

DECISION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1790
OAL Docket No. CSV 02138-23

ISSUED: APRIL 9, 2025

Regarding the charges, notwithstanding the appellant's reply to exceptions arguing to the contrary, the Commission finds that the ALJ's findings and conclusions were appropriate and based on the credible evidence in the record. In this regard, her findings were based on her credibility determinations as well as her assessment of the video of the incident in question. In its exceptions, the appointing authority argues that the ALJ erred in finding the appellant's testimony credible, especially in light of the video. The Commission disagrees. 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). The Commission finds no persuasive evidence in the record or the appellant's exceptions to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Moreover, the Commission finds no reason to question the ALJ's finding that the video, notwithstanding the appointing authority's contentions, does not establish that the appellant placed his hands around the detainee's neck. As such, the Commission affirms the ALJ's findings regarding the charges in this matter.

Regarding the penalty, the appointing authority argues that the originally imposed 40 working day suspension is the appropriate penalty, or at least a penalty higher than the previous 20 working day suspensions in the appellant's history. In this regard, it argues that the appellant's misconduct, coupled with his prior disciplinary history, supports the 40 working day suspension. In her initial decision, the ALJ stated:

In this matter, Fernandez has had three prior disciplines. Two twenty-day suspensions and a minor discipline. The suspension of forty days in the FNDA is not appropriate for Fernandez's conduct of handcuffing Moreno. A discipline of seven days in this matter is appropriate.

Similar to its review of the underlying charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Moreover, the Commission emphasizes that a County Correctional Police Officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990).

The Commission finds the ALJ's reduction of the penalty supportable. In this regard, the ALJ found that while the appellant's handcuffing the appellant was an inappropriate use of force, that he did not otherwise use improper force. Moreover, while the Commission notes the appellant's history of major discipline, it notes that the most recent action was five years prior to the current infraction. As such, while the sustained infraction merits a major discipline, the ALJ's reduction to a seven working day suspension is appropriate.

Since the suspension has been modified, the appellant is entitled to 33 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, although some charges were dismissed, charges were upheld and major discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth in *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. However, it modifies that action to a seven working day suspension. The Commission further orders that the appellant be granted 33 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.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF APRIL, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02138-23

AGENCY DKT NO. 2023-1790

**IN THE MATTER OF MARIO FERNANDEZ,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS,**

Stuart J. Alterman, Esq., for appellant (Alterman & Alterman, LLC. attorneys)

Georgina Pallitto, Esq. for respondent (Hudson County Counsel, attorneys)

Record Closed: March 3, 2025

Decided: March 14, 2025

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE

Mario Fernandez (Fernandez or appellant) appeals to the decision of respondent Hudson County Department of Corrections (Hudson) to suspend him for forty days on charges of incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee neglect of duty and other sufficient cause. The charges stem from an incident that occurred during intake regarding inmate Wanderbys Moreno- Carvajal (Moreno).

PROCEDURAL HISTORY

This matter was transmitted to the Office of Administrative Law (OAL) and filed on March 8, 2023. The hearings were held on December 17 and 20, 2024. Closing briefs were submitted on February 14, 2025, on which date the record closed.

FACTUAL DISCUSSION

Testimony

Lieutenant Shantanee Candelaria

Lieutenant Shantanee Candelaria (Candelaria) is a lieutenant at Hudson County Department of Corrections and Rehabilitation (HCDRCR). She held that position in August 2022. She worked the 9:00a.m. to 2:00p.m. shift. Her title was Unit Two Manager. There is a close circuit TV (CCTV) in the facility. Some of the CCTV cameras have audio and others do not.

