him using verbal commands to get him out of the office, either in his Special Report or during his administrative interview. (Exhibits J-2, J-3.) Officer Yuhas' Special Report indicated that A.M. followed Yuhas' commands and that Yuhas escorted A.M. from O'Shea's office to the holding cell. (Exhibit J-6.)

Accordingly, appellant was not a credible witness.

Therefore, based on the testimony, Joint Stipulation of Facts, and a review of the evidence, I **FIND**, by a preponderance of the credible evidence, the following **FACTS**:

The inmate population at GSYCF was primarily twenty-six years old and under; the young men were often violent and prone to acting without considering

the consequences; A.M. was six foot and one inch tall and weighed between 190 and 200 pounds; Dr. O'Shea and Ms. Sweeney were elderly and not physically able to defend themselves.

On May 15, 2019, inmate A.M. was in Dr. O'Shea's office, as was Beverly Sweeney, when A.M. became aggressive and ripped off his shirt, and began yelling; appellant was standing at the doorway of the office, saw A.M. take off his shirt, heard no verbal threats, and said nothing; A.M. removing his shirt was a warning that violence might ensue, as inmates often take off their shirt to ensure that no blood evidence would appear on their shirt; O'Shea and Sweeney exited O'Shea's office by moving quickly past the inmate and past appellant, without appellant escorting them; neither O'Shea nor Sweeney should have had to exit O'Shea's office by moving past the inmate without an officer escorting them after the inmate appeared to threaten violence; when O'Shea left her office, she called for Officer Yuhas to come to her aid; Yuhas removed A.M. to a holding cell; appellant's Special Report was dated May 29, 2021, two weeks after the Incident; Yuhas retired shortly thereafter and did not make himself available to be interviewed, but he wrote a report regarding the Incident before he left.

GSYCF General Post Order IMP (Exhibit J-8) required that custody staff take action when they witness a threat to the safety and security of staff, inmates or the prison; custody staff were required to prepare reports immediately after emergencies or incidents; all emergent issues requiring immediate attention were to be reported to Center Control; appellant never informed Center Control about the Incident; GSYCF IMP #129, covers custody staff assigned to Inside Sanitation, like appellant, and required that an officer immediately report emergency situations to Center Control.

The Law Enforcement Personnel Rules and Regulations set forth the responsibilities of all sworn law enforcement officers both on and off duty; Article 1, Section 3: Officers shall be held responsible for the proper performance of duty and for strict adherence to these rules and regulations; Article II, Section 4: No officer shall shirk danger, avoid responsibility or manifest cowardice in the performance of duty. Article II, Section 5: An officer on duty shall promptly report incidents in progress, respond to the scene as appropriate, and take action when the situation requires; failure to take action

when the situation required constituted neglect of duty; Article II, Section 6: An officer shall promptly report in writing through the chain of command all crimes, misconduct or unusual incidents which come to the officer's attention during the performance of duty; Article II Section 7: No officer shall make, or cause to be made, any false or misleading statements, and no officer shall intentionally omit or misrepresent facts or information known to the officer; Article II Section 8: No officer shall make false or misleading reports.

The penalty for a first incident of neglect was within a range of five days suspension through removal.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The issue is whether the respondent acted properly in assessing a forty-five working day suspension.

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 and 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).

Appellant's filing of an appeal required 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 were sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

Respondent had the burden of proof to 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 fact 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).

Appellant was charged with: N.J.A.C. 4A:2-2.3 (a) 1. Incompetency. Inefficiency or failure to perform duties; 6. Conduct unbecoming a public employee; 7. Neglect of Duty; 12. Other sufficient causes, HRB 84-17, as amended, B.2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons or property; B.9 Incompetence or inefficiency; C.8. Falsification; Intentional misstatement of material facts in connection with work; employment application, attendance, or in any report, investigation or other proceeding; C11. Conduct unbecoming an employee; D.7. Violation of administrative procedures and/or regulations involving safety and security; E1. Violation of a rule, regulation, policy procedure.

The facts must be applied to the charges in order to reach conclusions as to appellant's culpability, if any.

