

occurred on December 30, 2022. The appellant was suspended for thirty days for the December 30, 2022, major discipline. (R-24.) While the incident in this matter occurred before the December 30th disciplinary matter, he was not charged until after a thorough investigation was done. The PNDA was issued on April 5, 2023, and charges were sustained after a departmental hearing in March 2023. (R-1.) If this matter should be considered as a first offense, the penalty of termination for a first-time offense is certainly a serious disciplinary penalty. However, appropriate focus must be given to the nature and seriousness of the appellant's current actions. The appellant's conduct on December 16 or December 17, 2022, was a serious offense committed by someone in a safety-sensitive position and the penalty should reflect the same . .

Ultimately, the ALJ concluded that:

The appellant's status as a law enforcement officer places his conduct under heightened scrutiny . . . While I understand there is a plausible reason for taking his phone into the secured perimeter because he was concerned about his mother, there is no excuse for what he did next. He accessed the computer in the Control Unit, took a screenshot of a jail incident on one of the inmates and then sent it to Julie M., the inmate's wife, a civilian and an unauthorized third party. This is simply unacceptable.

Accordingly, the ALJ recommended upholding the removal. The Commission agrees.

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, such as a County Correctional Police 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).

In his exceptions, the appellant argues that the removal should be modified. In essence, the appellant attempts to minimize the nature of his misconduct and rely on his previous minor disciplinary history. While the Commission acknowledges the appellant's prior lack of a major disciplinary record, it wholeheartedly agrees with the ALJ that the appellant's egregious actions in this matter fall well short of what is expected of a public employee. Notwithstanding the appellant's attempts to justify, rationalize or minimize the serious nature of his misconduct, the Commission finds that his actions were egregious and wholly inappropriate, especially for a County Correctional Police Officer, who is held to a higher standard. The appellant's actions would clearly tend to undermine the public trust and as such, the Commission finds the penalty of removal neither disproportionate to the offense 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 upholds that action and dismisses the appeals of Benjamin Markus.

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 6TH DAY OF DECEMBER, 2023

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05685-23

AGENCY DKT. NO. N/A

2023-2658

**IN THE MATTER OF BENJAMIN MARKUS,
MONMOUTH COUNTY SHERIFF'S OFFICE.**

Patrick J. Caserta, Esq., for appellant Benjamin Markus (Patrick J. Caserta, Esq.
LLC, attorney)

Steven W. Kleinman, Special County Counsel, for respondent Monmouth Mercer
County Correction Center (Steven W. Kleinman, Esq., Special County
Counsel, attorney)

Record Closed: October 16, 2023

Decided: November 9, 2023

BEFORE JOAN M. BURKE, ALJ:

STATEMENT OF THE CASE

Appellant Benjamin Markus appeals the decision of respondent Monmouth County Appointing Authority (County) terminating him effective May 2, 2023, from his position as a county correction police officer with the Monmouth County Sheriff's Office, Correction Division, at the Monmouth County Correctional Institution (MCCI), a high security facility that houses inmates. The appellant does not dispute the charges but challenges the imposed penalty of removal.

PROCEDURAL HISTORY

On April 5, 2023, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) neglect of duty; N.J.A.C. 4A:2-2.3(a)(8) misuse of public property; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Monmouth County Correction Division Rules and Regulations: 3.20.070, and 8.05.070, violation of Monmouth County Policy Section 5 Employee Conduct and Work Rules regarding Workplace Rules; violation of Monmouth County Sheriff's Office, Correction Division Policy and Procedures: 1-3.13 Code of Ethics; 3-19 Electronic Devices/Internet Usage; 1.3-14 confidentiality of Information; and divulging Internal Information.

The charges were based on the following incident set forth in the Preliminary Notice of Disciplinary action (PNDA):

During the course of an internal Investigation, it was determined by your own admission that you released an internal Sheriff's office report that is confidential. This report was sent to a friend not employed by the Sheriff's Office via Facebook Messenger.

[R-2.]

Appellant did not request a departmental hearing. A Final Notice of Disciplinary Action (FNDA) was issued by the Correction Division on May 11, 2023, sustaining the charges on the April 5, 2023, PNDA. The FNDA removed the appellant effective May 2, 2023. The appellant filed a timely appeal of the removal and requested a hearing before the Office of Administrative Law (OAL), where the appeal was filed and perfected on June 27, 2023, as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. (R-1.)

A hearing was held on September 29, 2023, and the record was held open for the parties to obtain transcripts and submit closing briefs. Post-hearing submissions were

received on behalf of appellant and respondent, and on October 27, 2023, the record closed.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Greggory Uhlak (Officer Uhlak) is a county corrections officer. He has worked in the County since 2022. His job as a corrections officer is to monitor all inmates and help them in navigating through the facility. Officer Uhlak did not know the appellant and had no contact with him prior to this incident. Officer Uhlak is familiar with Nicholas M.,¹ the individual that is involved in the jail incident report since middle school. He has no personal interactions with Nicholas M. However, on September 28, 2022, Nicholas M. had reached out to Officer Uhlak via Facebook congratulating him on being a corrections officer. (R-11.) Nicolas M. was not in jail at the time.

