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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Monteleone,
Hudson County

CSC Docket No. 2014-2975
OAL Docket No. CSV 06839-14

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ISSUED: **DEC 18 2015** (HS)

The appeal of Thomas Monteleone, a County Correction Lieutenant with Hudson County, of his 10 working day suspension, on charges, was heard by Administrative Law Judge Kimberly A. Moss (ALJ), who rendered her initial decision on October 16, 2015. Exceptions were filed on behalf of the appointing authority and appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on November 18, 2015, did not adopt the ALJ's recommendation to reverse the 10 working day suspension. Rather, the Commission modified the penalty to a three working day suspension.

DISCUSSION

The appointing authority suspended the appellant for 10 working days on charges of insubordination and neglect of duty. Specifically, it asserted that the appellant neglected to report that three relatives, Charlene Porcuri, David Gonzalez and Anthony Monteleone, were incarcerated at the Hudson County Correctional Center (HCCC). Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In her initial decision, the ALJ set forth the testimony provided. Thaddeus Caldwell, Administrator of Internal Affairs at the HCCC, testified that during the appellant's internal affairs interview, which was not conducted by Caldwell, the

appellant stated that Porcuri was the daughter of his father by a woman other than his mother and that Gonzalez was Porcuri's son. Caldwell also testified that in a report dated August 19, 2013, after the Preliminary Notice of Disciplinary Action (PNDA) was issued in this matter, the appellant indicated that Anthony Monteleone was an inmate and that the appellant's father married Anthony Monteleone's mother. Caldwell further testified that Porcuri and Anthony Monteleone were siblings. The appellant testified that he did not report that Porcuri, Gonzalez and Anthony Monteleone were inmates because they were not related to him. The appellant also testified that his mother had told him that his father had another family. The appellant further testified that although Porcuri and Anthony Monteleone were not blood relatives, Anthony Monteleone's mother was married to the appellant's father. The ALJ found the appellant to be a credible witness and therefore found that the appellant did not believe that Porcuri, Gonzalez and Anthony Monteleone were related to him. The ALJ also found that the appellant's father left his mother and family and had a relationship with the mother of Porcuri and Anthony Monteleone, and Porcuri is the mother of Gonzalez. The appellant did not know if his father married the mother of Porcuri and Anthony Monteleone or if he was a biological sibling of Porcuri and Anthony Monteleone, and did not consider himself related to them. Porcuri and Gonzales had been inmates on 13 occasions since 1990, and Anthony Monteleone had been an inmate on nine occasions since 2005. Prior to the issuance of the PNDA, the appellant never informed the Director of Corrections (Director) that the three individuals were inmates. HCCC Custody Staff Rules and Regulations, particularly Rule 31, address the issue of fraternization regarding incarcerated relatives and associates. Rule 31A(a) requires employees to notify the Director in writing of relatives or associates who are in custody at the HCCC. It defines relatives as persons related through birth, marriage or adoption. It also lists 14 categories of persons considered relatives, including siblings and nieces/nephews, but relatives are not limited to those categories. Rule 31A(b) states that an employee who is unsure whether an inmate is a relative has an affirmative obligation to notify the Director in writing in order for the Director to make a determination as to appropriate action.

Based on the foregoing, the ALJ determined that the charges of insubordination and neglect of duty were not sustained and that the penalty should be reversed. The ALJ determined that the appellant did not consider Porcuri, Gonzalez and Anthony Monteleone to be related to him. She determined that the appointing authority had not provided any evidence that the three inmates were related to the appellant, noting that the documents and testimony the appointing authority relied on were hearsay. The ALJ further observed that Rule 31A(a) did not clearly delineate step-siblings as relatives, and thus, it was not clear if the rule treated them as relatives.

