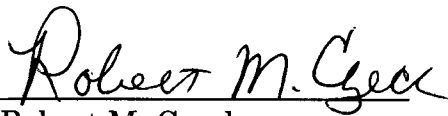


Re: Takia Johnson

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
NOVEMBER 10, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08564-15

AGENCY DKT. NO. 2015-3106

**IN THE MATTER OF TAKIA JOHNSON,
CAMDEN COUNTY DEPARTMENT OF
CORRECTIONS.**

William B. Hildebrand, Esq., for appellant (Law Office of William B. Hildebrand,
L.L.C., attorneys)

Antonietta P. Rinaldi, Assistant County Counsel, for respondent,
pursuant to N.J.A.C.1:1-5.4(a)8

Record Closed: June 13, 2016

Decided: July 19, 2016

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Takia Johnson, a Corrections Officer (CO) at Camden County Correctional Facility (CCCF), appeals a 180 day suspension for conduct unbecoming a public employee, Courtesy Rule 4.1, Internal Affairs Rule # 001, Neglect of Duty Rule 3; and General Orders #73 and #74. The allegations involve inappropriate comments

made by the appellant on September 28, 2014, and thereafter, being untruthful about it during the subsequent investigation.

On November 24, 2014, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA), seeking appellant's immediate suspension. Following a hearing on May 12, 2015, respondent issued a Final Notice of Disciplinary Action (FNDA), sustaining the 180 day suspension. Seventy-seven days of the suspension was served. On January 22, 2015, appellant was removed from her position on unrelated charges. Her termination was upheld by The Civil Service Commission, and thus, at issue is the seventy-seven day suspension which she served prior to her renewal. The appellant requested a hearing and the matter was filed at the Office of Administrative Law (OAL), on June 12, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on June 3, 2016 and June 13, 2016, and the record closed at that time.

TESTIMONY

For respondent:

Investigator Joseph Coleman has been in Internal Affairs for eleven years. He was assigned to investigate this matter after an allegation was made that CO Johnson made inappropriate comments, CO Valerie Santiago and CO Alesha Cabrera reported that on September 28, 2014, CO Johnson made a comment about "guala guala" and also stated "these fucking Puerto Ricans." He reviewed a video which did not have audio and interviewed all witnesses, who included Officers Cabrera, Santiago, Tillman, Little, and Johnson. Sargent Jones was also present for the interviews. He prepared a report and tape recorded all the interviews. The transcripts from the interviews and his report were entered into evidence.

CO Santiago advised him that she was inside the pod when the comments were made you. CO Santiago stated that you could hear what is being said outside the pod.

Officers Cabrera and Santiago both advised that Garcia came into the room and realized that he was in the wrong place and when he left, Johnson said “guala guala” and “fucking Puerto Ricans.” They both advised him that “guala guala” is a derogatory term used to refer to Hispanics, and they were insulted and offended by the comments. He interviewed Tillman also, who reported hearing “guala guala” but not “fucking Puerto Ricans.”

He testified that CO Cabrera advised that she and Officer Santiago entered 2 North Pod to relieve the other officers at the beginning of their shift. Officer Santiago went into the pod and CO Cabrera was in the waiting area. Cabrera advised that Garcia walked into the Two North Pod and realized he was in the wrong place and when he was walking out CO Johnson made a comment about him being a “guala guala” and a “fucking Puerto Rican.” Investigator Coleman also interviewed CO Santiago who also stated that she heard CO Johnson make some comment about how she could not stand these “guala gualas” and these “damn Puerto Ricans.” She told Coleman that she is familiar with the term “guala guala” and it is a derogatory term used to refer to someone of Hispanic descent. Officer Tillman reported to him that she heard CO Johnson used the terms “guala guala,” but did not hear any comments about Puerto Ricans. He also interviewed officers Dance and Little who were also present. Dance did not recall hearing any comments. Officer Little also stated that she did not hear any comments. During Officer Johnson’s interview, she denied making any such statements after repeated questioning. However, she ultimately admitted saying something about these Guatemalans. She continued to deny saying “guala guala” or “fucking Puerto Ricans.”