On August 25, 2022, Sergeant Pressley came to Candelaria and showed her a floor card, which is inmate Moreno's photo. The floor card showed a hand around the neck of inmate Moreno. A video of the incident was captured on CCTV. Candelaria reviewed CCTV footage of the incident that occurred on August 25, 2022. There was an audio and video component of the CCTV footage. The footage showed civilian Ester Ihenakwe seated in intake. Moreno is trying to communicate with her, but he only speaks Spanish, and she does not speak Spanish. Ihenakwe asked Fernandez to speak to Moreno in Spanish. Fernandez enters the intake and tells Moreno that he must have his photo taken. Moreno refuses. Fernandez then pulled Moreno to the spot where the picture was to be taken. Fernandez grabbed Moreno by the arm and points him to the camera. Fernandez then has Knox and Caporale assist him. Knox goes behind the desk and Caporale talks to Moreno. Fernandez pulled off Moreno's mask. Fernandez handcuffs Moreno as he is looking down. Fernandez grabs Moreno by the neck with his right hand and has his left hand behind Moreno's head. Officer Sobers then enters the room to get Moreno to take a side photo. Fernandez checks to see if

the photo is alright and then takes the handcuffs off Moreno. Candelaria states that there are two instances of Fernandez putting his hand on Moreno's neck. Candelaria believed that Fernandez used excessive deadly force on Moreno by putting him in handcuffs and putting his hand on Moreno's neck.

Candelaria requested incident reports from Fernandez, Knox, Pressley and Caporale. Fernandez was told by Candelaria to complete a use of force report, which he did on August 29, 2022.

Candelaria drafted a request for discipline against Fernandez. She sent the request and the reports to Director Aviles. Aviles did not advise Candelaria how to conduct the investigation.

Fernandez was charged with violation of duty for using physical force, insubordination, failure to obey orders plus other charges.

On August 25, 2022, Fernandez was working four hours of overtime. Both incident reports and use of force reports must be submitted before the end of the shift which they occurred. None of the other officers that were present during the incident received discipline.

Kevin Dilly was the Captain at the time of the investigation. At that time, Candelaria reported to Captain Paul Morales. Candelaria did not report the incident to the internal affairs department. She has no training in conducting an internal affairs investigation.

If an officer sees another officer using deadly force, there is a duty to report it. Candelaria decided that the actions of the other officers did not warrant discipline. There were other officers that used physical contact with Moreno.

During intake, a photo of the inmate is needed for identification. The photo is then placed on a floor card and a bracelet. The floor card is for the floor and the bracelet is for the inmate.

Candelaria has had in-house use of force training which was done by video. Fernandez had not been trained on the use of force policy issued on August 18, 2022, prior to the incident.

While conducting the investigation, Candelaria watched the CCTV video many times. The photo on the floor card of Moreno shows Moreno's face with an index finger at Moreno's jawline and thumb on the side of the jaw line. Caporale also had his hands on Moreno's upper chest. Moreno was struggling while he was handcuffed. He was whining and crying. He was trying not to take the picture. The officers were trying to get Moreno to cooperate.

Candelaria does not remember that Fernandez told her that he used physical contact. Fernandez report states that he handcuffed Moreno and held him by the chin for the picture. She spoke with Fernandez about the incident but did not memorialize the conversation. Candelaria believes that Fernandez is a good Sergeant, and she would work with him in the future.

Fernandez oversaw the intake process. It was his obligation to ask for an incident report. Caporale stated that he was not aware, at the time, that Fernandez had his hand around Moreno's neck. Knox stated that it appeared that Fernandez held Moreno by the chin.

Use of handcuffs alone is use of force. In the use of force report, Fernandez states the subject was non-compliant and Fernandez used a compliance hold, hand/fist and handcuffs. There is no physical contact box on the use of force form. Any placement on the neck is restrictive. When there is use of force, the form must be completed even if there are no injuries.

During the incident, Fernandez was constantly talking to Moreno. Caporale's report states that Fernandez had his hand around the neck of Moreno. Knox report does not state that Fernandez choked Moreno or that Fernandez applied pressure to him. Candelaria does not know if Fernandez used a chokehold on Moreno.

Mario Fernandez

Fernandez is employed by Hudson. He became a Sergeant in December 2017. Prior to August 25, 2022, Fernandez had training in Power DMS of reading policy on computers. He does not recall being trained in Power DMS by an individual. On August 25, 2022, Fernandez's assignment was intake supervisor. On that day, Moreno had come to the facility from Weehawken. Moreno spoke limited English but spoke Spanish. Fernandez is fluent in Spanish. The policy in Hudson is that all inmates are to be photographed. The civilian clerk, Ihenakwe, was sitting at the desk. Ihenakwe tried to get Moreno to comply. When he didn't comply, Fernandez was called. Fernandez told Moreno that the photograph was part of the process. Moreno said that he was not a delinquent. Knox and Caporale came in at this time. Fernandez held Moreno by the arm and put him in handcuffs. He then held Moreno by the chin and the back of the neck for the picture to be taken. Caporale had his hand on Moreno's upper chest when they were trying to get the picture taken. Fernandez put Moreno in handcuffs for safety. Fernandez stated that he did not squeeze Moreno's throat, he did not squeeze Moreno's airway or carotid artery, nor did he put Moreno in a chokehold. Fernandez continued to talk to Moreno who did not have any difficulty breathing.