In its exceptions, the appointing authority argues that the charges should have been upheld. It notes that the appellant testified that Anthony Monteleone's

mother was married to the appellant's father and that the appellant indicated in his August 19, 2013 report that his father was married to Anthony Monteleone's mother. The appointing authority contends that Rule 31A leaves no discretion for employees' considerations. Additionally, Rule 31A(a) provides a non-exhaustive list of persons and notes that relatives are defined as persons related through birth, marriage or adoption. The rule thus requires an employee to advise the Director in writing if a relative, even one related by marriage, is incarcerated or becomes incarcerated at the HCCC. Moreover, it argues that under Rule 31A(b), an employee who is unsure whether an inmate is a relative still has an affirmative obligation to notify the Director in writing in order for the Director to make a determination. Therefore, the appellant had the affirmative obligation to advise the Director in writing of the three inmates' incarceration irrespective of his personal feelings, so that the Director could decide on appropriate measures. The appointing authority further avers that it provided credible, non-hearsay evidence that the three inmates were related to the appellant, pointing to the August 19, 2013 report authored by the appellant in which the appellant admitted that his father was married to the mother of Anthony Monteleone. This evidences that the appellant was related to the inmates at least by marriage, if not biologically as half-siblings. The appointing authority disagrees with the reversal of the penalty since the appellant should have known that his personal considerations could not be substituted for the rules of the HCCC, a paramilitary institution where security is of the utmost importance.

In his exceptions, the appellant requests back pay, benefits, seniority and counsel fees. He maintains that the appointing authority produced no credible evidence to support its case, concurring with the ALJ that the documents and testimony the appointing authority relied on were hearsay. The appellant also urges the Commission to defer to the ALJ's witness credibility determination.

Initially, regarding the credibility of the witnesses, 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 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 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 the credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this case, upon review, the Commission finds nothing in the record that convinces it

that the ALJ's assessment of the credibility of the witnesses or her findings of fact based on those assessments were in error.

Nevertheless, based on its *de novo* review of the record, the Commission disagrees with the ALJ's assessment of this matter. Although the appellant may not have *considered* the inmates to be his relatives, the issue of whether someone is related cannot be left to one's subjective beliefs. While it is understandable why the appellant may have believed that the inmates were not related to him in light of the family history involved, his belief was not reasonable in this case in light of the competent, non-hearsay evidence in the record. In this regard, the appellant admitted during his internal affairs interview that Porcuri was the daughter of his father by a woman other than his mother and that Gonzalez was Porcuri's son. Additionally, in his August 19, 2013 report, the appellant indicated that his father was married to the mother of Anthony Monteleone, and the appellant also testified at the hearing to the same effect. In short, based on the appellant's own admissions, the inmates involved were the appellant's half-sister, Porcuri, his nephew, Gonzalez, and his half-brother or step-brother, Anthony Monteleone. Therefore, these inmates were relatives of the appellant through birth or marriage under Rule 31A(a), and the appellant's failure to report their multiple stints of incarceration constituted neglect of duty. Although step-siblings were not specifically stated in Rule 31A(a), the rule defined a relative as anyone related through birth, marriage or adoption and noted that the included list of relatives was not exhaustive. Moreover, given the circuitous nature of the appellant's family tree, he also neglected his duty to report under Rule 31A(b), which affirmatively obligated employees to report even where they are unsure if an inmate is a relative. Again, even if the appellant did not *consider* or *believe* the inmates to be his relatives, he still had an affirmative obligation to report. In essence, his ignorance of Rule 31A(b) was not reasonable, based on the clear evidence that all of the individuals were in some way related to his father. Accordingly, the Commission finds that the charge of neglect of duty is sustained.

With regard to the penalty, the Commission's review is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission 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 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. Moreover, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious

that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 N.J. 474 (2007). In the present case, the Commission has upheld the charge of neglect of duty, warranting some penalty. However, the Commission finds that the appointing authority's original penalty was too harsh. In this regard, the Commission recognizes the appellant's intricate and potentially embarrassing family history, which may explain why he did not consider the inmates to be his relatives and his reluctance to report. Based on these unique circumstances, it is appropriate to reduce the penalty to a three working day suspension.

Since the penalty has been modified, the appellant is entitled to seven days of back pay, benefits and seniority pursuant to *N.J.A.C.* 4A:2-2.10. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C.* 4A:2-2.12(a), an award of counsel fees is appropriate 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 any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. Mar. 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In this case, the Commission upheld the charge of neglect of duty and only modified the penalty. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12(a), counsel fees must be denied.