Alisha Cabrera is a Corrections Officer and has been employed in the CCCF for almost four years. She works the seven to seven shift and was in Two North Pod on September 28, 2014. She was there with Officers Santiago, Dance, Tillman, Little and Johnson during the shift change. She testified that Officer Garcia walked in and was told he was in the wrong place. He and Johnson were talking back and forth and when Garcia walked out; Johnson said “that’s why I can’t stand these “guala gualas” and then

something about these “damn Puerto Ricans.” She said that she felt offended because she is Puerto Rican and Santiago told her that “guala guala” is a derogatory term for Hispanics. She was told to write a report about the incident. Cabrera testified that Santiago was in the pod but could hear what was said. She testified that she only leaned down to talk to her because there is a window and she was talking to her through the window, but you can hear what is being said without talking through the window. She wrote the report before the end of the shift and gave it to the Sargent.

On cross-examination, Cabrera was questioned about whether Johnson said “damn Puerto Ricans” or “fucking Puerto Ricans” as her reports were inconsistent. Cabrera testified that she didn’t want to say “fucking” during the interview, and that the offensive part of the statement was the “Puerto Rican” and the “guala guala” comment, not the curse word she used with it. She testified that she thought Johnson was mad at Garcia and that is why she said it and directed it at him. Garcia got smart with Johnson, and she was mad, she was really yelling at him. Cabrera stated that it offended her because she is Puerto Rican.

Valerie Santiago is a Corrections Officer at the CCCF and works the seven to seven shift. She was working with Alisha Cabrera on September 28, 2014, when Johnson made the remarks in question. She testified that she was relieving Officers, Johnson, Dance, Little and Tillman. Officer Dance was in the booth with her. Officer Garcia walked into the post and realized he was in the wrong place. Johnson and Garcia had words with each other, and as Garcia was walking out, she heard Johnson say let me out; I can’t stand these “fucking guala gualas.” Then when someone told her to calm down, she said something about these “damn Puerto Ricans.” She testified that she knew that “guala guala” was a derogatory term. She had heard the terms used in a movie called State Property and it was a derogatory term for Hispanics. She is Hispanic so it was offensive to her. She was offended when she heard Officer Johnson saying this and was confused as to why she was saying it in front of her and Cabrera, who were Hispanic. She testified that she never had any problems with Officer Johnson before. After that she got in touch with Sargent Norton and was told to prepare a report.

Michelle Tillman is a Corrections Officer at the CCCF. She also works the seven to seven shifts and was being relieved from duty on September 28, 2014. She recalls that Garcia came in and realized he was at the wrong post. When he left, Johnson made some comment about "guala guala." She did not hear her say "fucking Puerto Ricans" but she did hear the guala guala comment. She is aware that it is an offensive comment directed at Puerto Ricans. She heard it in a movie but did not hear it much around the jail. She testified that she asked Johnson about it, but she denied that she said it.

Captain Karen Taylor is employed by the CCCF. She has been there for twenty years. She was a lieutenant before she became Caption three years ago. Prior to that, she was a Corrections Officer. She is in charge of operations and makes recommendations to the Warden regarding disciplinary matters. She briefs the Warden on issues he makes the determination of what discipline to impose. As a lieutenant, she is also in charge of reviewing policies at the jail. She was advised of the incident and told that she needed to prepare a report regarding what happened. She ordered Johnson to prepare a report regarding the incident. Captain Taylor testified that CO Johnson has a long history of discipline and this was a factor in her decision to recommend a 180 day suspension to the Warden. Ultimately Johnson admitted to saying something similar although she initially denied saying anything. The fact that she was not initially honest was also a factor in imposing a significant suspension.