Officer Uhlak testified that his next communication with Nicholas M. was sometime in December, prior to Christmas, while he was on vacation. Nicholas M. reached out to him by Facebook. Officer Uhlak testified that he had no communication with Nicholas M. while he was on duty. Nicholas M. informed Officer Uhlak that he was recently incarcerated at the facility and someone, a correctional officer, informed his wife about an incident while he was there. He wanted to know if Officer Uhlak could find out who the person was. (R-12.) Nicholas M. sent him a screenshot of the information which is deemed private that was sent to his wife. (R-8.) On December 24, 2022, Nicholas M. contacted him again and sent a picture of the alleged person, and said his name was "Benny." (R-10.) Officer Uhlak testified that he did not respond to Nicholas M. but was concerned and reported it to his union representative who then reported it to Internal Affairs (IA). On December 29, 2022, Nicholas M. reached out again to Officer Uhlak and

¹ The parties agreed to keep the names of the civilians involved in this matter confidential by referring to them with the use of their first name and an initial for their last name.

"claimed he was going to go to investigations and file a report if he didn't receive an apology by Sunday." (R-6.)

On cross-examination Officer Uhlak admitted that he did not report the correspondence from Nicholas M. until he had returned to work two days later. He was not sanctioned or disciplined when he reported the matter. Officer Uhlak admitted not to printing the Facebook shot and it is still on his Facebook.

William Beckenstein (Investigator Beckenstein) began employment as a rank and file corrections officer in 2011. In 2014 he became an investigator with the duty of investigating criminal incidents on jail property. He is involved with Internal Affairs (IA) which is a function for the jail. There is a separate IA unit at the jail. Beckenstein also conducts background investigations and handles other administrative responses and tasks. T30:2-7. He was promoted to senior investigator in 2022.

Investigator Beckenstein testified that when a complaint comes in, it is reviewed for criminal conduct; if there is criminal conduct, he is required to notify the Professional Responsibility Unit and the Monmouth County Prosecutor's office. If there is no criminal conduct, he would proceed with the investigation. Investigator Beckenstein is familiar with Officer Uhlak because he had conducted the officer's background investigation. Investigator Beckenstein was also familiar with the appellant in that he has worked with him and has spoken with him. All interactions he had with Officer Markus were in a professional capacity.

On December 29, 2022, Beckenstein was contacted by the warden about an incident of potential information leak. Shortly thereafter he was provided with information about the incident. In conducting the investigation, Beckenstein first spoke with the warden who instructed him to call the former inmate, Nicholas M. He was then informed by Nicholas M. that an officer from the jail had provided his wife with medical information about a medical emergency he had while he was in the jail. Nicholas M. stated the name of the correction officer as "Benny Markus." Beckenstein requested any screenshots and any other information that Nicholas M. received and requested a phone number for

Nicholas M.'s wife. After the holiday he reached out several times to the phone number that Nicholas M. provided to him for his wife, but to no avail.

Investigator Beckenstein testified he requested his IT department to pull the medical emergency, the Code 66 report involving Nicholas M. The internet protocol (IP) address identified the location of the computer which is located in Central Control which is the "nerve hub" to the jail facility. See R-15. The user ID CS 0434 refers specifically to the appellant. Ibid. Based on the ID and location of the computer, Beckenstein was able to determine that the appellant was on the computer approximately six times regarding the jail incident that is involved in this matter. Ibid. He used the employee schedules to see who was on duty at the alleged dates and time. (R-16.) After reviewing other reports from his investigation, he determined that it is more likely than not that Officer Markus was the source of the leak.

At the conclusion of Beckenstein's investigation, on January 4, 2023, he gave a "target notification letter" to the appellant. (R-6.) The target notification letter states :

YOU ARE HEREBY NOTIFIED THAT YOU ARE THE TARGET OF AN ADMINISTRATIVE INVESTIGATION BY THIS AGENCY INTO POTENTIAL VIOLATIONS OF DEPARTMENT RULES AND REGULATIONS, OR FOR YOUR FITNESS FOR DUTY. THIS INVESTIGATION CONCERNS:

AN ACCUSATION THAT ON OR ABOUT THE NIGHT OF 11 DEC 22, YOU, WITHOUT AUTHORIZATION, DISCLOSED JAIL INCIDENT REPORT 22JI03774. THIS REPORT CONTAINED INFORMATION REGARDING THE CODE 66 RESPONSE TO I/M . . . ON 11 DEC 22.

[R-6.]

Investigator Beckenstein said he spoke with Nicholas M. on January 17, 2023, regarding his unsuccessful attempts to speak with his wife as he had not gotten any response from her. (R-7.) As part of the email, Nicholas M. had sent a copy of the screenshot of the incident report. According to Beckenstein a Code 66 report is not

readily available and could be obtained by subpoena or an OPRA request. The screenshot that was taken of the Code 66 states:

NARRATIVE: Iannello, Vi

On 12/11/2022 I was assigned to housing unit A-2. At 10:am I observed an unresponsive inmate M Nicholas (#277121 DOB . . .) by cell 204 at the top of the stairs I immediately called a Code 66 Medical Emergency and began locking the unit down. Supervisors, Security and Medical entered unit. . . .

[R-14.]

Further to this report was also a supplemental narrative. Ibid.

On January 30, 2023, Investigator Beckenstein interviewed the appellant. (R-4.) The appellant told Investigator Beckenstein that he knew Julie M. before and prior to her current husband. Julie M. had lost two husbands previously, one by suicide. Officer Markus said he was trying to help her. The appellant informed the investigator that he took the screenshot of Nicholas M.'s jail incident with his personal phone. The appellant knew he was not authorized to have his personal phone in the Central Control Unit.