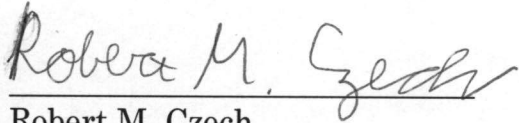
ORDER

The Commission finds that the appointing authority's action in imposing a 10 working day suspension was not justified under the circumstances and modifies that action to a three working day suspension. The Commission further orders that the appellant be granted seven days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned during this period. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

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 18TH DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 06839-14

AGENCY DKT. NO. 2014-2975

**IN THE MATTER OF THOMAS MONTELEONE,
HUDSON COUNTY DEPARTMENT
OF CORRECTIONS.**

Michael Bukosky, Esq., for appellant, Thomas Monteleone (Loccke, Correia & Bukosky, attorneys)

Chanima K. Odoms, Esq., Assistant County Counsel, for respondent Hudson County Department of Corrections (Donato Battista, Hudson County Counsel, attorney)

Record Closed: October 5, 2015

Decided: October 16, 2015

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

STATEMENT OF THE CASE

Hudson County Department of Corrections (Hudson) took the disciplinary action of a ten-day suspension of appellant, Thomas Monteleone (Monteleone or appellant), for violating the Civil Service Rules for neglect of duty and insubordination. He allegedly failed to report in writing to Hudson that Charlene Monteleone (Porcuri), David Gonzalez, and Anthony Monteleone were relatives of his when they were incarcerated

at Hudson County Correction Center (HCCC). Monteleone denies that they are his relatives. At issue is whether Monteleone engaged in the alleged conduct, and, if so, whether it constitutes insubordination and neglect of duty.

PROCEDURAL HISTORY

On or about June 6, 2013, Hudson served Monteleone with a Preliminary Notice of Disciplinary Action (PNDA). Following a hearing conducted on October 3, 2013, Hudson served Monteleone with a Final Notice of Disciplinary Action (FNDA) dated May 13, 2014, sustaining charges insubordination and neglect of duty. Hudson took the disciplinary action of a ten-day suspension.

Following Monteleone's May 8, 2014, appeal to the Civil Service Commission, it transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on June 3, 2014, for determination as a contested case. A prehearing conference was held on July 3, 2014. The hearing was held on October 5, 2015, at which time I closed the record.

FACTUAL DISCUSSION AND FINDINGS

As the following facts are undisputed, I **FIND** them to be the **FACTS** of this case:

Monteleone is a lieutenant with HCCC. He has been employed with HCCC for twenty-six years.

Testimony

Thaddeus Caldwell

Thaddeus Caldwell (Caldwell) is the Administrator of Internal Affairs at HCCC. He supervises all of the internal affairs investigators, staff and resources, and oversees all internal affairs investigations.

Sergeant Lambos made Caldwell aware that three inmates, Porcuri, Gonzalez, and Anthony Monteleone were relatives of appellant. There was an initial unrelated investigation of Porcuri where it was discovered that Porcuri and appellant were related. A statement was obtained from Porcuri and Monteleone and HCCC policies were reviewed. The recommendation was that disciplinary action be taken against appellant.

Monteleone was provided with the custody rules and regulations of HCCC. It is his responsibility to read and understand the custody rules and regulations. Monteleone was disciplined for violation of Rule 31A(a), which states that an employee must notify the Director of Corrections in writing of relatives or associates who are in custody at HCCC. He was also disciplined for violation of Rule 31A(b), which states if an employee is unsure whether an inmate should be considered an associate or relative the employee must notify the Director of Corrections so that the Director can make the appropriate determination.

Monteleone did not notify Director of Corrections Oscar Aviles that Porcuri, Gonzales, and Anthony Monteleone were inmates. Monteleone was interviewed by internal affairs. He stated that Porcuri was the daughter of his father by a woman other than his mother. Gonzalez is the son of Porcuri. After the PNDA was filed, Monteleone sent a report to Aviles on August 19, 2013, that Anthony Monteleone was an inmate and that his father married Anthony Monteleone's mother. Porcuri and Anthony Monteleone are siblings. Caldwell did not conduct the investigation.

Porcuri was an inmate at HCCC on thirteen different occasions from August 23, 1990, through July 25, 2013. Appellant did not notify the Director of Corrections of any of her incarcerations. Gonzalez was an inmate at HCCC on thirteen occasions from July 11, 2006, to May 17, 2013. Appellant did not notify the Director of Corrections of any of his incarcerations. Anthony Monteleone was an inmate at HCCC on nine occasions from July 27, 2005, to January 13, 2013. Appellant notified the Director of Corrections of one of Anthony Monteleone's incarcerations.