Fernandez knows the Hudson policy for use of force. In this matter, physical contact was used. When there is a use of force, a use of force form must be filled out. Fernandez did not fill out the use of force form on the day of the incident, because he did not use force.

In the use of force report, Fernandez checked the boxes that explained the incident. He checked off compliance hold, hands/fist and handcuffs. Fernandez does not feel that the use of force report is inconsistent with his incident report.

Fernandez believed the prior use of force policy was in effect on August 25, 2022. The use of force policy was updated on August 18, 2022. Fernandez had not read the update prior to August 25, 2022. Fernandez read the updated use of force regulations on August 29, 2022.

On the use of force form under subject's action Fernandez filled in other non-compliant. Under the officer's use of force, he filled out compliance hold, hands/fist and handcuffs. Moreno did not raise his hands to anyone or get aggressive. Fernandez did not fear that he was in danger of bodily injury or harm from Moreno. Moreno was non-compliant when he put his head down instead of having the photo taken. Moreno had facial hair on his chin. Fernandez right hand was on Moreno's chin and his left hand was behind Moreno's head.

Fernandez does not agree that handcuffing an inmate is a use of force. Moreno looking down while they were trying to take the picture instead of looking up was noncompliance. Moreno was not complying with Fernandez's orders. Caporale had his hand on Moreno's chest. This is the first time an inmate refused to take a photo when Fernandez was supervising intake.

Fernandez does not believe that he used force on Moreno. He does not believe that the hold he used on Moreno was similar to a chokehold. Fernandez could not have applied pressure to Moreno's neck from the position of his arms. Fernandez put handcuffs on Moreno to prevent him from moving his hands. Force can be used to enforce correction department policies when expressly permitted by the department of corrections.

Fernandez stated that the use of force form that he filled out is not accurate, but he signed it because he was ordered to complete one. The use of force form does not have an option for physical contact. Fernandez testified that the use of force form is inaccurate because it appears that he used force. He checked the boxes that were there. He is not admitting that he used force. Once Fernandez completed the use of

force form, he did not speak to Candelaria about the form. When Fernandez signed the use of force form, he did not think that it was inaccurate. He does not believe that there are discrepancies between the use of force form and his incident report. Fernandez checked compliance hold on the use of force form because he held Moreno's head.

If Fernandez refused to fill out the use of force report, he would have been charged with insubordination. Fernandez was not charged with improperly handcuffing an inmate.

FINDING OF FACTS

After hearing the testimony and review of the evidence, I **FIND** the following **FACTS**: Fernandez is employed by Hudson and became a sergeant in December 2017. On August 25, 2022, his assignment was intake supervisor. He oversaw inmates coming into the facility, making sure information is correct and that inmates get photographed and go to medical.

Candelaria is a lieutenant at Hudson. She held that position in August 2022. At that time, she worked the 9:00a.m. to 2:00p.m. shift. Her title was Unit Two Manager. The correctional facility has 900-1300 inmates. There is CCTV in the facility. Some of the CCTV cameras have audio and others do not. The responsibility of the Unit Two Manager is to oversee intake, records, classification. It includes processing intake. Processing occurs in the intake area. Candelaria oversees civilians and officers. The sergeants report to her. During intake a photo of the inmate is taken for identification. The photo is placed on a floor card and a bracelet. The floor card is for the floor and the bracelet is for the inmate.