The appellant acknowledged that he was aware of the rules and regulations and procedures regarding the official release of information by the Monmouth County Sheriff's Office and that he was not authorized to make any such release. (R-4.) At the conclusion of Inspector Beckenstein's investigation, he found that the appellant had violated several policies and procedures: Monmouth County Correction's Rule 8.05.056 (R-19, R-28.); Policy and Procedures Guidelines Section III, Section IV and Section VI. (R-20.) This policy and procedure "provides guidelines for the security of departmental business." T 53:22-23. According to Investigator Beckenstein, all corrections officers on the first day of the job, received this information and know about these rules and regulations. There was also a violation of the use of electronic devices. (R-21.) Investigator Beckenstein testified that Officer Markus had also "violated the Spellman User Agreement which is required for acknowledgement every time an officer logs into the system." T51: 16-19.

On May 8, 2019, a memo regarding "unauthorized Cell Phones" was distributed to all custody staff and the appellant was a member of the custody staff. (R-23.)

Investigator Beckenstein identified the Booking Sheet (commonly referred to as the face sheet) of Nicholas M. which contains all his biographical information along with dates and times of charges. (R-17.) Nicholas M. was booked into the facility on December 10, 2022 for the offense of "AGG ASSAULT-STRANGLE DOMESTIC VIOLENCE VICTIM." Id. at 2. Nicholas M. was released on December 21, 2022. Ibid.

On cross-examination, the investigator was not sure what the exact date and time of the appellant's schedule. However, he obtained the report from the IP personnel. (R-16.) The appellant's shift ended at 9:00 p.m. on December 11, 2022. (R-16.) The computer was shown being accessed at 22:29.05 or 10:29 p.m. In looking at Exhibit 8, Beckenstein admitted that there was no identification of who sent it, or if Nicholas M.'s wife was the receiver. Investigator Beckenstein testified that the appellant admitted that he took a screenshot of what was on the computer and sent it to Julie M.

Investigator Beckenstein testified that the appellant at his interview was borderline "distraught and teary eyed." Appellant told him that he had carried his cell phone into Central Control because his mother was in the hospital, and she could pass at any moment. (R-4.) He sent the screenshot to Julie M. because she had previously lost two husbands, one by suicide. Investigator Beckenstein testified that as an investigator he is a factfinder and does not recommend disciplinary action.

Captain Shawn Reece (Captain Reece) testified on behalf of respondent. Captain Reece is employed by the County for approximately twenty-six and a half years and is currently the captain for the Correction Center. The Correction Center is a maximum secured facility as it houses individuals who have committed a variety of offenses, from traffic offenses to individuals who have committed murder. Captain Reece has seen a great deal of crimes in the facility to include assault, murder of an inmate, drug abuse and sexual assault. Thus security is taken seriously in the facility. As an administrator, Captain Reece feels that he has "an obligation that all my officers go home safely to their

families and we have an obligation to the inmates as well, care custody and control.” Tr. at 61:16-19. The facility can be an unpredictable environment. The inmates try to get over on the corrections officers and they have “twenty-four hours a day seven days a week to figure it out how they can beat the system. . . .” Tr. at 82:1-3. In addition, the inmates try to compromise the correctional officers with family members who are outside of the facility.

Captain Reece testified that there are policies on accessing the computer and other guidelines on how the facility operates. Every incident that occurs in the facility is documented in an official incident report and if disseminated to the public, could reveal their strategies, on escapes or reveal medical emergency protocols. As here, when a jail incident report is released to civilians without authorization from management it is problematic. Captain Reece has no control after the information is released as to who gets it. Inmates are still covered by HIPPA. Captain Reece testified that there are policies in place for dissemination of information. Officer Markus did not follow the policy that was in place at the time.

Cell phones are not allowed in the secured area of the facility. For example, if an inmate gets hold of a cell phone, it could facilitate gang activity. Currently the inmates have pre-paid phones that they use, however all of their conversations are recorded. Thus, with a cellphone the safety and security of the institution/facility can be compromised. Captain Reece testified that after hearing about the incident he called Officer Markus into his office and asked him if he had a cell phone on him.² He said “no” at first, and then admitted he had one on him. Captain Reece had Officer Markus remove the cell phone and place it on his desk. This triggered a PNDA which was issued on January 5, 2023. (R-24.) On January 24, 2023, a FNDA was issued suspending Officer Markus for thirty working days. Ibid.

Captain Reece testified that the Central Control computer has sensitive information. It has the criminal justice information system (CJIS) that is used statewide and can access anything that occurs in the county(ies). Captain Reece testified that if

² This incident occurred on December 30, 2022.

Officer Markus was restored to his position, he would have all the access, security rights and responsibilities he had before. This would be hard to do because he has lost all trust in Officer Markus. Prior to Officer Markus' termination he was placed in an area where there was no computer. As a correction's officer, you are sworn to protect and serve and are held to higher standards as a police officer on the street. Captain Reece felt it was reckless of Officer Markus to take and send something outside the facility and he does not know where the report is today. Captain Reece testified that if the appellant had discussed the situation regarding his mother's illness, they would have made accommodations as to where he would be placed with accessibility for a phone.

Benjamin Markus (appellant, Officer Markus) testified that he has been a corrections officer for approximately twelve years. He has been married for twelve years with two children, ages nine and four. Officer Markus said that he was born for the job and loves working as a corrections officer. He is three credits short of receiving his bachelor's degree. He has received commendations for saving a child's life who he had performed resuscitation to after a drowning incident. He received a commendation for also saving inmates' lives in the jail. He was also Correctional Police Officer of the Year for both State and for the County. He was "picked" for special details such as funerals or high profile cases.

