



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gregory Williams,
South Woods State Prison,
Department of Corrections

CSC Docket Nos. 2019-1386 and
2019-1923
OAL Docket Nos. CSV 17746-18 and
CSV 02726-19
(Consolidated)

ISSUED: SEPTEMBER 4, 2024

The appeals of Gregory Williams, Senior Correctional Police Officer, South Woods State Prison, Department of Corrections, 15 and 60 working day suspensions on charges, were heard by Administrative Law Judge Elaine B. Frick (ALJ), who rendered her initial decision on July 24, 2024. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on September 4, 2024, adopted the ALJ's Findings of Fact and Conclusions and affirmed the recommendation to uphold the 15 working day suspension. However, the Commission did not agree with the ALJ's modification of the 60 working day suspension to a 15 working day suspension. Rather, the Commission imposed a 30 working day suspension.

As indicated above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them generally unpersuasive. The Commission makes the following comments. In its exceptions, the appointing authority argues that the ALJ should not have dismissed certain charges underlying the 60 working day suspension. The Commission disagrees. Much of the ALJ's determinations stemmed from her credibility determinations of the testimony of the witnesses in conjunction with the video evidence in the record. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the

witnesses and common human experience that are not transmitted by the record.” See also, *In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ’s decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See N.J.S.A. 52:14B-10(c); *Cavalieri u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). Upon its review, the Commission finds nothing in the record or the appointing authority’s exceptions to demonstrate that the ALJ’s credibility determinations, or her findings and conclusions based on those determinations in conjunction with the video of the event, were arbitrary, capricious or unreasonable.

As such, the only question is the proper penalty to be imposed regarding the 60 working day suspension. In that regard, the Commission notes that its review of the penalty is also *de novo*. Further, 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. It is settled that the theory of progressive discipline is not a “fixed and immutable rule to be followed without question.” See *Carter v. Bordentown*, 191 N.J. 474 (2007).

Upon its review, the Commission finds that the modified 15 working day suspension imposed, in light of the misconduct that has been sustained, and, importantly, the appellant’s previous disciplinary history, is insufficient. The appellant’s history of major discipline as well as similar types of misconduct supports a higher penalty. However, given the circumstances and the dismissal of certain charges, the Commission finds that the proper penalty is a 30 working day suspension. This penalty should be sufficient to impress on the appellant that any future similar misconduct will result in increased penalties, up to removal from employment.

Since the 60 working day suspensions has been modified, the appellant is entitled to 30 working days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, he is not entitled to counsel fees. N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino*

(MSB, decided September 21, 1989). In the case at hand, the initial 15 working day suspension was upheld and, although the penalty for the 60 working day suspension was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalties imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision modifying the 60 working day suspension to a 30 working day suspension will not become final until any outstanding issues concerning back pay are finally resolved.

ORDER

15 Working Day Suspension

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. Accordingly, the Commission affirms that action and dismisses the appeal of Gregory Williams.

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

60 Working Day Suspension

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. However, it modifies the 60 working day suspension to a 30 working day suspension. The Commission further orders that the appellant be granted 30 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF SEPTEMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 17746-2018

AND CSV 02726-2019

AGENCY DKT. NOS. 2019-1386

AND 2019-1923

(CONSOLIDATED)

**IN THE MATTER OF GREGORY WILLIAMS,
SOUTH WOODS STATE PRISON,
DEPARTMENT OF CORRECTIONS.**

Louis M. Barbone, Esq., for appellant (Jacobs and Barone, P.A. attorneys)

Marcus Garcia, Esq., Legal Specialist, New Jersey Department of Corrections,
and **Lujuana M. Lee, Esq.,** Legal Specialist, having appeared at the hearing
and authored the closing summation briefs for respondent, South Woods
State Prison, New Jersey Department of Corrections

Record Closed: May 7, 2024

Decided: July 24, 2024

BEFORE **ELAINE B. FRICK, ALJ:**

STATEMENT OF THE CASE

Respondent, South Woods State Prison (SWSP), New Jersey Department of Corrections (DOC), imposed discipline of a fifteen working days suspension upon appellant, Gregory Williams (Williams), a Senior Correction Police Officer (SCPO) at SWSP, pursuant to a Final Notice of Disciplinary Action (FNDA) which lists multiple

sustained charges regarding an incident that occurred on May 11, 2018, when appellant took ill at the facility and as he was placed on a stretcher various items fell from his pocket, which were deemed to be contraband. Additional items deemed to be contraband were found in his jacket pocket.

SWSP also imposed discipline of a sixty working days suspension upon appellant, for an incident that occurred on May 22, 2018. Multiple sustained charges are identified in the FNDA regarding the incident at the facility entryway when Williams was reporting for work and had a bottle of iced tea and a yogurt in his jacket pocket and had an interaction with the security screening officer at the entryway. Williams appealed the discipline imposed upon him in both matters.

PROCEDURAL HISTORY

On September 13, 2018, an FNDA was issued by SWSP which imposed discipline of fifteen working days suspension upon Williams for the incident of May 11, 2018. Williams appealed and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 12, 2018, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13.

That matter was assigned to a prior ALJ. Summary decision motions were filed by both parties. The motions were denied by that ALJ, by order entered on January 23, 2020. The ALJ was subsequently appointed to the Superior Court bench, while the matter was pending.

On December 26, 2018, SWSP issued another FNDA to Williams, which imposed sixty working days suspension of discipline upon Williams regarding an incident that occurred on May 22, 2018. That matter was transmitted to the Office of Administrative Law (OAL) where it was filed on February 26, 2019, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13.

The sixty days suspension matter was assigned to a second ALJ. A motion for summary decision was submitted. That motion was held in abeyance, pending the

summary decision motion determination by the first ALJ in the fifteen days suspension matter. After the first ALJ issued his determination denying the cross applications for summary decision in the fifteen days suspension matter, and the summary decision motion was still pending in the sixty days suspension matter, the second ALJ assigned to the sixty days suspension matter also was appointed to the Superior Court bench.

Both suspension matters were reassigned to the undersigned ALJ. An order denying the motion for summary decision in the sixty days suspension matter was entered on February 9, 2022. The parties thereafter agreed the matters should be consolidated. An Order for Consolidation was entered on August 20, 2022.

Hearing dates were scheduled. While those dates were pending, the DOC's counsel of record changed. When the hearing date approached, the DOC's new counsel of record misunderstood that the matters had been consolidated and were scheduled to be heard together, and not as two separate cases. The hearing dates were adjourned and rescheduled to permit counsel time to prepare for the consolidated proceeding. A Second Amended Prehearing Order was entered on July 26, 2023, confirming the hearing dates.

The hearing was conducted in person at the OAL in Atlantic City on November 6, 2023, and January 25, 2024. The record remained open for the submission of written summations. An extension for the submission of the summations was granted. An extension order was entered for the issuance of this decision.

FACTUAL DISCUSSION AND FINDINGS

Williams was hired as a Correctional Officer (CO) by the DOC on September 4, 2001. He has been continuously employed by DOC since that time. At some point during his employment, his job title was updated to Senior Correction Police Officer (SCPO). As of May 2018, Williams was working as an SCPO at the SWSP facility.

FIFTEEN DAYS SUSPENSION-STIPULATIONS

The parties agreed upon a "Joint Stipulation of Facts", set forth in separately numbered paragraphs, entered as "J-1-15" regarding the fifteen days suspension. The stipulated facts I **FIND** to be **FACTS**, as set forth verbatim from J-1-15 as follows:

1. Gregory Williams (Petitioner) is employed with the New Jersey Department of Corrections (NJDOC) as a State Correctional officer at South Woods State Prison.
2. State Correctional Officer duties are to ensure the custody, safety and care of incarcerated person confined in the State correctional facilities.
3. On Friday, May 11, 2018, at approximately 10:12 a.m., Petitioner was discovered on the floor with complaints of dizziness. Code 53 (denotes a medical emergency) was called, and the Petitioner was transported to the hospital for medical care.
4. On the same date, upon the Petitioner being placed on a stretcher four items fell out [sic] his pocket, specifically, a back scratcher, two magnets, a roll of tape and a plastic bag with miscellaneous items. These miscellaneous items included 1 T15 Trox bit, 1 ¼ inch socket containing the Trox bit, 1 allen wrench, 1 watch style battery, 1 nail clipper, 2 ink pens, 1 dime (coin), and 3 pieces of aluminum foil that were folded over.
5. A subsequent inventory of the Petitioner's jacket, uniform shirt and vest disclosed a blue multi-mat pillow with cover, green liquid Advil capsules, one small blue flashlight, one carabiner hook, 1 paper with miscellaneous notes, 3 black ink pens, 1 partial white sock, 1 radio clip, 1 dollar bill, and 1 eyeglass holder with eyeglasses.
6. On Tuesday, June 26, 2018, during a video recorded interview, the Petitioner was advised of his Weingarten Administrative Rights, which he indicated he understood and his PBA Local 105 Union Representative, SCPO Randy Whitt was

present. He was put on notice that he was a subject of an administrative investigation potentially leading [sic] disciplinary actions against him.