Appellant's disciplinary history includes five disciplines; two resulting in fines and three resulting in suspensions. The longest suspension was ten days.

Thomas Monteleone

Appellant has been a lieutenant at HCCC for the past eight years. He was previously a sergeant for seven years at HCCC. He is not related to Porcuri, Gonzalez, or Anthony Monteleone. His father does not acknowledge Porcuri, Gonzalez, or Anthony Monteleone. He has no knowledge if he is related to them by marriage.

He did not report that Porcuri, Gonzales, and Anthony Monteleone were inmates because they are not related to him. On one occasion Gonzalez stated that he was his "Uncle Tom." Appellant told Gonzalez that he was not Gonzalez's uncle. Appellant's mother told him that his father had another family. He does not know if his father married the mother of Porcuri and Anthony Monteleone.

When appellant reported to his supervisor, Tish Castillo, he was told that his sister was an inmate. He stated that Porcuri was not his sister. He was told that Anthony Monteleone was an inmate. He stated that they were no blood relatives and that Anthony Monteleone's mother was married to his father. Castillo ordered him to write a report that Anthony Monteleone was an inmate. He wrote the report to appease his supervisor. HCCC wants him to recognize Porcuri, Gonzalez, and Anthony Monteleone as family members. After the PNDA, whenever Porcuri, Gonzalez, or Anthony Monteleone is incarcerated he writes the Director of Commissions to inform him.

When appellant was interviewed by internal affairs he was shown a picture of Porcuri. He recognized her because she had stated that she had been beaten. He did not report that Porcuri, Gonzalez, or Anthony Monteleone were inmates because he is not related or acquainted with them.

FINDINGS OF FACT

In light of the contradictory testimony presented by respondent witness and appellant, the resolution of the charges against appellant requires that I make credibility

determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, it is my view appellant was credible. He does not believe that Porcuri, Gonzalez, and Anthony Monteleone are related to him and that is why he did not inform the Director of Corrections of their incarceration. He reported Anthony Monteleone as an inmate because he was ordered to do so by Castillo. I found Caldwell to be credible regarding how the investigation was conducted and the regulations. However he did not conduct the investigation and there was no testimony from Porcuri, Gonzales, Anthony Monteleone, and Sergeant Lambos.

In view of the above credibility determinations, I make the following **FINDINGS** of critical **FACTS**:

Appellant's father left his mother and family. Appellant's father had a relationship with the mother of Porcuri and Anthony Monteleone. Porcuri is the mother of Gonzalez. Appellant does not know if his father married the mother of Porcuri and Anthony Monteleone. He is not a biological sibling of Porcuri and Anthony Monteleone.

Appellant does not consider himself to be related to Porcuri, Gonzalez, or Anthony Monteleone.

Porcuri and Gonzales have been inmates on thirteen occasions since 1990. Anthony Monteleone has been an inmate at HCCC on nine occasions since 2005. Prior to the issuance of the PNDA, Monteleone never informed the Director of Corrections when Porcuri, Gonzales, and Anthony Monteleone were inmates. Appellant was ordered by Castillo to inform the Director of Corrections in writing whenever Porcuri, Gonzalez, or Anthony Monteleone were incarcerated after the PNDA was issued.

HCCC Custody Staff Rules and Regulations address the issue of fraternization regarding incarcerated relatives and associates, Rule 31. It defines relatives as persons related through birth, marriage, or adoption. It lists fourteen categories of people that are considered relatives; however, relatives are not limited to the fourteen categories. Rule 31 also states if an employee is unsure of whether someone is a relative to notify the Director of Communications in writing in order for the Director to make a determination.

Caldwell did not conduct the interviews with Porcuri, Gonzalez, or Anthony Monteleone. Sergeant Lambos conducted the internal affairs investigation of appellant. It is not clear who Porcuri told that she was related to appellant; Lambos did not interview Gonzalez regarding whether he was related to appellant, he spoke to officers who had spoken to Gonzalez; and there is no indication that Anthony Monteleone was interviewed as part of the investigation. Sergeant Lambos, Porcuri, Gonzalez, and Anthony Monteleone did not testify at this hearing. There was no documentation provided by Hudson to show that appellant's father was married to the mother of Porcuri and Anthony Monteleone.