Officer Markus testified that at the time of this incident, his mother was in the hospital, and he was focused on whether she was going to live. He admitted to not following the proper protocol regarding having a cell phone in a secured area. He had his phone on him in the Central Control Unit. He was contacted by Julie M. who he has known his whole life. She told him that she had not heard from her husband who is in the facility. He was not thinking when he sent the screenshot to Julie M. He thought by sending the screenshot it would have given Julie M. "peace of mind" that her husband was okay. Officer Markus testified that Julie M. had two prior husbands; one died of a heart attack and the other from suicide. He therefore was trying to reassure her that her husband, Nicholas M., was okay. He admitted that his "head space was not correct" at the time. However, he testified that looking at what he sent Julie M., "it didn't even do what I wanted it to do which was give her a piece of mind." Tr. at 115:18-19.

Officer Markus admitted to sending the screenshot. (R-8.) He testified that prior to this incident, he led an exemplary life in his duties as a correctional officer; he is a very good corrections officer and an asset to the facility. He is disappointed in himself. He testified that the entire week that the incident occurred has been a blur to him. Sadly, Officer Markus' mom passed away on December 19, 2022. He has thirteen years to retire, and he would like to return to his position. He wants to prove his trustworthiness and loyalty to his family and to the department. He testified that " I just don't want to be judged for one mistake that I wasn't thinking clearly of." Tr. at 118:7-8. Officer Markus does not want his life and career to be determined by this incident. Officer Markus was very contrite and emotional and expressed his regrets.

On cross-examination, Officer Markus admitted that on December 16 or December 17, 2022, he did take a screenshot of the jail incident and at the time he knew the phone policy. He also admitted that he knew the policy regarding personal use of the computer. Officer Markus admitted that he should not have disseminated the information to Julie M. He admitted that on December 30, 2022, he also had his cell phone on him in a secured area. He said he had forgotten to leave it in the car. When asked how many times he had his phone with him in the secured area, he said on the two occasions (on or about December 16 or December 17, 2022, and December 30, 2022); there were no other times. Officer Markus agreed that correction officers need to be on guard at all times because inmates and family members could take advantage of them. Officer Markus admitted that he was compromised by Julie M., but said he had no sexual contact with her. Officer Markus testified that he has a deep longstanding friendship with Julie M. In looking back, Officer Markus stated, given his state of mind, Julie M. may have taken advantage of him. During that time frame she called him multiple times.

Officer Markus admitted that his communication was only through Facebook Messenger. Any calls he made was through the App. He stated that the concern with having a cell phone on assignment in the Central Control Unit is somewhat unfounded because "[t]he assignment that I was assigned to is a controlled setting with no inmate access and there's no inmates around. You control all the doors in the jail and there's no inmate access at all." See Tr at 127:19-22. In order to get to the Central Control Unit,

one must first go through a sallyport; and another sallyport to get into the facility where the inmates are located. Officer Markus said all the phone calls he made were done when he was off duty and reiterated that he should not have taken the screenshot from the computer in the Central Control Unit.

FACTUAL DISCUSSION AND FINDINGS

Based upon the testimony of the witness and examination of the documentary evidence, I **FIND** that the following **FACTS** are undisputed:

After carefully reviewing the exhibits and documentary evidence presented numerous times during the hearing, and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

1. The appellant was employed as a County Correction Police officer at the Monmouth County Correction Division. (R-1.)
2. On January 4, 2023, the appellant was notified that he was a target of an administrative investigation. (R-6.) The notice further informed the appellant that the investigation concerned " an accusation that on or about the night of 11 Dec 22, you, without authorization disclosed jail incident report 22J103774. This report contained information regarding the code 66 response . . . ' ibid.
3. On January 5, 2023, the appellant was served with a PNDA regarding violation of the Monmouth County Sheriff's Office, Corrections Division, Rules and Regulations Section 3.20.070 regarding "[c]ell phones are prohibited from being brought into a secured perimeter of the facility." (R-24.)

A) The appellant attended a hearing regarding this matter on January 19, 2023. ibid.

- B) The specifics of the allegation were that on "December 30, 2022, during a meeting in Captain Reece's Office, you were in possession of your cell phone in the secured perimeter of the facility." Ibid.
- C) On January 24, 2023, the appellant was issued a thirty-day suspension, out-of-work and without pay for being in possession of his cell phone in the secured perimeter of the facility on December 30, 2022. Ibid.
4. On April 5, 2023, the appellant was issued a PNDA for removal with a date to be determined. (R-2.)
5. On May 11, 2023, the respondent issued a FNDA (R-1) resulting in the appellant being charged with the following violations:
- N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties;
- N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee;
- N.J.A.C. 4A:2-2.3(a)(7) neglect of duty;
- N.J.A.C. 4A:2-2.3(a)(8) Misuse of public property;
- N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Monmouth County Correction Division Rules and Regulations:
1. 3.20.070, Cell phones are prohibited from being brought into the secured perimeter of the facility;
 2. 8.05.050, All members of the Division shall treat as confidential the official business of the Division. They shall not talk for publication, be interviewed or make public speeches or Divisional business, nor

shall they impart information relating to the official business of the Division to anyone except: **A.** By due process of law; **B.** With the permission of the Sheriff; **C.** As authorized by the rules and Regulations.

3. Violation of Monmouth County Policy Section 5 Employee Conduct and Work Rules regarding Workplace Rules;

4. Violation of Monmouth County Sheriff's Office, Correction Division Policy and Procedures:

- a) 1-3.13 Code of Ethics;
- b) 3-19 Electronic Devices;
- c) 3-14 Confidentiality of Information;
- d) 3-19 Electronic Devices, Divulging Internal Information.