7. On the same date, Petitioner stated that when he reported to work that day, he knew he had in his pants, jacket, vest and uniform shirt the items discovered.

8. On the same date, Petitioner stated that the items found in the plastic bag were items he placed in his uniform, jacket pocket, before he left for work.

9. On the same date, Petitioner stated that he had the items found in the plastic bag while inside the correctional facility.

10. On Monday, July 2, 2018, the investigator assigned to the investigation, Investigator Jarvis Perry, obtained statements from Locksmith, Jay Allan Zoller and Crew maintenance Supervisor, Elvis Rijo, providing further detail regarding the unauthorized items found on or with the Petitioner on the day at issue.

11. Investigator Perry concluded that the Petitioner possessed the contraband inside of the secured perimeter of South Woods State Prison.

12. In addition, Perry continued that the Petitioner admitted in the video interview that he knew that possession of these items was against DOC procedures, rules and regulations.

13. Subsequently, on May 11, 2018, the Petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) with the following charges:

N.J.A.C. 4A:2-2.3, General Causes 12. Other sufficient cause.

HRB 84-17, as amended

B. Performance 8. Serious mistake due to carelessness which may result in danger and/or injury to persons or property.

C. Personal Conduct: 11. Conduct unbecoming an employee. 17.

Possession of contraband on State Property or in State Vehicles.

- D. Safety and Security Precautions: 7. Violations of administrative procedures and/or regulations involving safety and security.
- E. General E1. Violation of a rule, regulation, policy order or administrative decision.

The penalty indicated a 10 working days suspension.

14. The Petitioner appealed the discipline imposed and a Departmental Appeal Hearing was scheduled to be heard on September 4, 2018.

15. On September 13, 2018, the Petitioner was served with a Final Notice of Disciplinary Action (FNDA), and the above referenced charges and the 15 working days suspension penalty were sustained.

16. Notice of Appeal from that Final Notice of Disciplinary Action (FNDA) was filed with [sic] Office of Administrative Law and perfected on December 12, 2018.

(J-1-15.)

The FNDA issued to Williams had an attachment page entitled "Notification of Major Disciplinary Action – Specification attachment" which outlined the charges sustained against Williams and included a narrative paragraph regarding the incident giving rise to the charges and the specifications outlining the matter. (R-1-15, at 2.) That attachment page indicated there were multiple other attachments to the FNDA, although they are not attached to the FNDA entered into evidence. Some of the attachments listed in the FNDA were submitted and entered into evidence separately from the FNDA.

SIXTY DAYS SUSPENSION-STIPULATIONS

The parties agreed upon a "Joint Stipulation of Facts" which is a listing of stipulations set forth in separately numbered paragraphs. Those stipulations were entered into evidence as "J-1-60" regarding the sixty days suspension. I **FIND** the stipulations as **FACTS** set forth verbatim as follows:

1. Gregory Williams (Petitioner) is employed with the New Jersey Department of Corrections (NJDOC) as a State Correctional Officer at South Woods State Prison.
2. State Correctional Officer duties are to ensure the custody, safety and care of incarcerated persons confined in the State correctional facilities.
3. On May 22, 2018, at approximately 9:44 p.m., when the Petitioner was reporting to duty for the third shift, the Lobby Officer, SCPO Edwin Diaz, during his search, found that the Petitioner was in possession of contraband.
4. The contraband found in the Petitioner's coat, not permitted per DOC's policy, was two (2) bottles of water, one (1) bottle of ice tea and one (1) bottle of milk (although the Petitioner states that it was yogurt and not milk).
5. A dispute occurred between the two (2) Officers, when the Lobby Officer, SCPO Diaz, began searching the Petitioner's duty jacket.
6. On May 29, 2018, Investigator Jarvis Perry, the Investigator assigned to this case made assessments based on his review of the video footage of the incident.
7. On June 20, 2018, the Investigator conducted a video recorded interview of SCPO Diaz in regards to the Violence in the Work Place allegation between SCPOs Diaz and the Petitioner. SCPO Diaz was advised of his Weingarten Administrative Rights and chose to participate without union representation.
8. On June 26, 2018, the Investigator conducted a video recorded interview of the Petitioner in regards to the Violence in the Work Place allegation between SCPO Diaz and the Petitioner. SCPO Diaz was advised of his Weingarten Administrative Rights, which he indicated he understood and his PBA Local 105 Union Representative, SCPO Randy Whitt, was present. He was put on notice that he was a subject of an administrative investigation potentially leading [sic] disciplinary actions against him.

9. The Petitioner admitted to the Investigator that "he was aware that the ice tea and yogurt that he attempted to bring into the institution was not permitted inside of the secured perimeter of SWSP."

10. On July 5, 2018, the Investigator reviewed SCPO William's personnel file, which indicated that on the date he was hired, September 4, 2001, that the Petitioner was aware of and signed for receipt of the Department of Corrections Handbook and Rules, Code of Ethics and The Prevention of Violence in the Workplace Policy.

11. On July 23, 2018, the Investigator conducted video recorded interviews of two (2) witnesses, SCPO Alexander Gauntt and SCPO David Trullender.

12. On July 27, 2018, the Investigator and Senior Investigator (SI) Donna Alexander, conducted a video recorded interview of Correctional Police Lieutenant (CPL) Otley Heulings. CPL Otley was advised of his Weingarten Administrative Rights, which he indicated he understood and his PBA Local 105 Union Representative, SCPO Randy Whitt, was present.

13. On September 21, 2018, the Petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) with the following charges:

N.J.A.C. 4A:2-2.3, General Causes (a) 12. Other sufficient cause.

HRB 84-17, as amended:

- C. Personal Conduct: 5. Inappropriate physical contact or mistreatment of an inmate, patient, client, resident, or employee; 11. Conduct unbecoming an employee; 17. Possession of contraband on State Property or in State Vehicles;
- D. Safety and Security Precautions: 7. Violations of administrative procedures and/or regulations involving safety and security;
- E. General: 1. Violation of a rule, regulation, policy order or administrative decision.

The penalty indicated a 60 working days suspension.

14. The Petitioner appealed the discipline, and a Departmental Appeal Hearing was scheduled to be heard on December 14, 2018.

15. On December 26, 2018, the Petitioner was served with a Final Notice of Disciplinary Action (FNDA), and the PNDA charges and the 60 working days suspension penalty were sustained.

16. Notice of Appeal from that Final Notice of Disciplinary Action (FNDA) was filed with Office of Administrative Law and perfected on February 26, 2019.

17. On January 16, 2020, the DOC learned that on December 23, 2019, SCPO Kenyon Jones had provided a telephonic statement to Private Investigator Michael Benjamin (PI), who is employed by the Petitioner's Attorney, the Law Offices of Jacobs and Barbone.

18. DOC employee, SCPO Kenyon Jones was a witness to this Work Place Violence incident, of whom the DOC Investigator had not been aware, and it was reported that the statement contradicted some of the information reported by the DOC Investigator.

19. On January 28, 2020, Senior Investigator (SI) Eleazar Spratley and Investigator Darrin Pratz interviewed SCPO Jones. SCPO Jones was advised of his Weingarten Administrative Rights, which he indicated he understood and his PBA 105 IVP Union Representative, SCPO Joseph McAllister, was present.

(J-1-60.)

Testimony

Eleazar Spratley testified twice in the matter. When he testified on the first hearing day regarding the fifteen days suspension matter, he was in the position of deputy chief of the Special Investigations Department (SID) unit for SWSP, which is sometimes commonly referring to as the internal affairs or IA unit. When Spratley testified on the second hearing day, regarding the sixty days suspension matter, he had been promoted to Administrator of Garden State Correctional Facility, which is the chief operating officer for the institution. He has been employed by the DOC for twenty-two years. He first began his employment as a CO at the Riverfront facility in 2002, got promoted to sergeant, promoted to special investigator, served in the central reception and assignment facility's drug interdiction unit, and was promoted to principal investigator in 2016 for the SID at SWSP. In 2017 he was on special unit assignment for corrections intelligence and served as a task force officer with the U.S. marshal's counter gang unit. As of 2020 he was promoted to his position as deputy chief investigator of SID at SWSP, then recently promoted to the position of administrator at Garden State.

He was not assigned to SWSP as of May 2018, when the two matters occurred with Williams, which are the subject of this proceeding. Administrator Spratley was assigned to be the principal investigator of the Corrections Intelligence Center, at that time. That is a specialized unit in SID. He was assigned to supervise investigators who were assigned to the FBI joint terrorism task force. He was also serving as a supervisor in the U.S. Marshal's counter gang unit.

Administrator Spratley testified about the responsibilities he had when serving in the SID unit. He had to conduct fair, impartial, and thorough investigations, which generally requires interviewing witnesses, reviewing evidence documents or video, finding evidence, and completing an investigative report which is submitted to the appointing authority, which in Williams' matter was the office of the administrator at that time. He has conducted thousands of such investigations. He confirmed that investigators in SID do not give recommendations on discipline. They just conclude their investigative findings and forward the information to the facility's administrator.