On August 25, 2022, inmate Moreno was brought to Hudson from Weehawken, where he refused to be fingerprinted. Ihenakwe was seated in intake. Moreno tried to communicate with her, but he only spoke Spanish. Ihenakwe does not speak Spanish. She then asked Fernandez to enter intake to speak to Moreno in Spanish. When Fernandez entered the room, he held Moreno by the arm, moved Moreno to the area

where the photo was going to be taken and spoke to Moreno in Spanish. Moreno stood up with his hands out and Fernandez had his hand on Moreno's arm and took off Moreno's mask. Fernandez was telling Moreno in Spanish to take the picture but Moreno refused. Fernandez told Moreno that the photograph was part of the process. Moreno said that he was not a delinquent.

The policy in Hudson is that all inmates are photographed. Moreno refused to take the photo. At that time, Fernandez placed Moreno in handcuffs and held him by the arm. Moreno did not raise his hands to anyone or get aggressive. Fernandez did not feel that he was in danger of bodily injury or harm from Moreno. Fernandez was never trained in what to do when an inmate refuses to be photographed.

Fernandez called officers Knox and Caporale into the room to assist with Moreno's photograph being taken. Knox went to assist with the photograph and Caporale assisted Fernandez with getting Moreno in place to take the photo. Moreno was moving and putting his head down. Fernandez put his right hand under Moreno's chin and his left hand behind Moreno's head and Caporale put his hand on Moreno's chest for the photo to be taken. Moreno was whining and crying. Moreno was turned sideways for another photo. Fernandez did not squeeze Moreno's throat, airway or carotid artery. Moreno did not have difficulty breathing.

Candelaria did not speak to Moreno. She had Pressley take another picture of Moreno. He did not have any marks or bruises. Moreno did not receive medical assistance or make a complaint as a result of this incident.

On August 25, 2022, Sergeant Pressley came to Candelaria and showed her a floor card of Moreno. The floor card displayed a hand around the neck of inmate Moreno. This display warranted Candelaria to view the CCTV footage of the incident. Upon viewing the footage Candelaria believed that Fernandez used excessive deadly force on Moreno by putting him in handcuffs and putting his hand on Moreno's neck. Candelaria believes that Fernandez used a chokehold on Moreno. A chokehold is when

someone has his hand, knee, or around another person's neck. There must be pressure applied for a chokehold. She determined that Fernandez used a chokehold by watching the CCTV video. She does not know how much pressure was used or if pressure was used.

When an officer uses excessive deadly force, the officer must complete an incident report and a use of force report. These reports must be tendered before the officer's tour ends. Fernandez did not tender a force report before the end of his shift. The use of force form does not have an area to detail the incident. If there is a non-compliant inmate where handcuffs are used on the inmate, a use of force report must be done.

Candelaria requested incident reports from Fernandez, Knox, Pressley and Caporale. Pressley's incident report was dated August 29, 2022. In the report Pressley states that she observed a hand on the neck of an inmate on the floor card and reported that to Candelaria. Pressley took a second picture of Moreno without incident. Caporale's report was dated August 29, 2022, it stated that he assisted Fernandez to get the photo of Moreno. Caporale was not aware that Fernandez had his hand around Moreno's neck at the time of the incident. Knox's incident report was dated August 29, 2022. It stated that he was setting up the camera when Fernandez held Moreno by the neck and that Moreno's eyes were closed.

Candelaria contacted Fernandez the day of the incident and stated that she needs him to write a report and leave it in her office. He asked her why a report was needed and Candelaria told him because the photo did not look good. Fernandez was not told that he was the target of an investigation. He did not sign forms that he was the target or subject of an investigation. He was never interviewed by anyone. No one has explained to Fernandez what he did wrong. Fernandez provided an incident report dated August 25, 2022. He stated that he handcuffed Moreno and held Moreno by the chin for the photo to be taken. These reports were not generated until Candelaria requested them.

Fernandez completed a use of force report on August 29, 2022. It stated that there was noncompliance and that Fernandez used a compliance hold, hand/fists and handcuffing on Moreno. He listed compliance hold because he held Moreno. Fernandez's right hand was holding Moreno's chin, and his left hand was on the back of Moreno's head. Physical contact can be used on an inmate. The use of force form is not needed when physical contact is used on inmates. Fernandez completed the use of force form when he was ordered to do so by Candelaria. He does not believe that he used force on Moreno but filled out the form because he was ordered to do so.