The facts indicated that appellant stood outside Dr. O'Shea's office while she and Ms. Sweeney were dealing with an inmate-patient who had not taken his mental health medications that day and had arrived at her office in an agitated mood. Both women were of relatively diminutive size and older age. A.M., a man larger in size than O'Shea and Sweeney, became aggressive and ripped off his shirt, and began yelling. A.M. removing his shirt was a warning that violence might ensue, as inmates often take off their shirts to ensure that no blood evidence would appear on thereon. Appellant was standing at the doorway of the office and saw A.M. take off his shirt. The removing of the shirt was enough for A.M. to see that there was a problem in the office, and appellant should have opened the door and secured the room or removed the inmate or called for help. He did none of those things. His lack of action made it so that the two elderly women had to walk around the desk, and walk past the irate inmate, in order to

escape from the office. Appellant's inaction put both Dr. O'Shea and Ms. Sweeney at risk of physical harm. It was Officer Yuhas, not appellant, who removed the inmate from the office, and only after Dr. O'Shea had to call out for Yuhas to help them. It was a fortunate result that nobody was injured as a result of the Incident.

GSYCF General Post Order IMP required that custody staff take action when they witness a threat to the safety and security of staff, inmates or the prison. The Law Enforcement Personnel Rules and Regulations, Article 1, Section 3, state that officers shall be held responsible for the proper performance of duty and for strict adherence to these rules and regulations; Article II, Section 4 states that no officer shall shirk danger or avoid responsibility; Article II, Section 5 requires that an officer on duty shall respond to the scene as appropriate, and take action when the situation requires, and that failure to take action when the situation required constituted neglect of duty.

I **CONCLUDE** that appellant's inaction during the Incident constituted a failure to perform duties and neglect of duty, as set forth in N.J.A.C. 4A:2-2.3(a) and was a violation of GSYCF General Post Order IMP and Law Enforcement Personnel Rules and Regulations. I **CONCLUDE** that appellant's inaction constituted violations of HRB 84-17 as a neglect of duty, and a willful failure to devote attention to tasks which could result in danger to persons or property, and inefficiency.

Additionally, appellant never informed Center Control about the Incident. Further, appellant's Special Report was dated May 29, 2021, two weeks after the Incident.

The GSYCF General Post Order IMP requires that all emergent issues requiring immediate attention need to be reported to Center Control. GSYCF IMP #129, covers custody staff assigned to Inside Sanitation, like appellant, and require that an officer immediately report emergency situations to Center Control. The GSYCF General Post Order IMP also requires that custody staff prepare reports immediately after emergencies or incidents. Law Enforcement Personnel Rules and Regulations, Article II, Section 5 states that an officer on duty shall promptly report incidents in progress; Article II, Section 6 requires that an officer promptly report in writing through the chain of

command all crimes, misconduct or unusual incidents which come to the officer's attention during the performance of duty.

I **CONCLUDE** that appellant's failure to report the Incident to Central Control and to file a timely report constituted violations under N.J.A.C. 4A:2-2.3 (a) for 1. Incompetency, Inefficiency or failure to perform duties and 7. Neglect of Duty, as well as violations of the GSYCF General Post Order IMP, the Law Enforcement Personnel Rules and Regulations, and HRB 84-17, B.2 Neglect of duty and willful failure to devote attention to tasks which could result in danger to persons or property; B.9 Incompetence or inefficiency; D.7. violation of administrative procedures and/or regulations involving safety and security, and; E1. violation of a rule, regulation, policy procedure.

As far as the accuracy of appellant's report, and the contradictions between his report, his interview statements, the Joint Stipulation of Facts, the Yuhas report, and the various testimonies at the hearing, I **CONCLUDE** that respondent failed to prove by a preponderance of the evidence that appellant failed to submit an accurate report or falsified or misstated material facts. Several of the witnesses, for both parties, lacked credibility, and therefore no conclusions could be drawn as to which version of the Incident was completely accurate.

Finally, appellant was charged with "Conduct unbecoming a public employee," 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 In re Emmons, 63 NJ. 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)).

Appellant should have done more to protect the medical staff dealing with an aggressive inmate and should have been more dutiful in reporting the Incident, but the various testimonies and reports proffered failed to uniformly paint the picture of an employee who committed violations that would meet the above-stated standards. I **CONCLUDE** that respondent failed to show by a preponderance of the evidence that appellant committed conduct unbecoming a public employee.

PENALTY

Having met its burden of proving some, but not all, of the above-referenced violations of statutes, regulations and policies, this Court may then look to whether respondent acted properly in applying discipline against appellant in the form of a forty-five working day suspension.