When Administrator Spratley was serving as a supervisor of the SID unit, he would review reports completed by the investigators. He would ensure the reports were thorough, unbiased, and provided a conclusion based upon the evidence.

Administrator Spratley was assigned to SWSP in 2018 but was supervising a totally different unit than the SID unit. He did not conduct the investigations in Williams' matters. The investigation for the May 11, 2018, matter was conducted by Senior Investigator Jarvis Perry from the SWSP SID unit.

Perry authored his report about the incident when Williams took ill while at work at SWSP and while custody staff were placing Williams on a stretcher, various items fell out of his pants pocket. (R-2-15.) Administrator Spratley confirmed that Investigator Perry conducted a video recorded interview with Williams, while Williams' union representative was present. The video interview is considered part of Perry's report. (R-2-15.) Photographs of the items which fell from Williams' pants and items which were located in his jacket pocket are attached to Perry's report. (R-2-15 at 5-12.)

Written statements provided by a facility locksmith and a crew supervisor of the facility's building maintenance department were obtained by investigator Perry and included in his report. (R-2-15 at 14-15.) Those two individuals identified some of the items which were in Williams' possession, such as the Torx bit and Allen key and that the Torx bit could be used to remove the face plate for receptacles and light switches in the facility. (R-2-15 at 14-15.) Administrator Spratley indicated that according to those documents, such items could pose a threat to the facility. He confirmed that Perry's report indicated that the plates could be removed, including the key plate on an inmate's door, but such items could not open the door nor close the door. He did not recall if there was any information in Investigator Perry's report to indicate that the items had been used to remove any switch plates in any area where Williams had been on the day he took ill. He confirmed there was no indication in Perry's report that inmates ever came into possession of any of the items Williams had on his person.

Administrator Spratley was aware from his time working at SWSP that there is an officers' restroom facility. He never recalled having to get a key to open the officers'

restroom. He confirmed that it is in a part of the facility where inmates could have access to the restroom and could just open the door.

Administrator Spratley confirmed that the items listed in Perry's report as having fallen from Williams' pants pocket or found in Williams' jacket pocket, would be prohibited items under the DOC rules to be brought into the facility. He further confirmed that as per the DOC rules, it does not matter whether an individual brings in such items intentionally or inadvertently, it is still a violation of the rules. Administrator Spratley read and acknowledged that there was a document presented to him at the hearing entitled "Authorized Items." (R-4-15.) Some such items listed are a comb or brush, one chapstick, one pair of eyeglasses, and personal care items such as feminine care products. (R-4-15.) He could not recall having seen that list previously.

Regarding the sixty days suspension matter, Administrator Spratley's involvement occurred approximately a year and half after the incident in January 2020. It was brought to his attention, as supervisor of SID at that time, that Officer Kenyon Jones from SWSP had been interviewed by a private investigator from Williams' attorney's office, about Williams' May 22, 2018, matter. Administrator Spratley was tasked with interviewing SCPO Jones, to get a statement from SCPO Jones about his interactions with the private investigator. It was also the first time they learned that SCPO Jones had been a witness at the entryway to the facility on May 22, 2018, regarding the interaction between Williams and the screening officer, SCPO Diaz.

Administrator Spratley prepared for the SCPO Jones' interview by reviewing investigator Perry's report regarding the May 22, 2018, matter. (R-2-60.) He went through that report to determine if Jones had initially been interviewed during Perry's investigation. SCPO Jones had not been interviewed. Administrator Spratley also reviewed all the video evidence from that matter to prepare for his interview with Jones, including the audio recording of the statement SCPO Jones gave to the private investigator and the video of the entryway area of the facility at the time of the interaction between Williams and the screening officer. (R-22-60; R-21-60.) Administrator Spratley interviewed SCPO Jones on January 28, 2020. (R-23-60.)

When he reviewed the video of the incident, Administrator Spratley observed Williams submitting his coat to be searched at the screening entrance of the facility. Administrator Spratley determined from his view of the video and video interviews, that SCPO Diaz searched Williams' coat and discovered some contraband items, which appeared to be yogurt and an iced tea. Williams objected to Diaz's contact with the coat and tried to take it back. Diaz had challenged Williams about the jacket contents and an argument ensued. Williams appears to walk around the desk into Diaz's workspace and a physical altercation appears to occur. Administrator Spratley candidly testified that it is difficult to see on the video, but based upon the interviews he reviewed, Williams came into contact with Diaz, and they were separated by two other staff members.

He admittedly indicated that the interaction on the video is very fast. He observed Williams submit his jacket to be searched and Diaz was searching it. On the video there is some sort of contact between the two and then Williams goes around the desk to Diaz's area and two other officers stepped in to separate them. (R-21-60.)

Administrator Spratley confirmed that a thorough investigation should be done in all such matters. Had he been conducting the investigation and had he seen that SCPO Jones was on the video as the next officer to be scanned into SWSP, he would have interviewed SCPO Jones or obtained a statement from him as part of the initial investigation.

Kenyon Jones was called to testify for the DOC. He has been employed by the DOC for twenty-two years, serving as a SCPO at SWSP.

On May 22, 2018, SCPO Jones was reporting to work for third shift. He came into the front lobby of the facility and was standing at the screening area. He explained that when you come in for work, you must remove any outer garments and anything in your pockets and place them in a bin which gets pushed through on the desk to the officer working the front lobby screening area. You have to walk through the metal detector. The officer working in the front lobby will put the bin through a machine to be cleared. The officer there will check through the items in the bin before sending them through the machine.

SCPO Jones was behind Williams as they were entering the building. As SCPO Jones was standing at the screening area behind Williams, he saw Williams clear the metal detector and pushed his bin through to SCPO Diaz, who was the screening officer that evening. SCPO Jones was standing at the metal detector waiting to go through. He heard some bickering going on between Williams and the screening officer at the desk, SCPO Diaz. He could not hear exactly what was being said back and forth between the two of them. The voices got a little louder and he saw Williams clear the metal detector and pushed his bin through to SCPO Diaz.

SCPO Jones said his view from coming in through the metal detector had a little computer monitor behind the desk and he could not see the other side of the desk, being blocked by the computer screen. He really could not see what was going on. He saw Williams lean over to grab his jacket. He could not see what was going on between the two men down behind his view from standing at the metal detector. He could not see SCPO Diaz's hands nor Williams' hands when they both seemingly were pulling on the jacket in the bin.

He saw SCPO Diaz snatch the jacket up and Williams came around the desk trying to retrieve the jacket. He saw SCPO Diaz put his arm up to try to, he guessed, fend off Williams. SCPO Jones could not recall which arm SCPO Diaz used, but he knew SCPO Diaz had one hand up around Williams' collar area and Williams was trying to retrieve his jacket. SCPO Diaz's hand was around Williams' collar area, preventing Williams from getting his jacket. He was not certain if SCPO Diaz actually grabbed Williams' collar, but he knew SCPO Diaz was "up around" Williams' collar area. He acknowledged having previously described the incident with SCPO Diaz "grabbing" Williams by the collar. He testified he really was not certain if SCPO Diaz had grabbed the collar since he only could recall seeing SCPO Diaz's arm outstretched with his hand near Williams' collar area. Another officer got in between them and tried to break things up. SCPO Jones could not tell who the aggressor was in the situation between the men.

SCPO Jones could not recall who cleared him to go through the metal detector. He went through it after the men were separated and SCPO Jones reported to work. He

did not report the incident to any supervisor. He was never called upon to give a statement immediately after the May 22, 2018, incident. There were other officers who were in the area of the screening at the time of the incident. SCPO Jones recalled there was one lieutenant in the area as well.

Williams later came to SCPO Jones and asked him if he saw anything. SCPO Jones told Williams what he could see and that he heard they were going back and forth with words and SCPO Diaz was searching Williams' stuff and Williams tried to retrieve the jacket. Williams went around into SCPO Diaz's area and SCPO Diaz had grabbed the jacket and held Williams off. Williams asked Jones if he saw SCPO Diaz grab Williams' arm and Jones told him "no" he did not see SCPO Diaz grab Williams' arm, all he saw was SCPO Diaz trying to fend off Williams, holding him off up around the collar area.

About a week or so after talking to Williams, SCPO Jones was contacted on his personal cell phone, when he was home, and spoke to an investigator. It was an investigator for Williams' lawyer, but SCPO Jones thought it was an investigator from the SID unit at SWSP. SCPO Jones gave him a statement, basically saying the same thing about what he saw. (R-22-60.)

SCPO Jones later was interviewed by investigator Spratley from SWSP SID unit. (R-23-60.) SCPO Jones had his union representative with him during that interview, which occurred on January 28, 2020. SCPO Jones explained that he honestly thought he was speaking to someone on the phone from SWSP and did not realize it was an investigator employed by Williams' lawyer. SCPO Jones did not realize after witnessing the incident that it was something he needed to report. He thought it was just a couple of officers with words exchanged and other officers broke it up and that was it. He sees officers all the time coming into the front lobby joking, laughing, playing, so he thought it was something like that, it got squashed, so nothing was going to be done about it.