The use of force form does not have an option for physical contact. Fernandez stated that the use of force form is inaccurate because it appears that he used force. He checked the boxes that were there. Fernandez's right hand was on Moreno's chin and his left hand was behind Moreno's head. Fernandez does not agree that handcuffing an inmate is the use of force. Moreno's looking down while they were trying to take the picture instead of looking up was noncompliance. Moreno was not complying with Fernandez's orders. Caporale had his hand on Moreno's chest. This is the first time an inmate refused to take a photo when Fernandez was supervising intake.

Fernandez does not believe that he used force or that the hold he used was similar to a chokehold. Fernandez could not have applied pressure to Moreno's neck from the position of his arms. Fernandez's incident report of August 25, 2022, stated that he handcuffed Moreno for safety but does not say that he used force or a compliance hold. Moreno and Fernandez were approximately the same size. The policy and procedure for Hudson is on a computer program called Power DMS. It is the duty of the officers to log on daily to Power DMS to ensure that they are up to date with the policies and procedures. A receipt is generated when an officer signs off Power DMS.

Hudson had a use of force policy with an effective date of August 18, 2022, which was listed in Power DMS. The prior use of force policy had an effective date of January 26, 2021. Fernandez had not signed off on reading the August 2022 use of force policy. He had signed the use of force policy with the effective date of January 26,

2021. It should be noted that the policy from 2021-2022 did not change regarding handcuffs. Both policies prohibit the use of a chokehold. Fernandez became aware of the new use of force policy after the incident, Fernandez believed the prior use of force policy was in effect on August 25, 2022. Fernandez had a duty to look at Power DMS to be aware of any change. Candelaria ordered Fernandez to write a use of force report four days later.

Candelaria reported that Fernandez used deadly force to Captain Morales but not to the Hudson County Prosecutor's Office. She was not told that the Prosecutor's Office would get involved. Candelaria did not report the incident to the internal affairs department. She has no training in conducting an internal affairs investigation. If an officer sees another officer using deadly force, there is a duty to report it. None of the other officers' present during the incident wrote a use of force report. She did not speak to Caporale when he submitted his incident report. She did speak to Knox when he gave her the report but does not remember the conversation. Candelaria decided that the actions of the other officers did not warrant discipline.

Fernandez had prior disciplines. One discipline for striking an officer was settled for a twenty-day suspension on July 22, 2015. Another discipline for insubordination was settled for a twenty-day suspension on September 11, 2015. Fernandez also had a minor discipline on December 7, 2017, which resulted in a fine.

LEGAL ANALYSIS

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

Under N.J.A.C. 4A:2-2.3(a)(1), an employee may be subjected to major discipline for “incompetency, inefficiency, or failure to perform duties.”

Incompetency: Although progressive discipline is the general rule, sheer incompetency can be the grounds for firing without progressive discipline. Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency’s judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old’s face was terminated, despite lack of any prior discipline).

“There is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

(NOTE: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

“In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change.” Klusaritz v. Cape May Cnty., 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a County treasurer who couldn’t balance the books, after the auditors tried three times to show him how).

In reversing the MSB’s insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that “[t]he [MSB’s] application of progressive discipline in this context is misplaced and contrary to the public interest.” The court determined that Klusaritz’s prior record is “of no moment” because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35–36 (2007) (citations omitted).]

There is no definition in the administrative code of the term “inefficiency,” and therefore, it has been left to interpretation.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee’s conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep’t of Agric., 1 N.J.A.R. 315 (1980).

The fundamental concept that one should be able to perform the duties of the position is stated in Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), which happens to be a probationary period case involving a nurse:

“Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental

unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140. "Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), cert. denied, 59 N.J. 269 (1971).

In this matter, Fernandez was charged with incompetence, inefficacy, failure to perform job duties, inability to perform job duties, insubordination, unbecoming conduct a public employee, other sufficient cause can be merged with regard to Fernandez

handcuffing Moreno. Hudson did not prove by a preponderance of the evidence that Fernandez used a chokehold or held the neck of Moreno. Fernandez testified credibly that he held Moreno by the chin and the back of the head. There was no testimony that he put pressure on Moreno's neck. From the CCTV video it cannot be determined if Fernandez hand was on Moreno's chin or throat. It cannot be determined from the floor card photo whether Fernandez's hand was on Moreno's neck or chin. Fernandez testified that he did not apply any pressure to Morino's neck. There was no evidence of any marks or injury to Moreno as a result of this incident. However, Fernadez did put Moreno in handcuffs when he was not acting in an aggressive manner, and Fernandez did not believe that Moreno posed a danger to anyone.