LEGAL ANALYSIS AND CONCLUSIONS

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the charges of neglect of duty and insubordination are not sustained.

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).

Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

"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. Corp. Express of the E., 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.), certif. denied, 59 N.J. 269 (1971).

Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

HCCC Rule 31A(a) states:

Custody staff members of the HCDOC, employees of contracted departments and contractors working on the grounds of HCC, must notify the Director of Corrections, in writing of relatives or associates who are in the custody of the HCCC and notify the Director of Corrections immediately when a relative or associate becomes incarcerated at the HCCC. The Director of Corrections will determine the appropriate adjustment to work assignment, if any, to maintain the proper level of security within HCCC.

I. Relatives are defined as persons related through birth, marriage or adoption, including but not limited to:

1. Father, Step-Father, Father-in-Law
2. Mother, Step-Mother, Mother-in-Law
3. Husband
4. Wife
5. Son or Step-Son
6. Daughter or Step-Daughter
7. Brother
8. Sister

9. Grandparents
10. Grandchildren
11. Cousins
12. Uncles
13. Aunts
14. Nephews, Nieces

b. Any employee that is unsure whether or not an inmate with whom they are acquainted should be considered a relative or associate for the purposes of this section has the affirmative obligation to notify the Director of Corrections, in writing so that the Director of Corrections may make a determination as to any appropriate action.

In this matter there was no direct testimony that Porcuri, Gonzalez, and Anthony Monteleone are related to appellant. Porcuri, Gonzalez, and Anthony Monteleone did not testify. The officers who spoke to Porcuri and Gonzalez did not testify. It does not appear that any officer spoke to Anthony Monteleone. Sergeant Lambos, who conducted the investigation, did not testify. There was no marriage license of appellant's father nor was Porcuri and Anthony Monteleone's mother identified or offered into evidence. Appellant does not consider Porcuri, Gonzalez, and Anthony Monteleone related to him. He was not unsure as to whether they were related to him. That is, he was clear that they were not related to him. Hudson did not provide any evidence that Porcuri, Gonzalez, and Anthony Monteleone are related to appellant.

Appellant did notify the Director when Porcuri, Gonzales, and Anthony Monteleone were incarcerated after August 2013, because he was ordered by Castillo to do so.

Rule 31A(a) provides a list of people who are considered relatives. The list is not exhaustive. It lists relations by marriage as well as by step-parent, step-child, and in-laws. It does not list step-siblings when it lists siblings. It is not clear in this rule that step-siblings are considered relatives. It is clearly delineated that a step-parent or step-child is a relative. Step-siblings could have been clearly delineated in the rule, but they were not.

N.J.A.C. 1:1-15.5(b) provides:

Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

The documents and testimony that respondent relied on to establish that appellant was related to Porcuri, Gonzalez, and Anthony Monteleone was hearsay. There was no testimony from them or testimony from anyone who spoke to them. There was no testimony to establish that appellant's father was married to the mother of Porcuri and Anthony Monteleone. Appellant does not know if his father was married to their mother.

Under the circumstances, major discipline is not appropriate and I **CONCLUDE** that the penalty of a ten-day suspension is reversed.

ORDER


Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the determination of Hudson that appellant, Thomas Monteleone, serve a ten-day suspension is **REVERSED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

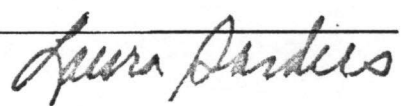
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. 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.

10-16-15
DATE


KIMBERLY A. MOSS, ALJ

Date Received at Agency:


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:
ljb

OCT 20 2015

APPENDIX

WITNESSES

For Appellant:

Thomas Monteleone

For Respondent:

Thaddeus Caldwell

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action, Preliminary Notice of Disciplinary Action, Report of Investigation, Rules and Regulations of HCCC
- R-2 HCCC incident report dated August 19, 2013, HCCC inmate history of Charlene Porcuri, David Gonzalez, and Anthony Monteleone
- R-3 Disciplinary History of Thomas Monteleone