SCPO Jones stated he has not seen SCPO Diaz "target" another officer. He confirmed he has not had a negative encounter with SCPO Diaz. He confirmed he has not had a negative encounter with Williams.

Brian LaBonne testified for the DOC. He has been employed by the DOC for more than nineteen years. He originally was a CO at Southern State facility in 2004 and was promoted to sergeant and served at SWSP as of January 2010. He was promoted to lieutenant and served at another facility in 2013 for a little more than a year. He was transferred back to SWSP as a lieutenant and then promoted to the rank of correctional police major in 2020, serving in another facility for a few months before coming back to SWSP. He was transferred thereafter to another facility and as of 2022, works at DOC's central Office headquarters as the southern region major.

He was working as a major at SWSP in May 2018 when the matters involving Williams occurred. He did not have any personal involvement in the investigations of Williams. He was not involved with the drafting of the PNDAs or FNDAs issued or the framing of the charges. He testified as to the policies and regulations applicable to DOC employees, regarding Williams' fifteen days suspension matter.

New hires or incoming transferred employees for SWSP are processed for their employment. The process includes having the employee confirm receipt of documents and materials, such as the employee handbook and rules and regulations. Williams confirmed acknowledgement of materials on September 4, 2021, when hired as a CO. (R-6-15.)

Major LaBonne confirmed that SWSP had an internal management procedure (IMP) policy, with a section entitled security at facility entry points, effective December 4, 2009. (R-3-15.) The policy applies to anyone who is attempting to gain entrance into the secure perimeter of the facility. It includes a definition of contraband and lists items that are considered contraband. (R-3-15 at 2-3.) The policy includes a portion regarding search of an individual who is identified and approved to enter the facility. (R-3-15 at 8-11.)

SWSP has on display in the lobby entryway a list of authorized items permitted to be brought into the secured area of the facility. (R-4-15.) Major LaBoone testified that the list is posted with other memos in plain sight for everyone to see. It is helpful to have

the list posted at the entryway, in the event of a dispute by someone attempting to come in and the screening officer processing the individual can point to the list if the individual is trying to bring in an item that is not on the list.

Major LaBonne confirmed that the list of items in Investigator Perry's report, attributed to Williams having with him on May 11, 2018, would all be considered contraband. (R-2-15 at 1-2.) Certain items could be used as tools and the facility does not want inmates to get their hands on such items, and depending upon the type of tool, it could be used as a weapon by an inmate. Such items pose a security threat, even just to remove an outlet cover or light switch plate, which would enable an inmate to manipulate those systems. The back scratcher found to have fallen from Williams' pocket could be sharpened into a weapon by an inmate. Hence, such items are a concern to the safety of the facility and are considered contraband.

Major LaBonne identified DOC HRB 84-17 as amended documentation, confirming it outlines the DOC's policy regarding offenses and penalties or sanctions to be imposed for both minor and major disciplinary actions. (R-7-15.)

Major LaBonne testified that one sustained charge as to Williams is known as HRB 84-17, as amended, section D, regarding safety and security precautions, subsection 7, addressing a violation of administrative procedures and/or regulations regarding safety and security. (R-1-15.) Williams violated this when he brought contraband items into the facility. HRB 84-17 as amended outlines the penalty for a first offense of violating administrative procedures or regulations involving safety and security, ranging from OWR to removal. (R-7-15 at 13.) For a second offense, the penalty is a five working days suspension through removal.

Major LaBonne indicated that Williams also violated the charge of HRB 84-17, as amended, section B, performance of duties, at subsection 8, which addresses a serious mistake by an officer due to carelessness, which may result in danger or injury to persons or property. Major LaBonne testified that even if Williams indicated he accidentally or inadvertently brought the items into the facility in his jacket pocket, he is still responsible to abide by the rules because it was a serious mistake that could have caused danger or

injury to others in the facility or to facility property. The penalty for this sustained charge for a first offense ranges from Official Written Reprimand (OWR) through removal. The penalty for a second offense is removal. (R-7-15 at 6.) This charge was for the items found on Williams on May 11, 2018, which would be a first-time offense for Williams.

Major LaBonne acknowledged during cross examination that there is a note provided in HRB 84-17 as amended, section B, subsection 8, that: "The first infraction under this charge should only be treated as a major disciplinary action where an individual is placed in a hazardous situation, property is damaged, or there is a serious breach of security." (R-7-15 at 6.) Above that charge, is section B, subsection 7, also indicating it is for a serious mistake due to carelessness, but there is no resulting danger to people or property. Major LaBonne confirmed that OWR is to be imposed for a first offense under that charge, and that the charge is intended to result in minor discipline, not major discipline. He believed that the charge under subsection 8 was appropriate, because it was a hazardous situation for Williams and a serious breach of security to have tools such as those possessed by Williams to make their way inside the secured facility. Major LaBonne acknowledged that there was no evidence any of the items were out of Williams' direct possession or control throughout his work shift and there was evidence of an inmate obtaining the items or the items being used as a weapon or used to remove switch plates or outlet covers. Major LaBonne stated that he believed the charge used under subsection 8 was appropriate because there was the potential for danger or injury to people or property, simply by Williams possessing the items.

Major LaBonne acknowledged that an officer is permitted to have a pen and a small flashlight in their possession. He could not speak to whether having two pens would be a violation of the policy or not. He confirmed that COs need pens to complete reports and fill in logbooks. He opined that pens are necessary for an officer to do their job and while they are not on the authorized items list, perhaps they should be. He noted that officers will have a small flashlight with them to use when doing required searches during their shifts. He did not know why any of the items Williams had on him made it through the security screening metal detector which Williams would have had to have gone through at the beginning of his shift. Perhaps sometimes items, such as the two pens, Williams had, are allowed to come in unchecked. Major LaBonne confirmed that the two

liquid Advil tablets in Williams' possession would be deemed contraband because the list of authorized items only identified cough drops or throat lozenges as being permitted. The facility does not want inmates getting any type of medication, whether it is over the counter medication or prescription strength medication.

Williams was also found to have violated HRB 84-17, as amended, section C, subsection 11, which applies to conduct unbecoming an employee and the charge under subsection 17 which prohibits possession of contraband on state property. Major LaBonne testified that conduct unbecoming can relate to many types of behavior, but basically anything that violates the public's trust in the public employee. He recognized that there is an overlap with these subsections of section C, since the contraband charge can be viewed as action which causes a lack of trust in the employee by the public.

The penalty as contained in HRB 84-17 as amended, for a first offense violation of conduct unbecoming an employee ranges from a three working days suspension to removal, while removal is listed for a second infraction. The penalty for possession of contraband on state property ranges from OWR to removal for a first offense and removal for a second infraction. (R-7-15.)

Major LaBonne testified that it was appropriate to sustain the violation of HRB 84-17, section E, subsection 1, which refers to a violation of a rule, regulation, policy, or order, as to Williams' behavior. (R-1-15.) The DOC has promulgated Law Enforcement Personnel Rules and Regulations. (R-5-15.) Major LaBonne testified that the rules and regulations apply to all sworn law enforcement officers who work for the DOC. He indicated that certain sections of the rules and regulations applied to Williams' conduct on May 11, 2018, although the sustained charges against Williams did not enumerate specific sections of the DOC rules and regulations. For example, Article 1, Section 2, provides that officers are not to act in a manner expected to create suspicion among the public that the officer is engaged in conduct that violates the public's trust. (R-5-15 at 3.) Major LaBonne also read in portions of Article 1, Section 1, regarding DOC law enforcement officers being required to observe and comply with the rules of conduct outlined therein. (R-5-15 at 3.) DOC officers are also required to obey any written or verbal orders and not willfully disobey any lawful order by a supervisor. (R-5-15 at 4.)

Major LaBonne highlighted that DOC officers, such as Williams, are required to devote their full attention to their assignments to ensure they perform their duties in accordance with the DOC rules and regulations. (R-5-15 at 5.) It was acknowledged that the sustained charges against Williams did not enumerate these specific sections of the DOC rules and regulations, only the sustained charges from HRB 84-17 as amended are identified in the FNDA.

HRB 84-17 as amended, outlines the penalties for a violation of a rule, regulation, policy, or procedure. (R-7-15 at 16.) For a first offense the penalty ranges from OWR to removal. For a second infraction, the discipline imposed can range from a five working days penalty to removal.

Major LaBonne confirmed that for the incident of May 11, 2018, the penalty of fifteen working days for all the sustained charges, all being first offenses, was appropriate and within the range of discipline provided by HRB 84-17 as amended. He stated that when the decision is made to issue discipline, the totality of the circumstances is looked at because no two situations are alike. The potential for what could have happened is considered as well. He testified that a major discipline is ten working days suspension so for Williams to have gotten fifteen working days suspension for the multiple sustained charges, that would be on the "lower end" of major discipline, perhaps because the items did not find their way into the hands of any inmates.