6. The appellant was removed from his position effective May 2, 2023. (R-1.)

7. On or about August 11, 2023, the appellant admitted that that he was not authorized to have his personal cell phone in any secure area of MCCI. (R-18.) The appellant further admits that it was a violation when he took a screenshot of the jail incident report regarding Nicholas M. on December 11, 2022. Ibid. Appellant admitted that he obtained the official MCCI incident report regarding Nicholas M. on either December 16 or December 17, 2022, to provide a copy to Julie M., and he was not authorized to access the official MCCI incident report regarding Nicholas M. (R-18, at 5.) The appellant admits that the official MCCI report regarding Nicholas M. contained non-public information relating to the investigation into the incident. Ibid. Appellant admitted that he was not authorized to disclose the MCCI incident report that occurred December 11, 2022, on Nicholas M. Ibid.

8. The appellant further admits that his conversation with Julie M. took place on Facebook messenger. (R-18, at 6.)

9. The appellant challenges only the penalty imposed.

LEGAL DISCUSSION

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 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 Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may properly execute their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). An appeal requires the OAL to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

The appellant's status as a corrections officer subjects him to a higher standard of conduct than ordinary public employees since corrections officers, like police, are held to a high standard of professional conduct because when a corrections officer fails in their duties, they may imperil others. Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 317 (App. Div. 1967). Strict discipline of corrections officers is necessary for the safety and security of other corrections officers and the inmates in their charge. Henry, 81 N.J. at 578. As the Appellate Division explained, this higher standard of conduct and behavior is necessary because:

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

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

A 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 enumerated at N.J.A.C. 4A:2-2.3. The specific charges in this matter are that appellant is guilty of incompetency, inefficiency or failure to perform duty in violation of N.J.A.C. 4A:2-2.3(a)(1), conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7) and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Appellant is also charged with violation of Monmouth County Sheriff's Office, Corrections Division, Rules and Regulations:

3.20.070 Cell phones are prohibited from being brought into the secured perimeter of the facility.

8.05.070, All members of the Division shall treat as confidential the official business of the Division. They shall not talk for publication, be interviewed or make public speeches or Divisional business, nor shall they impart information relating to the official business of the Division to anyone except: **A.** By due process of law; **B.** With the permission of the Sheriff; **C.** As authorized by the rules and Regulations.

Violation of Monmouth County Policy Section 5 Employee Conduct and Work Rules regarding Workplace Rules

Violation of Monmouth County Sheriff's Office, Correction Division Policy and Procedures:

1-3.13 Code of Ethics;

3-19 Electronic Devices;

3-14 Confidentiality of Information; and 3-19 Electronic Devices, Divulging Internal Information.

[R-1.]

Under N.J.A.C. 4A:2-2.3(a)(1), an employee may be subjected to major discipline for "incompetency, inefficiency, or failure to perform duties." Although progressive discipline is the general rule, sheer incompetency can be the grounds for firing without progressive discipline. Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline). Here the appellant admitted to taking his phone into a secured area, taking a screenshot of information that was not public and then disseminated it. This reflects absence of judgment and as a corrections officer he is held to a high standard of professional conduct because when a corrections officer fails in their duties, they may imperil others. Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). I **CONCLUDE** that the respondent has met the burden of proof to sustain the charges of Incompetency, inefficiency, or failure to perform duties under N.J.A.C. 4A:2-2.3(a)1.

"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 Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule

or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

The appellant does not deny that his conduct on December 16 or December 17, 2022, violated Monmouth County Sheriff’s Office Corrections Division Policy and Procedure prohibiting persons from bringing electronic devices inside the secure perimeter of the facility. See R-21, Policy and Procedure 3.19 stating “the policy of the Monmouth County Sheriff’s Office, Corrections Division, that the Monmouth County Correctional Institution will not permit electronic devices into the facility unless approved by Administration. . . . Cell phones are prohibited on any post with the exception of Perimeter, Hospital Duty, Transportation, or pre-approved posts by Administration.”

Section 5: Employee Conduct & Workplace Rules “expects all employees to follow certain work rules and conduct themselves in ways that protect the interests and safety of all employees, Employees who break workplace rules may be subject to disciplinary action, up to and including termination of employment.” (R-22.) Actions that constitute unacceptable conduct includes unauthorized use of telephones, mail system, internet, or other county-owned equipment, violation of departmental or personnel policies. Ibid. When Officer Markus brought his personal cell phone with him into the secured perimeter of the facility it violated Monmouth County Sheriff’s Office Corrections Division Policy and Procedure and undermined the security of the facility where the appellant worked. As the Appellate Division summarized, there is a cognizable public safety concern in having such devices inside the secure perimeter of a correctional institution:

[P]ersonal computers and cell phones are not permitted because they are likely to compromise security and the therapeutic environment. Cell phones and personal computers are contraband in a secure facility because of their ability to receive, transmit, or store data. Computers and cell

phones are easily used to store and view data that may include pornographic pictures and/or videos. Furthermore, cell phones and personal computers are capable of accessing the [I]nternet, both through wireless and hard lines. The Department believes that access to the [I]nternet would open the door for residents to prey on unsuspecting victims and would therefore be a public safety concern.