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, 38 N.J. 500, 523-24 (1962). Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct. Progressive discipline is not a fixed and immutable rule to be followed without question. In re Carter v. Bordentown, 191 N.J. 474 (2007). The determination of a penalty is subjective and follows no specific formula. One may consider the seriousness of the infraction, the length of employment, the amount of training received, as well as prior disciplinary matters. West New York v. Bock, 38 N.J. at 523-24.

In Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980), the New Jersey Supreme Court recognized the importance of maintaining discipline in correctional facilities. One must conduct an appraisal of the seriousness of the offense and degree to which such offenses subvert discipline. Towards that end, these matters were within the expertise of the corrections officials. Bodine v. Southwoods State Prison, OAL Docket No. 10121-04 (May 24, 2005), reversing Merit System Board, Docket No. 2005-

844 (July 27, 2005), quoting Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993) certif. denied, 135 N.J. 469 (1994).

But while the Office of Administrative Law is duty bound not to ignore the respondent's appraisal of the severity of appellant's conduct, it is not strictly bound to uphold a penalty when the respondent fails to meet its burden of proof as to all charges. Respondent noted that according to HRB 84-17, as amended, the range of discipline for the first offense of infractions for B2, B9, C8, C11, and E1 extended from an official written reprimand to removal; in the within matter respondent levied discipline of a forty-five working day suspension. Appellant's failure to follow rules and procedures related to safety and security, and failure to immediately report an unusual and threatening incident, were of concern. But respondent failed to prove cowardice and incompetence, failed to show that his inaction was egregious in nature, and failed to show conduct unbecoming a public employee. While his behavior might have placed the civilian employees and inmate in jeopardy, nothing was submitted to prove that appellant's violations jeopardized the integrity of the GSYCF or brought dishonor to NJDOC. While appellant had numerous disciplinary issues for attendance and sick time violations, he had not had any disciplinary issues with substantive matters such as in the within matter over his long career, and therefore I **FIND** the forty-five working day suspension to have been too great a penalty for the violations proven.

DECISION AND ORDER

I **ORDER** that the charges of failure to perform duties and neglect of duty, as set forth in N.J.A.C. 4A:2-2.3(a), and neglect of duty, and willful failure to devote attention to tasks which could result in danger to persons or property, and inefficiency, as set forth in HRB 84-17, be **SUSTAINED**. I **ORDER** that the charges of incompetency, inefficiency or failure to perform duties and neglect of duty, as set forth in N.J.A.C. 4A:2-2.3 (a) be **SUSTAINED**. I **ORDER** that the charges of neglect of duty and willful failure to devote attention to tasks which could result in danger to persons or property, incompetence or inefficiency, violation of administrative procedures and/or regulations involving safety and security, and violation of a rule, regulation, policy procedure, set forth in GSYCF General Post Order IMP, the Law Enforcement Personnel Rules and Regulations, and HRB 84-

17, B.2 , be **SUSTAINED**. I **ORDER** that the charges of conduct unbecoming a public employee, and failure to submit an accurate report, or submitting falsified or misstated material facts, be **REVERSED**.

I **FURTHER ORDER** that respondent's imposition of a forty-five working day suspension be **MODIFIED** to a twenty-five working day suspension.

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.

March 20, 2023
DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency:

March 20, 2023

Date Mailed to Parties:

March 20, 2023

JNR/dw

APPENDIX

LIST OF WITNESSES:

For appellant:

John Graham
Charles Williams, appellant

For respondent:

Frank DiNatale
Dr. Alice O'Shea
Beverly Sweeney
Dr. Kevin Vaughn
Mervin Ganesh

LIST OF EXHIBITS:

Joint Exhibits:

- J-1 Final Notice of Disciplinary Action, dated August 23, 2019
- J-2 DiNatale Report, dated June 24, 2019
- J-3 Appellant Special Custody Report, dated May 29, 2019
- J-4 O'Shea Special Custody Report, dated May 29, 2019
- J-5 Sweeny Special Custody Report, dated May 29, 2019
- J-6 Yuhas Special Custody Report, dated May 15, 2019
- J-7 Vaughn email, dated May 24, 2019
- J-8 GSYCF IMP GS.101
- J-9 GSYCF IMP GS.129
- J-10 Law Enforcement Personnel Rules and Regulations
- J-11 Appellant receipt of Law Enforcement Personnel Rules and Regulations,

J-12 Appellant Work History

J-13 NJDOC HRB 84-17

BRIEFS

For appellant:

Post-trial Brief, received November 10, 2021

For respondent:

Post-trial Brief, dated November 19, 2021