The DOC maintains a work history listing for employees, such as Williams. Major LaBonne confirmed that Williams' work history is a document entered into evidence. (R-8-15.) Williams' work history lists infractions that have occurred during his employment, listing the date of the infraction, and what type of discipline was imposed. (R-8-15.) The work history also identifies that Williams was commended by the Administrator for service during a snow emergency blizzard in 2003.

Williams has no prior history of major discipline before the May 2018 events. There are four minor discipline issues listed for Williams from 2004 through January 2018 before the May 2018 matters. The first three involved time and attendance issues and he received OWRs for them. The fourth matter involved a letter of counseling, which Major

LaBonne testified is not actually considered discipline, it is training, or instruction given to an employee. (R-8-15 at 1.)

Anthony Degner testified for the DOC regarding the sixty days suspension. He has been a DOC employee for more than twenty-four years. He started as a CO recruit, worked at multiple state facilities throughout the state, and was promoted through the ranks to senior correction officer, sergeant, assistant superintendent, associate administrator, and administrator, and worked in special groups and response teams.

He is the administrator of SWSP, having been promoted to that position in November 2023. He is the chief operating officer of the facility. He knows Williams as an officer who works in his institution. He denied having any bias towards Williams. He had no direct involvement in either of Williams' incidents in May 2018. He was working in Central reception in 2018. Administrator Degner testified as a policy witness regarding Williams' sixty days suspension matter.

Administrator Degner confirmed that there was a checklist for new hires in Williams' personnel file. (R-6-15.) According to the checklist, Williams received documentation, such as the handbook, rules and regulations, and the workplace violence document, when he was hired. Williams signed under the acknowledgement that he received such materials checked off on the list. Administrator Degner likewise confirmed the work history information for Williams, listing only minor discipline as any prior discipline before the May 2018 matters. (R-8-15.) He affirmed that there was no history of Williams having been violent in any way or threatening

In preparation for his testimony, Administrator Degner reviewed both SID investigation reports by Investigator Perry, reviewed the officers' reports from the incident, reviewed the video from the entryway of the facility, and reviewed the policies and procedures, commonly referred to as the IMPs, which is the acronym used for the internal management procedures for SWSP.

Administrator Degner testified that contraband is one of the main security issues at SWSP. He is focused on keeping the community safe, the officers safe, and the inmate

population safe from any contraband. Only thirteen items are not considered contraband. Generally, anything that is not approved by either the DOC commissioner's office or his office, is considered contraband if not on the list of thirteen items.

He confirmed SWSP had an IMP to address security at the facility entry points. (R-10-60.) Anyone entering the facility is bound to follow the policy, whether it is a visitor, contractor, custody staff or civilian employees. The policy includes guidelines for the officer working the post for entry into the facility. The policy includes information about contraband. (R-10-60 at 13-14.) The facility has a list of authorized items that may be brought in, which lists the thirteen items permitted such as a comb, a chapstick, and two bottles of water. (R-4-15.) Administrator Degner testified that the list is included in the IMP and posted at entry points within the SWSP facility. He confirmed the list is posted at the front house area, or otherwise referred to as the frisk area before someone enters the facility.

There is also an IMP specific to the title of Lobby Officer, which identifies the procedures that officer must follow while on duty at that post. (R-11-60.) It is a guideline for the officer and explains what is expected of the officer and outlines their job duties and responsibilities. That IMP also addresses contraband and what is and is not allowed into the institution.

Administrator Degner explained the entry process for anyone entering the institution. At the frisk table there are bins where the person entering places any objects from their pockets and the bin is slid to the officer for inspection. The individual walks through the metal detector. The individual gets patted down by a member of the custody staff or wanded with a handheld metal detector. If the metal detector is set off, the individual must go through the process again. After four times of the detector being set off, a supervisor must be called.

Whatever items have been placed in the bin are searched. They get put through a metal detector, similar to the detectors seen at airports. The items are also checked by the officer to be sure there is no contraband. Once an individual is cleared, they gather their belongings and proceed to the next stop which is the front door where IDs are

checked and there is a pat down done.

Food items and liquids are contraband, except for two factory-sealed bottles of water, which are permitted to come in. Anything could be concealed in darker liquids, such as a tool or drugs. The DOC provides food for all staff members of the institution. SWSP has five officers' dining rooms. The dining rooms are all behind the security perimeters. Administrator Degner indicated that Williams' action in bringing in any food that was not two sealed water bottles would be a violation of the policy.

Administrator Degner reviewed the video from the May 22, 2018, lobby entrance matter involving Williams and screening officer, SCPO Diaz. He confirmed there is no sound with the video. He observed Williams proceed through the frisk area machine then he went around the table into SCPO Diaz's area and there "was some kind of a scuffle" appearing to be the men grabbing back and forth at Williams' jacket. Administrator Degner indicated that Williams' action in coming around the table into SCPO Diaz's workplace appears to be a violation of the policy when they started to fight over the jacket. Degner acknowledged there are obstructions to the view of the area of the table in the video. It was his opinion that Williams came around the table by himself, not being grabbed.

SWSP has an IMP to address violence in the workplace. (R-13-60.) It is a statewide policy setting forth rules about violence in the workplace. Administrator Degner testified that the DOC has a zero-tolerance policy for threats, intimidation, and verbal or physical violence. The purpose is to keep staff and anyone who enters the institution free from intimidation or threats of violence by one another. He asserted that it appeared to him as if Williams physically confronted SCPO Diaz, by coming around the table. Although Degner confirmed he could not see if SCPO Diaz had grabbed Williams by the arm and pulled him around the table, as Williams claimed in his interview statement.

He also reviewed the DOC's policy statement regarding standards of professional conduct. (R-14-60.) Administrator Degner explained that the policy applies to DOC staff, providing a set of ethical standards to guide the staff in their relationships with other employees, families of others, and the general public. The DOC staff must abide by the

ethical standards. Most of the guidelines deal with financial matters, such as not accepting gifts. There is a portion of the policy that prohibits any action that sheds poor light on the officer or the DOC. If that policy is violated, the DOC staff member is subject to discipline. (R-14-60 at 3.)

Administrator Degner confirmed the state DOC has promulgated Law Enforcement Personnel Rules and Regulations. (R-15-60.) Those rules and regulations apply to the majority of staff members who work at SWSP, such as custody staff members and any law enforcement entity for the department. Article I, Section 2 of the DOC's rules and regulations is similarly worded as the SWSP policy regarding standards of conduct, that no officer shall knowingly act in a manner expected to create an impression of suspicion among the public or that an officer is acting in a manner to violate the public's trust in the officer. (R-15-60 at 3; R-14-60 at 3.) The DOC rules and regulations confirm in Article I, Section 3, that all officers are responsible to perform their duties, and strictly adhere to the rules and regulations for their conduct. (R-15-60 at 3.)

The DOC rules and regulations specify at Article II, Section 4 that officers must maintain a high degree of self-control. (R-15-60 at 6.) Administrator Degner indicated that this requires all officers to maintain control in every situation, at all times. He asserted that Williams did not have self-control when Williams tried to circumvent the security procedures at the entryway and confronted the screening officer. Likewise, Williams' action at the entryway, by coming around the frisk table and engaging with SCPO Diaz violated Article III, section 2, subsections (a) and (b), which prohibits officers from engaging in threatening or assaultive conduct," or using insulting language or behaving disrespectfully while performing their duties. (R-15-60 at 8.)

The DOC rules and regulations specify at Article III, section 5 that officers shall be civil, orderly and maintain decorum and control their temper. They are to be patient and use discretion in the performance of their duties. (R-15-60 at 9.) Administrator Degner again indicated that Williams confronting another law enforcement officer who was on duty trying to complete their job was not demonstrating self-control. Williams could have called for a supervisor and there were sergeants, lieutenants and majors on duty. It was improper for Williams to tell SCPO Diaz "Don't touch my food." Williams was trying to

stop SCPO Diaz from doing his job as the screening officer. Degner asserted that from what he saw and determined to be Williams going around the table into SCPO Diaz's space, that demonstrates Williams lost his cool.

Administrator Degner identified the HRB 84-17 as amended, which copy entered into evidence had a cover page of the New Jersey Administrative Code, section 4A:2-2.3, entitled "General causes" which lists matters when a civil service employee may be subject to discipline. (R-18-60.) He confirmed that HRB 84-17 as amended lists what type of charges can be made against DOC employees and includes a range of discipline or the discipline to be imposed when a charge has been sustained.

He confirmed that there were sustained charges against Williams for the May 22, 2018, matter, for violating portions of HRB 84-17 as amended. The first HRB 84-17 as amended sustained charge against Williams was section C, personal conduct, subsection 5, inappropriate physical contact or mistreatment of an employee. (R-1-60; R-18-5 at 8.) The penalty for a first offense ranges from OWR to removal.