Manasco v. New Jersey Dep't of Corrections, Dkt. No. A-3588-08T3, 2010 N.J. Super. Unpub. LEXIS 3103, *4-6 (App. Div. Dec. 27, 2010). See also N.J.A.C. 10A:1-2.2 (designating "electronic communication devices" as contraband inside NJ correctional facilities). The appellant's action of taking his personal cell phone into a secure area of the MCCI, coupled with taking a screenshot of confidential information located on the Central Control computer and disseminating it to an unauthorized person demonstrates brazenness, a reckless attitude and egregious conduct. I **CONCLUDE**, therefore, that the appellant's conduct did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and the respondent has met its burden of proof to sustain this charge.

Respondent contends that Officer Markus' actions violates Monmouth County Sheriff's Office, Corrections Division, Rules and regulations (Rule) 8.05.070, which states "[a]ll members of the Division shall treat as confidential the official business of the Division. They shall not talk for publication, be interviewed or make public speeches or Divisional business, nor shall they impart information relating to the official business of the Division to anyone." Additionally, appellant's actions violate Monmouth County Sheriff's Office, Correction Division Policy and Procedures (Procedures): 1-3.13 Code of Ethics, which states in part "violation of the Standard of Conduct, Rules and Regulations Manual, Code of Ethics for County Correction Officer or special rules of conduct specifically applicable to employees of the Department may result in disciplinary action." This ethical violation of the rule includes violation of 3-19 Electronic Devices.

Respondent further contends that, there is a violation of Rule 3-14 confidentiality of information; which states "[a]n employee shall not reveal the contents of any official documents, records, or reports, policies and procedures, or emergency plans except as authorized by the Warden." (R-20). Moreover, it is a further violation to divulge internal

information. The rule states “[n]o employee will communicate any internal information that concerns the Department, Departmental activities, or departmental members to persons outside the Department without authorization.” Id. at 2. Here Officer Markus did bring an unauthorized cell phone into a secured perimeter of the facility, did enter into a computer in the secured area and took a screenshot of a jail incident on inmate Nicholas M., that occurred on December 11, 2022, and disseminated that internal information to Julie M., a civilian, all of which he was not authorized to do.

Appellant concedes that he knew it was wrong to take the phone into the secured area and that he knew the policy about taking a phone into the secured area. However, because his mother was in the hospital and he was worried about her, he kept his private cell phone on him while in the secured area. Captain Reece testified that had Officer Markus discussed the situation regarding his mother with him, he could have placed him in an area where there was access to a phone. The appellant never discussed with his superiors or made them aware about taking his cell phone into the secured perimeter. In addition, the appellant admitted to being aware of rules, regulations and procedures regarding the official release of information by Monmouth County Sheriff’s Office. (R-4) Despite knowing this, Officer Markus took the screenshot of non-public confidential information and sent it to Julie M. via Facebook Messenger, a social media platform. In addition, appellant at a later date, was again caught with having a cell phone on him in the Central Control Unit for which he received a thirty-day suspension. (R-24.)

The appellant, in his testimony, acknowledged that he knew that what he did was wrong and would like a second opportunity to prove himself worthy of the position of a corrections officer. However, the record reflects only appellant’s word is in support of his return. Captain Reece testified that to return Officer Markus back to his position would include giving him access to all the security information of the facility. Captain Reece testified that he has lost all trust in Officer Markus. What was clear is that after Captain Reece found out about the incident with the phone on December 16 or 17, 2022, he called Officer Markus into his office on December 30, 2022, and asked if he had a cell phone on him at that time. After denying it, Officer Markus admitted that he did, and the captain requested he place it on his desk. This was the second time that the facility found Officer

Markus violating the cell phone policy. If the first time he had it was because of his mother's terminal condition, then why take the chance two weeks later after his mother had passed? Officer Markus knew that cell phones were prohibited from being brought into the secured perimeter of the facility. Rule 3:20.070 states: "Cell phones are prohibited from being brought into the secured perimeter of the facility." (R-1.)

The appellant's actions of taking his personal cell phone into a secure area of the MCCI, coupled with taking a screenshot of confidential information located on the Central Control computer and disseminating it to an unauthorized person demonstrates brazenness, a reckless attitude and egregious conduct. Accordingly, I **CONCLUDE** that the respondent has met its burden of proof to sustain the charges of, conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violating Monmouth County Sheriff's Office, Corrections Division, Rules and Regulations: 3.20.070, 8.05.070; Policy and Procedures 1-3.13, 3-19 and 3-14.

Officer Markus was also charged with neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7). "Neglect of duty" has been interpreted to mean that an "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "negligent" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). There is no doubt that preserving confidential information was an essential element of Officer Markus' duties. Therefore, I **CONCLUDE** that the respondent has met its burden of proving by a preponderance of credible evidence that Officer Markus' conduct constituted neglect of duty.

Officer Markus was also charged with misuse of public property under N.J.A.C. 4A:2-2.3(a)(8). This phrase can be understood to mean the unauthorized use of property

owned, leased or otherwise acquired by a governmental or official entity, which is provided to employees to assist them in the performance of their official duties in carrying out the mission of the entity, other than such incidental or minimal use not unexpected by the employer. Such property can include vehicles, computers, copiers, telephones, uniforms, etc. Officer Markus took a screenshot of a confidential record on an inmate at the facility and disseminated it in violation of MCCI Rules and Regulation 3.20.070, 8.05.050. The County records indicated that Officer Markus logged into the Control Center computer terminal on December 12, 2022, December 14, 2022 and December 17, 2022, to access the jail incident report. Officer Markus admitted to accessing the computer and used his phone to screenshot Nicholas M.'s jail incident report that occurred on December 11, 2022. He then disseminated it to an unauthorized person, Julie M. I therefore **CONCLUDE** that Officer Markus violated N.J.A.C. 4A:2-2.3(a)(8). I further **CONCLUDE** that the respondent has met its burden of proof and this charge must be **SUSTAINED**.