Power DMS is to be read daily by officers and Supervisors of Hudson was not aware of the August 18, 2022 update. I **CONCLUDE** that Moreno was not a danger to anyone, he was not being aggressive, and Fernandez had the assistance of two other officers. Fernandez putting handcuffs on Moreno was an unnecessary use of force. I also **CONCLUDE** that Fernandez did not read Power DMS daily as required.

When determining the appropriate penalty to be imposed, the appointing authority must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. Bock, supra, 38 N.J. 500. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also In re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

In this matter, Fernandez has had three prior disciplines. Two twenty-day suspensions and a minor discipline. The suspension of forty days in the FNDA is not appropriate for Fernandez's conduct of handcuffing Moreno. A discipline of seven days in this matter is appropriate.

ORDER

It is **ORDERED** that Fernandez be suspended for seven days for conduct unbecoming a public employee.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 14, 2025



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

March 14, 2025

Date Mailed to Parties:

March 14, 2025

ljb

WITNESSES

For Appellant

Mario Fernandez

For Respondent

Shantanee Candelaria

EXHIBITS

For Appellant

- A-1 Moreno Inmate Photo
- A-2 Video on Disk of Moreno Intake
- A-3 Preliminary Notice of Disciplinary Action
- A-4 N.J.A.C. 10A:31
- A-5 CRM01 Case management Record
- A-6 Not in Evidence
- A-7 CUS. 02 Duties and Responsibilities of Sergeants
- A-8 Not in Evidence
- A-9 Not in Evidence
- A-10 Not in Evidence
- A-11 Custody Staff Rules and Regulations
- A-12 Detainee Personal Property Management
- A-13 Not in Evidence
- A-14 Not in Evidence
- A-15 S&C 14 Transportation of Inmates
- A-16 Not in Evidence
- A-17 S&C 16 Use of Force
- A-18 Not in Evidence
- A-19 Not in Evidence
- A-20 Not in Evidence

A-21 Not in Evidence
A-22 Not in Evidence
A-23 Int 01 Inmate-Detainee Intake Discharge
A-24 Not in Evidence
A-25 Not in Evidence
A-26 Not in Evidence
A-27 Not in Evidence
A-28 Use of Force Regulation Revised on January 21, 2021
A-29 Not in Evidence
A-30 Use of Force Report for Fernandez
A-31 Incident Report of Fernandez Dated August 25, 2022
A-32 Incident Report of Fernandez dated August 29, 2022
A-33 Candelaria request for Disciplinary Action
A-34 Incident Report of Pressley Dated August 29, 2022
A-35 Incident Report of Knox Dated August 29, 2022
A-36 Signature of Fernandez for Receipt of Custody Staff Rules and Regulations
Dated October 25, 2017
A-37 Not in Evidence
A-38 Not in Evidence
A-39 Incident Reports Processing Policy
A-40 Not in Evidence
For Respondent
R-1 Preliminary Notice of Disciplinary Action
R-2 Request for Disciplinary Action by Candelaria Dated August 31, 2022
R-3 Processing Photos of Moreno
R-4 Incident Report of Pressley Dated August 29, 2022
R-5 Incident Report of Fernandez Dated August 25, 2022
R-6 Use of Force Report of Fernandez Dated August 25, 2022
R-7 Incident report of Caporale Dated August 29, 2022
R-8 Incident Report of Knox Dated August 29, 2022
R-9 Custody Staff rules and Regulations Manual

R-10 (a) S&C 16 Use of Force Policy Revised August 18, 2022

R-10 (b) S&C 16 Use of Force Policy Revised January 26, 2021

R-11 ADM .07 Incident Reports Processing Policy

R-12 Three Receipts from Fernandez Including Incident Processing and Use of Force

R-13 Fernandez Prior Disciplines

R-14 Not in Evidence

R-15 USB Disk with Audio of CCTV video of incident in Intake on August 22, 2022