The next HRB 84-17 as amended sustained charge was C11, conduct unbecoming an employee. A first offense penalty ranges from three working days suspension to removal, while a second offense has a penalty of removal. (R-18-5 at 9.) Williams was sustained to have violated C17, possession of contraband, with a first offense ranging from OWR to removal. A second infraction lists removal as the discipline to be imposed. Administrator Degner noted that these two offenses would be second infractions, if Williams is confirmed as having violated them from the first matter which occurred on May 11, 2018. He asserted that "they" should have removed Williams for these two infractions, according to the HRB 84-17 as amended penalty chart.

Administrator Degner confirmed that there was a Lieutenant in the vicinity of the entryway at the time of the incident. He allowed Williams to return to his car to place the iced tea and yogurt in there. Administrator Degner confirmed that those items, as contraband, should have been seized and not permitted to be returned by Williams to his vehicle, according to the rules and regulations.

Williams also had a sustained charge under subsection D7, violating administrative procedures and/or regulations involving safety and security, which penalty for a first offense ranges from OWR to removal, with a second infraction discipline ranging from five working days suspension to removal. He also was sustained under subsection E1, for violating a rule, regulation, policy or procedure. That offense carries a discipline penalty of OWR to removal for a first infraction and for a second infraction the penalty range is five working day suspension through removal.

He asserted that the sixty days working suspension imposed upon Williams for the May 22, 2018, matter was "on the lower end" but did comply with the DOC's disciplinary structure for all of the sustained charges. He confirmed that the full facts and circumstances of the matter are to be considered when determining the range from minimum to maximum. He asserted that pertains to offenses listing a range of discipline. If the discipline specifies removal for a second offense, then that is to occur, without regard to the facts and circumstances of the matter.

Credibility Analysis

In factually contested matters, the fact finder is required to weigh the credibility of witnesses. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. Credibility findings are "often influenced by matters such as observations of character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 475 (1999). "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).

Here, the “policy” witnesses presented by the DOC, Major LaBonne and Administrator Degner, are both professional men, long time DOC employees, and testified in a business-like and straightforward manner, without any indication of bias or ill will towards Williams. Neither policy witness was a firsthand witness to the incidents in May 2018. Neither policy witness was involved in the investigation of the two matters, nor were they involved in any way regarding the discipline imposed upon Williams by both FNDAs. They were credible in their testimony regarding the policies and procedures. Neither was presented as an expert witness. Although Degner did opine that he believed from his viewing of the video that Williams walked around the table into SCPO Diaz's area, no other witness could definitely state same. All acknowledged that the video of the incident is not very clear and there is equipment blocking a clear view of the incident involving the handling of Williams' jacket and screening at the entryway. Degner's opinion with his years of experience in the DOC field is appreciated, yet he was not presented as an expert witness for weighing of such an opinion.

Administrator Spratley likewise is a professional man with long time DOC experience holding many respected positions with supervisory experience and currently serving as administrator of a state facility. He also was straightforward and business-like during his testimony. He acknowledged with frank candor his view of the videos in question and the investigations and information gathered for the two matters. He has many years of experience in the SID unit as an investigator and supervisor. He did not witness either event. He was not involved in the investigation of either matter. In January 2020, almost a year and a half after the matters had occurred, Administrator Spratley did conduct an interview of SCPO Jones, an eyewitness to the second matter. Administrator Spratley was back in SWSP SID as of 2020, but his interview of SCPO Jones was prompted when the SID unit learned through discovery provided in this matter that Jones had given an interview to Williams' attorney's investigator. It was acknowledged that the information gained from SCPO Jones through that interview regarding the second Williams' matter was a long time from the incident. Administrator Spratley was credible in his testimony and his candid testimony and reflections on the matters were appreciated.

Only one witness who was a direct witness to the second event was presented by the DOC. SCPO Jones has many years of experience working in SWSP. He responded

to questioning in a careful and thoughtful manner, cautiously choosing the wording of his recollection of the event. It is evident although he was the next person who would go through the metal detector behind Williams, he was not paying specific attention to Williams or the screening officer until he heard some bickering type words being exchanged and then saw the two men behind the desk area with SCPO Diaz's arm up and extended with his hand around Williams' collar area and then they were quickly separated when other officers stepped in. It is appreciated that he could not definitely recall if SCPO Diaz was grabbing at the collar. SCPO Jones noted his view towards the men was obstructed, just as other witnesses stated. SCPO Jones' testimony is credible, given the time that has transpired. Although credible, his testimony did not provide any more clarity or detail about the incident than has been presented through the testimony and admitted evidence.

Based upon the testimony and review of the documentary and video evidence, I **FIND as FURTHER FACTS:**

The FNDA issued regarding the May 22, 2018, matter specified that the incident giving rise to the charges as:

On 5/22/18, at approximately 21:44 hours, while reporting for duty for 3rd shift SCPO Gregory Williams was in possession of contraband while being processed into SWSP. When confronted by the Lobby Officer, SCPO Edwin Diaz, SCPO Williams initiated a verbal and physical altercation with SCPO Diaz. SCPO Williams attempted to stop SCPO Diaz from searching his (Williams) duty jacket by grabbing SCPO Diaz by the arm, walking around the frisk table and pushing SCPO Diaz by the shoulder until separated by other Custody Staff. A Special Investigations Division (SID) investigation was initiated. It was determined that SCPO Williams attempted to introduce contraband inside the secure perimeter of South Woods State Prison and when confronted, initiated a physical altercation with SCPO Diaz.

(R-1-60.)

The video of the incident at the screening area on May 22, 2018, does not present a clear view of the matter. As all witnesses have testified, and as seen when viewing the

video, there is some type of equipment on the desk which blocks the view of the incident. There is no sound to hear what was said or to determine if voices were raised and threatening. The video is grainy and fuzzy. It cannot be determined from viewing the video exactly what Williams was reaching for and what he grabbed, or if SCPO Diaz grabbed Williams' arm, as Williams alleged in his interview statement. It cannot be determined from the video what caused Williams to go around the screening desk, whether he was being pulled behind the table by SCPO Diaz grabbing him, or by each of them grabbing onto the jacket, or if Williams purposely walked into the area.

There was no physical violence or physical contact seen on the video. No one witnessed any specific physical contact or attempted physical aggression such as punches being thrown. SCPO Jones could recall that SCPO Diaz had his arm outstretched and his hand was "up around" Williams' collar, but he could not definitively state that SCPO Diaz had grabbed Williams by the collar. No witness could confirm if Williams had grabbed SCPO Diaz's hand or grabbed his own jacket while it was in the bin. No witness could confirm if SCPO Diaz grabbed Williams and pulled him around to the other side of the table, nor did any eyewitness to the event state affirmatively that Williams, on his own volition, went around the table as an aggressor.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, and regulations set forth in the New Jersey Administrative Code, govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 through 11A:12-6; and N.J.A.C. 4A:2-1.1 through 4A:2-6.3. A civil service employee may be subject to discipline for committing any one of twelve enumerated violations within the administrative code. N.J.A.C. 4A:2-2.3. The discipline which may be imposed upon a civil service employee can be "major" such as a demotion, removal from their position of employment, or being a suspension or fine of five or more days. N.J.A.C. 4A:2-2.

An employee may appeal a disciplinary action. N.J.A.C. 4A:2-1.1. The appointing authority employer has the burden of proving the charges against an employee, which the employer contends warranted the major disciplinary action. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible

evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); and see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate “if it establishes the reasonable probability of fact.” Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) citation omitted. The evidence must “be such as to lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958).

Williams’ status as a SCPO subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576-77 (1990). Law enforcement employees, such as corrections officers, represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Service Commission, 115 N.J. Super. 64, 72 (App. Div.), cert. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

N.J.A.C. 4A:2-2.3 is the regulation which outlines general causes for when major discipline may be imposed upon a civil service employee. In the fifteen days suspension and the 60 days suspension matters, the NJDOC has sustained charges against Williams under N.J.A.C. 4A:2-2.3(a)(12) general causes, other sufficient cause. “Other sufficient cause” is a catchall provision for conduct which is not listed as one of the eleven other general causes, as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would “violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” In re Boyd, Cumberland Cnty. Dep’t of Corrections, OAL Dkt. No. CSR 15990-18, 2019 N.J. CSC LEXIS 621, *115 (July 3, 2019), adopted Commissioner, Id. at 1-2 (Aug. 14, 2019).

Here, DOC has sustained the other sufficient cause charge against Williams in both matters, by listing multiple sections from the DOC’s disciplinary action policy, HRB 84-17, as amended, as having been violated by Williams. Each section from the HRB 84-17, as amended, is addressed below for both matters.