PENALTY

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

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, Bock, 38 N.J. at 523, that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the

seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 205 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The respondent has proven by a preponderance of the credible evidence the following charges against the appellant: violation of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) neglect of duty; N.J.A.C. 4A:2-2.3(a)(8) misuse of public property; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Monmouth County Correction Division Rules and Regulations: 3.20.070, and 8.05.070, violation of Monmouth County Policy Section 5 Employee Conduct and Work Rules regarding Workplace Rules; violation of Monmouth County Sheriff's Office, Correction Division Policy and Procedures: 1-3.13-Code of Ethics; 3-19 Electronic Devices/Internet Usage; 1.3-14- confidentiality of Information; and divulging internal information.

The respondent seeks to remove the appellant from his job as discipline for these charges. The remaining question to be resolved, therefore, is whether the discipline sought to be imposed in this case is appropriate.

Although the Civil Service Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's disciplinary history may be outweighed if the infraction at issue is of a serious nature. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The concept of progressive discipline is recognized in this jurisdiction, but:

That is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position, or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's own position involves public safety and the misconduct causes risk of harm to persons or property.

[In re Herman, 192 N.J. 19, 33-34 (2007), (citing Henry, 81 N.J. at 580).]

A singular incident of absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See Id. at 32.

The appellant's prior disciplinary history (R-17) shows that, in the approximately twelve years since the appellant worked for the County, he has had three minor disciplines; and one major discipline for taking his cell phone into the secured perimeter of the facility which occurred on December 30, 2022. The appellant was suspended for thirty days for the December 30, 2022, major discipline. (R-24.) While the incident in this matter occurred before the December 30th disciplinary matter, he was not charged until after a thorough investigation was done. The PNDA was issued on April 5, 2023, and charges were sustained after a departmental hearing in March 2023. (R-1.) If this matter should be considered as a first offense, the penalty of termination for a first-time offense is certainly a serious disciplinary penalty. However, appropriate focus must be given to the nature and seriousness of the appellant's current actions. The appellant's conduct on December 16 or December 17, 2022, was a serious offense committed by someone in a safety-sensitive position and the penalty should reflect the same. Given the serious nature of these actions, the respondent argues that removal is warranted here.

Respondent relies on the following cases to support its position:

1. I/M/O Christopher Chin, OAL Dkt. No CSR 1209-13 where the removal was upheld for violating the departmental cell phone policy, ALJ Miller concluded that "[b]ringing electronic devices, particularly cell phones, into a correctional facility is a serious offense. . . . , these devices could fall into the hands of inmates and be used for purposes that seriously undermine the facility's security. If an inmate were

to gain custody or control of a cell phone, it could be used for surveillance, communication, contraband, gang-related activities, riots, prison breakouts or other serious prohibited activities.” Ibid.

2. In I/M/O/ Ricky Muse, OAL Dkt. No. CSR 14350-19. In Muse, the appellant was in possession of his cell phone while at his post. He was on a video phone call using an internet application, FaceTime. When questioned by the Special Investigations Division, he initially denied ever introducing a cell phone into the facility. Appellant later admitted to having his cell phone while on post inside a secure perimeter. ALJ Bogan concluded that removal was appropriate. The Commissioner adopted the ALJ’s decision in its Final Decision. See final decision CSC 2020-617 issued May 1, 2020.
3. In I/M/O Takia Johnson, OAL Dkt No. CSR 11230-15, the appellant here admitted using her cell phone in the confines of the correctional facility numerous occasions and also received a picture from an officer on the cell phone of a naked body part while she and that officer were on duty inside the correctional facility. In addition, she further stated that she took a picture of a supervisor without his knowledge while they were both on duty at the correction facility hospital. The ALJ upheld the removal, and the Commissioner adopted the ALJ’s Initial Decision. (See Final Decision CSC 2015-3106 issued December 18, 2015).

Respondent argues that the misconduct here “meets or exceeds the misconduct the Civil Service Commission found sufficient to justify removal in all of the foregoing cases.” (Respondent’s Brief at 21.) Respondent further argues that “substantial actual harm resulted from Appellant’s actions—an inmate’s personal medical information was disseminated without his knowledge and consent, along with other confidential material . . .” Ibid.

The appellant argues that progressive discipline should apply here because “[t]he present matter is not a repeat offense.” and [it] would be inappropriate to consider the December 30th matter as prior discipline for the purpose of assessing the appropriate sanction here under the concept of progressive discipline.” (Appellant’s Brief.) The

appellant further argues that he “provided confidential information to the inmate spouse, not to the public or a third party. He provided that information because he believed he was doing the right thing by calming her worst fears.” (Appellant’s Brief.) Furthermore, “Officer Markus did not provide an inmate with a cell phone and he did not bring his cell phone into an area in the jail where he would encounter any inmates.” Ibid. Appellant submits that termination here is inappropriate. I disagree.

The appellant’s status as a law enforcement officer places his conduct under heightened scrutiny. His primary duty is to enforce and uphold the law. “He carries a service [weapon] on his person and is constantly called upon to exercise tact, restraint and good judgment.” In re Disciplinary Procedures of Phillips, 117 N.J. 567, 576-77 (1990) (quoting Moorestown, 89 N.J. Super. at 566). Being held to this heightened standard of conduct is one of the obligations the appellant undertook “upon voluntary entry into the public service.” In re Emmons, 63 N.J. Super. at 142. Respondent posits that “the position of Corrections Officer requires a cool head and the ability to exercise appropriate decision-making at all times, including while under significant personal stress.” (Respondent’s Brief at 2.) While I understand there is a plausible reason for taking his phone into the secured perimeter because he was concerned about his mother, there is no excuse for what he did next. He accessed the computer in the Control Unit, took a screenshot of a jail incident on one of the inmates and then sent it to Julie M., the inmate’s wife, a civilian and an unauthorized third party. This is simply unacceptable.