Fifteen days suspension from May 11, 2018, matter

1. HRB 84-17, as amended, section B8 Performance, serious mistake due to carelessness.

Multiple miscellaneous items deemed to be contraband fell from Williams' pants pocket and were found in his jacket pocket when he took ill while on duty on May 11, 2018. Some of the items, the Torx bits and the Allen wrench, could be used to remove switch plates or outlet covers in the facility. Another item, the back scratcher could have been fashioned into a weapon. Such items are prohibited from being brought into the secure area of the institution. This was a serious mistake caused by Williams' carelessness in having such items in his pockets while on duty, which may have resulted in danger or injury to other inmates, COs, or staff, or could have damaged property in the facility. I thus **CONCLUDE** that the charge of HRB 84-17, as amended, B8 was appropriately sustained by the NJDOC as to Williams.

2. HRB 84-17, as amended, section C11 Personal Conduct, conduct unbecoming an employee.

The term "unbecoming conduct" has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of government services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Williams' conduct in having multiple miscellaneous unauthorized items in his pockets on May 11, 2018, in the secured area of the facility, which items could have been used to damage or alter property or used as a weapon by an inmate, would tend to destroy the public's respect and trust in Williams and other employees of the facility. The items were not found until Williams took ill while on duty. Had an inmate gotten to him before a fellow officer, the items could have easily been taken by an inmate. It is reasonable to expect the public's confidence to be lacking regarding Williams' ability, and any other SWSP CO's ability, to deliver proper protective and custodial services under such circumstances.

I **CONCLUDE** that the NJDOC appropriately sustained this charge of HRB 84-17, as amended, C11.

3. HRB 84-17, as amended, section C17 Personal conduct--possession of contraband on State property.

Multiple miscellaneous items were found in Williams' possession when he took ill at the facility. Many of the items were not on the list of authorized items permitted within the SWSP facility. Any item, as innocuous as it may seem, which is not listed as an authorized item, is deemed contraband. Williams does not dispute that the items were found having fallen from his pockets or otherwise found in his jacket pockets on the day he was ill while on duty. I **CONCLUDE** the NJDOC appropriately sustained this charge of HRB 84-17, as amended, C17.

4. HRB 84-17, as amended, section D7 Safety and Security Precautions – violations of administrative procedures and/or regulations involving safety and security.

Williams had miscellaneous items deemed to be contraband in his possession when he took ill on duty within the secured area of the facility. He thus violated a regulation for the facility involving the safety and security of the facility, which is the policy banning the possession of contraband in the facility. There is no separate or distinct other event or circumstance to charge under this section of the policy, but for the same reason that Williams had contraband. This charge under such circumstances is redundant and duplicative. I **CONCLUDE** this charge should be **DISMISSED**.

5. HRB 84-17, as amended, section E1 General violations, violation of a rule, regulation, policy, or administrative decision.

This is an example of a catchall type of charge, to cover behavior or actions by an employee which behavior or action has violated any rule, regulation, policy, or administrative decision. Here, the DOC asserted during the hearing that Williams violated the NJDOC's Law Enforcement Personnel Rules and Regulations, such as the general provisions section requiring all law enforcement officers to observe and comply with the

rules of conduct and any amendments. This is another redundant, unnecessary charge. In addition, the DOC did not notify Williams, in the FNDA, of the various provisions and sections of the rules and regulations alleged to have been violated. The FNDA only identified HRB 84-17, as amended, sections as having been violated. I **CONCLUDE** this charge as to Williams should not have been sustained and thus shall be **DISMISSED**.

Williams has been found to have violated HRB 84-17, as amended, sections B8 performance of job, serious mistake; C11 personal conduct-conduct unbecoming; and C17 possession of contraband. Such violations demonstrate "other sufficient cause" under N.J.A.C. 4A:2-2.3. I **CONCLUDE** that the DOC appropriately sustained the charge of N.J.A.C. 4A:2-2.3, other sufficient cause, due to Williams' violations of HRB 84-17, as amended, as found herein, regarding the event of May 11, 2018.

Sixty days suspension May 22, 2018, incident

1. HRB 84-17, as amended, section C5 Personal conduct--inappropriate physical contact or mistreatment of an inmate, patient, client, resident, or employee.

There has been no demonstrated inappropriate physical contact or mistreatment by Williams as to anyone else, specifically as to the SCPO Diaz. The video did not demonstrate any physical contact, nor could any eyewitness confirm such. I **CONCLUDE** the NJDOC has not demonstrated by a preponderance of the evidence, that this charge should have been sustained and thus it shall be **DISMISSED** as it was unproven.

2. HRB 84-17, as amended, section C11 Personal conduct-conduct unbecoming an employee.

The DOC asserts that Williams' actions towards SCPO Diaz was conduct unbecoming an employee, having engaged SCPO Diaz in a verbal dispute and alleged physical dispute and/or physically threatened violence to SCPO Diaz. There was no audio on the video. The view of the incident on the video is obstructed and found to be unclear and unable to see or determine what occurred as to whether Williams grabbed SCPO Diaz or was grabbing at his jacket, or whether SCPO Diaz grabbed Williams and

caused that momentum to draw him around the table into SCPO Diaz's space. No eyewitness could affirm the details through the statement interviews from the other officers nor through the only witness to testify at the hearing who actually was present and closest to the event. I **CONCLUDE** this charge should not have been sustained as the DOC has failed to demonstrate by a preponderance of the evidence that Williams' alleged actions occurred and thus this charge should be **DISMISSED** as unfounded.

3. HRB 84-17, as amended, section C17 Personal conduct -- possession of contraband on state property.

Williams had a bottle of iced tea and yogurt in his jacket pocket when he slid the jacket through to SCPO Diaz. They are not authorized items to be brought into the facility. He immediately realized he had the items, when he is seen reaching down towards the bin area. He stated he told SCPO Diaz "Don't touch my food." Williams admittedly knows that such items are contraband.

It is recognized that there is no tolerance for whatever the contraband may be, or even if something is inadvertently forgotten to be removed before entering the facility. The evidence preponderates that Williams realized his inadvertence in having the two food items and attempted to retrieve them back. He had just gone through the metal detector. He had not yet been cleared to go to the ID check security point and get patted down, which would have been his next stop before being permitted to enter the inner-security perimeter of the facility. There were supervisors and other officers present. All seemed to treat this as a "non-event" having stepped in to separate the two men, and then allowing Williams to return the items to his vehicle and then return to start his shift. No one apparently reported the matter except for the lieutenant coming forward to report the scuffle, who then admittedly did not seize the contraband and Williams was allowed to return it to his car. Under the totality of the circumstances, Williams being permitted to return the items to his car, and not having gained any further entry into the facility but for stepping through the metal detector in the lobby, preponderates that this should not have been a sustained charge under this factual scenario.

It is noted that Williams had entered the lobby, which is "state property" but so too is the parking lot for staff where Williams was permitted to return the items. He never got any further than the metal detector. No supervisor on site confiscated the iced tea and yogurt. This tends to indicate that this may not have been the first time someone entering immediately realized they had an item deemed to be contraband and immediately turned around or were otherwise permitted to return the item to their vehicle. I **CONCLUDE** the DOC has not demonstrated by a preponderance of the evidence that this charge should have been sustained, and thus it should be **DISMISSED**.

4. HRB 84-17, as amended, section D7 Safety and security precautions -- violations of administrative procedures and/or regulations involving safety and security.

The DOC asserts that Williams violated the regulations involving safety and security for the facility, and as promulgated by the DOC by his actions entering the facility with the two food items, then engaging with the screening officer in a verbal and physical altercation. Williams is required to maintain self-control. That was not done here. When he realized his inadvertent error of having the iced tea bottle and yogurt in his jacket, which he just slid through to the screening officer, he should not have reached in for his jacket nor even stated "Don't touch my food." SCPO Diaz was working at the lobby officer post. He was required to search the items in the bin. The IMP for the lobby officer provides that whenever an issue regarding the search of the person or challenge to anyone who has unidentifiable items or may have contraband arises, "the Shift Commander shall be immediately notified, and a supervisor shall be dispatched to the scene." (R-11-60.)

Once Williams realized his inadvertence, he could have asked for a supervisor rather than reacting in the manner in which he did. Although it is not clear exactly what was said and how it was said, nor is it clear exactly what caused Williams to go around the table into SCPO Diaz's workspace, he did wind up there. There was no apparent struggle that he was trying to resist getting pulled into the space. Most reasonably what can be inferred is that they were tussling over the jacket. Williams most logically was trying to retrieve his jacket due to his error while SCPO Diaz was not releasing the jacket. Williams did not maintain his self-control and instinctively reacted with his immediate

attempt to go towards the jacket in the bin. Fortunately, whatever “scuffle” ensued was fast and quickly diffused by other officers without any harm to anyone. I **CONCLUDE** that DOC has demonstrated by a preponderance of the evidence that Williams failed to maintain proper self-control and failed to have abided by the security rules and procedures when entering the facility for security screening. I **CONCLUDE** that the charge of HRB 84-17, as amended, D7 was properly sustained.

5. HRB 84-17, as amended, section E1 violation of a rule, regulation, policy, procedure, order, or administrative decision.