The court in In re Griffin, No. A-5042-09 (App. Div. November 4, 2011), <https://njlaw.rutgers.edu/collections/courts/>, upheld the Civil Service Commission’s penalty of removal for a senior correction officer who was a nine-year employee with a generally positive record when that officer brought a cell phone inside the secured perimeter and sent messages via text, even when there was “no nefarious purpose” and “no harm resulted,” stating that “what matters is the safety of the public, the prison staff, and the prisoners.” In sustaining the charge, the Civil Service Commission explained that “[a] Senior Correction Officer . . . holds a highly visible and sensitive position within the community and the standard for an applicant includes good character and an image of utmost confidence and trust,” and found that the officer subjected the correctional facility

and the public to possible harm by bringing a cell phone into a secure facility. Correctional institutions are operated as paramilitary organizations, 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).

I **CONCLUDE** that the action by the appointing authority of removing Benjamin Markus for his conduct on December 16 or December 17, 2022, should be affirmed.

ORDER

I **ORDER** that charges against the appellant for violations of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) neglect of duty; N.J.A.C. 4A:2-2.3(a)(8) misuse of public property; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Monmouth County Correction Division Rules and Regulations: 3.20.070, and 8.05.070, violation of Monmouth County Policy Section 5 Employee Conduct and Work Rules regarding Workplace Rules; violation of Monmouth County Sheriff's Office, Correction Division Policy and Procedures: 1-3.13-Code of Ethics; 3-19 Electronic Devices/Internet Usage; 1.3-14 confidentiality of information; and divulging internal information, are **AFFIRMED**. The appellant's appeal is hereby **DISMISSED**.

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

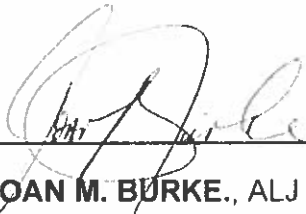
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision

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. 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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

November 9, 2023 _____

DATE



JOAN M. BURKE., ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JMB/jm/mph

APPENDIX

WITNESSES

For appellant

Benjamin Markus

For respondent

Shaun Reece, Captain, Monmouth County Correctional Institution

William Beckenstein, Investigator Secured facilities, Monmouth County
Correctional Institution

Greggory Uhlak, County Correctional Police Officer, Monmouth County
Correctional Institution

EXHIBITS

For appellant

Appellant's Brief, October 27, 2023

For respondent

Respondent's Brief, October 26, 2023.

- R-1 Final Notice of Disciplinary Action, May 11, 2023
- R-2 Preliminary Notice of Disciplinary Action, April 5, 2023
- R-3 Notice of Immediate Suspension, March 24, 2023
- R-4 Statement of Benjamin Markus to Investigator William Beckenstein
- R-5 Investigator William Beckenstein's notes taken during statement of Benjamin Markus
- R-6 Internal Affairs Notification to Benjamin Markus, January 4, 2023
- R-7 E-mail communication between Nicholas M. and Investigator William Beckenstein, January 3-17, 2023

- R-8 Attachment to email from Nicholas M. to Investigator William Beckenstein (Supplemental Incident Report prepared by Sgt. Michael Gall, January 3, 2023
- R-9 Jail Incident Report authorized by CCPO Gregory Uhlak, December 29, 2022
- R-10 Screenshot of Facebook Messenger Communication between Nicholas M. and CCPO Gregory Uhlak, December 24-27, 2022
- R-11 Printout of Facebook Messenger Communications between Nicholas M. and CCPO Gregory Uhlak, December 24-27, 2022
- R-12 Jail Incident Report authored by CCPO Gregory Uhlak
- R-13 Screenshot of Supplemental Incident Report prepared by Sgt. Michael Gall, December 11, 2022
- R-14 Supplemental Incident Report prepared by Sgt. Michael Gall, December 11, 2022
- R-15 Access Report for Supplemental Incident Report prepared by Sgt. Michael Gall, December 11-17, 2022
- R-16 MCCI Duty Rosters for December 11, 14, and 17, 2022
- R-17 Booking Sheet for Inmate Nicholas M., December 10, 2022
- R-18 Request for Admissions, August 11, 2023
- R-19 Monmouth County Sheriff's Office Corrections Division Rules and Regulations (8.05.050)
- R-20 Monmouth County Sheriff's Office Corrections Division Policy and Procedure 1:3.14 Confidentiality of Information, December 1, 2021
- R-21 Monmouth County Sheriff's Office Corrections Division Policy and Procedure 3.19 Electronic Devices/Internet Usage, January 6, 2023
- R-22 Monmouth County Employee Guide, Section 5 (Workplace Rules). December 19, 2022
- R-23 Memorandum by Captain Jason McCauley Re-unauthorized cell phones, May 8, 2019
- R-24 Final Notice of Disciplinary Action, Benjamin Markus, January 24, 2023
- R-25 Minor Disciplinary Action, May 19, 2022
- R-26 Minor Disciplinary Action, October 10, 2020

R-27 Minor Disciplinary Action, February 7, 2018

R-28 Monmouth County Sheriff's Office Corrections Division Rules and Regulations