This is another instance of the DOC utilizing this charge as a catchall provision. There are no separate other facts or circumstances, besides the alleged attempt to introduce the contraband iced tea and yogurt items into the facility and the actions by Williams thereafter with his engagement with SCPO Diaz, to support another finding of a violation of a rule, regulation, policy, or procedure, besides what has already been confirmed as appropriately sustained. I **CONCLUDE** there have been no additional proven facts to support sustaining this charge and thus it shall be **DISMISSED** for being duplicative and redundant.

Williams has been found to have violated HRB 84-17, as amended, section D7, safety and security precautions, regarding the matter of May 22, 2018. Such a violation falls within “other sufficient cause” under N.J.A.C. 4A:2-2.3. I **CONCLUDE** that the DOC appropriately sustained the charge of N.J.A.C. 4A:2-2.3, other sufficient cause, due to Williams’ violation of HRB 84-17, as amended, D7, regarding the May 22, 2018, matter.

PENALTY

If it has been determined that a civil service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee’s past record. West New York, 38 N.J. at 523-524. The past record is said to encompass the employee’s

reasonably recent history of promotions or commendations on the one hand, and on the other hand, any “formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee.” Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

It is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual’s disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Thus, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one’s sense of fairness. Id. Progressive discipline manifests in either a gradually increasing penalty for reoffenders or will mitigate the penalty for a current offense if, after considering the mitigating and aggravating factors of the matter, the penalty sought is deemed inappropriate. In re Herrmann, 192 N.J. 19, 31-33 (2007).

Sworn law enforcement officers are recognized as a “special” kind of public employee. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and to represent law and order to the citizenry. Id. Law enforcement employees, such as SCPOs, must present an image of personal integrity and dependability to garner the respect of the public. Id.

It is noted that Williams has no prior history of major discipline before these events. He did receive OWR for lateness and attendance issues, and a letter of discipline which is not even considered minor discipline, as it is like coaching or training. That discipline occurred many years ago. He received one commendation for having worked during a blizzard early on in his DOC career.

Regarding the first matter of May 11, 2018, it has been determined that Williams violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for having been found in violation of three of the HRB 84-17, as amended, charges. Two of the HRB 84-17, as amended,

charges were dismissed. The FNDA imposed a fifteen working days penalty, which is major discipline, which can be imposed under N.J.A.C. 4A:2-2.3.

The charges confirmed herein as sustained for other sufficient cause are violations of HRB 84-17, as amended, B8 serious mistake due to carelessness which may result in danger or injury to persons or property; C11, conduct unbecoming an employee; and C17, possession of contraband on state property. The penalty range for a violation of B8 is OWR to removal. This was a first offense for Williams, and it is specified at this section that a first infraction should only be treated as a major disciplinary action where the individual is placed in a hazardous situation, property is damaged, or there is a serious breach of security. Williams placed himself in a hazardous situation, when he had in his pockets miscellaneous contraband items while on duty and he took ill. This situation would allow for the imposition of major discipline for the first offense.

The range of penalty for a violation of C11, conduct unbecoming for a first offense is a three working day suspension to removal. The range of penalty for a violation of C17, possession of contraband is OWR to removal.

Although not all of the HRB 84-17, as amended, charges were sustained regarding the May 11, 2018, incident, the charges that have been sustained all permit major discipline to be imposed for first offenses. Williams' lack of any prior disciplinary history is appreciated. This was certainly an unusual event for him, not only to take ill while on duty, but to have the miscellaneous contraband items in his pockets, placing himself and others at risk and risk to the security of the facility had any such items come into the possession of an inmate. Weighing the mitigating lack of prior major discipline, with the seriousness of the violations, I **CONCLUDE** the assessment of a fifteen working days suspension is appropriate for the May 11, 2018, matter, even with some of the HRB 84-17, as amended, charges not being sustained, due to the seriousness of the circumstances of Williams being in the secured area of the facility.

Regarding the matter of May 22, 2018, Williams had a sixty working day suspension imposed. The DOC largely was unable to prove by a preponderance of the evidence facts to support the HRB 84-17, as amended, charges levied against Williams.

None of the witnesses who testified witnessed the matter and were mainly presented as "policy" witnesses to testify regarding the policies, rules, and regulations. The one witness who did testify who was at the scene could not recollect any specific verbal comments and his view was obstructed by equipment at the screening desk area. This did not excuse Williams from all charges, as he has been found herein to have violated HRB 84-17, as amended, D7, violation of procedures and/or regulations involving safety and security, which merits confirmation of the charge under other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). Williams' actions at the entryway demonstrated a lack of self-control and engagement in a "scuffle" with a co-worker over items Williams realized he should not have carried into the facility.

Williams had no prior major disciplinary history, but for the event on May 11, 2018, which was less than two weeks prior to this matter. Williams is a senior officer and immediately realized his inadvertence. His behavior thereafter is troubling. Rather than pausing and calling for a supervisor to advise of his inadvertent possession of the iced tea and yogurt at the screening area, he chose to engage in commenting to the screening officer and then "scuffle" with that officer. It is noted that no one could affirmatively state whether Williams was the primary aggressor. However, had he been as attentive as he is required to be, he would have realized before he even got in the lobby that he had those items in his jacket pocket.

The situation does warrant major discipline. It is concerning that this occurred shortly after the only time Williams had been issued a PNDA with major discipline recommended. Williams, as a senior employee, knew better than to react the way he did when he realized what had occurred. It is noted that no one present, supervisors or other officers, could provide clear eyewitness confirmation as to whether Williams was the aggressor, and the video of the incident is not clear and is not enough to preponderate the evidence to determine if either man grabbed the others' arm or whether Williams walked into Diaz's space or Diaz pulled Williams into the area. Weighing the mitigating factor of a prior history of a handful of time and attendance issues with only OWR as a penalty, with the seriousness of Williams actions in dealing with his inadvertent carrying into the lobby the iced tea and yogurt, and having just been issued a PNDA dealing with a contraband issue in the facility a few days prior, I **CONCLUDE** a penalty of a fifteen

working days suspension should be imposed for Williams' sustained charge for the May 22, 2018 matter, other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), for having violated HRB 84-17, as amended, D7, violation of procedures and/or regulations involving safety and security.

ORDER

It is **ORDERED** that the sustained charges for the May 11, 2018, matter are modified to be sustained under other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12) for having violated HRB 84-17, as amended, sections B8, C11, and C17. It is further **ORDERED** that the penalty of a fifteen working days suspension for those violations is appropriate and shall be imposed.

It is further **ORDERED** that the sustained charges for the May 22, 2018, matter are modified to be sustained under other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12) for having violating HRB 84-17, as amended, section D7. It is further **ORDERED** that the penalty to be imposed for the May 22, 2018, matter is modified and shall be a fifteen working days suspension for this sustained charge.

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.



July 24, 2024

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/gd

APPENDIX

WITNESSES

For petitioner

None

For respondent

Eleazar Spratley

Brian LaBonne

Kenyon Jones

Anthony Degner

EXHIBITS

Joint Exhibits

J-1-15 Stipulations of the Parties regarding fifteen working days suspension

J-1-60 Stipulations of the Parties regarding sixty working days suspension

For petitioner

None.

For respondent

R-1-15 FNDA September 13, 2018

R-2-15 DOC SID Administrative Investigation report July 5, 2018

R-3-15 SWSP Level 3 Internal Management Procedure, Security at Facility
Entry Points

R-4-15 Authorized Items list

R-5-15 DOC Law Enforcement Personnel Rules and Regulations 1/12

R-6-15 SWSP Checklist for processing new hires/transfers

R-7-15 N.J.A.C. 4A:2-2.3 General causes excerpt of statute with HRB 84-17
as Amended

R-8-15 DOC Work History for Williams as of February 5, 2019

R-1-60 FNDA December 26, 2018; PNDA May 22, 2018

R-2-60 DOC Administrative investigation report by Jarvis Perry, date received:
May 23, 2018

R-3-60 through R-9-60 Not utilized

R-10-60 SWSP IMP #486, Security at Facility Entry Points

R-11-60 SWSP IMP #10, Lobby Officer

R-12-60 not utilized; duplicative of R-4-15 entered

R-13-60 Policy Statement, effective July 2, 1999, Prevention of Violence in the
Workplace

R-14-60 NJDOC Policy Statement, ADM.010.001, Standards of Professional
Conduct

R-15-60 NJDOC Law Enforcement Personnel Rules and Regulations

R-16-60 not utilized; duplicative of R-6-15, entered

R-17-60 not utilized; duplicative of R-8-15, entered

R-18-60 N.J.A.C. 4A:2-2.3 Major discipline, General causes excerpt with HRB
84-17 as Amended

R-19-60 DVD Interview of SCPO Williams re sixty day incident

R-20-60 not utilized

R-21-60 DVD video of May 22, 2018, SWSP lobby 21:25-22:10

R-22-60 DVD statement by Officer Kenya Jones to petitioner's investigator

R-23-60 DVD Interview of SCPO Jones on January 28, 2022, by DOC