Caption Taylor testified as to the policies that were violated. She testified that the use of highly offensive language violates several of the rules and also constitutes conduct unbecoming. It also violations the rules regarding curtsey. In addition to saying something inappropriate to a colleague, Johnson was guilty of dishonesty during the investigation. Johnson also had several prior disciplinary infractions, so the lengthy suspension was appropriate. She was questioned as to why Tillman and Dance did not recall her saying anything, and she responded that sometime officers would rather stay out of things and not get others in trouble. Tillman did here her say "guala guala," just not "fucking Puerto Ricans."

For appellant:

Officer Takia Johnson was a Corrections Officer at the CCCF until January 2015. She was a video officer, and would get inmates and escort them to the video rooms if they had court that day. She testified that she knew the other individuals that had testified and that she worked with them sometimes, but they were not really friends. She testified that she never heard the term “guala guala” and she never used the term. She testified that she grew up in Philadelphia and she has Puerto Rican friends and her boyfriend of seven years, Filipe Gonzalez is Hispanic. She testified that she does not look down on Hispanics and did not make the alleged comments. She testified that she reviewed the video and it was time to go home and they were all just happy and joking around. Garcia came in and realized that he was at the wrong pod and then he walked out. She did not speak to him or have words with him. She does not recall that anything was said.

Officer Johnson testified that she had a running joke with Officer Martinez about where he was from because he had a different accent. She testified that he was from Guatemala and we would joke about it, but he was cool and we were friends. When they asked me to prepare a report about name calling on September 28, 2014, she had no idea what they were talking about. She just prepared a report. She testified that during the IA investigation, Investigator Coleman must have asked her thirty times if I said “guala guala” or “fucking Puerto Ricans.” She told him that maybe I said Guatemalans; because she was worn down from all the questioning and she thought he would let her go after that. When she was told to write the report and during the interview, she did not know what the allegations were, so it was hard to respond. The interview was over an hour and she was truthful. Eventually she just said what they wanted her to say. She believed that she was being harassed and badgered in the interview. She stated that Little, Tillman, Cabrera and Santiago are all friends and they are all lying about it.

FINDINGS OF FACT

In view of the contradictory testimony presented by appellant and the respondent's witnesses, the resolution of the charges against Officer Johnson requires that I make a credibility determination with regard to the critical facts. The choice of accepting or rejecting the witnesses' 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 experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' 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 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly 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 carefully observe the demeanor of the witnesses, it is my view that Officers Cabrera, Tillman and Santiago were truthful and credible. Their testimony was consistent with the statements taken immediately after the incident and during the investigation and consistent with their recollection of the events of September 28, 2014. With respect to Officer Johnson, I **FIND** her testimony not credible due to the fact that she changed her story during the investigation. Although the interview was quite exhaustive, she eventually admitted that she said something about Guatemalans, and to being not truthful during the interview as she did not want to get into trouble. It is undisputed that Johnson has had quite a few disciplinary infractions, so she was familiar with the process.

Accordingly, I **FIND**, that on September 28, 2014, Officer Johnson made a comment regarding being Guatemalan and/or being a guala guala, and Puerto Ricans, all of which have racial implications and are inappropriate. I also **FIND** that these comments constitute conduct unbecoming, violate rules regarding curtesy and general Orders #73 and #74. I further **FIND** that Johnson failure to be completely honest in the investigation constitutes a violation of Internal Affairs Rule #001 and Neglect of Duty.

LEGAL DISCUSSION AND CONCLUSION

The Civil Service employees' rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

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 Atlantic 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, supra, 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)).

Unbecoming conduct has also been defined as any conduct which adversely affects the morale or efficiency of the department or which has a tendency to destroy public respect for employees and confidence in the operations of government services. Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992). The Merit System Board and its predecessor and now successor, the Civil Service Commission, and the courts have generally held that law enforcement officers are held to a higher standard than the conduct unbecoming employees because discipline is invoked. Correction officers are law enforcement officers to which this higher standard applies.

The standard of behavior for police and correction officers is set higher than that of other civil service employees, meaning that infractions will lead to major discipline of officers than otherwise may not have warranted severer discipline for some other position. See Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). When applied to correction officers, a charge of conduct unbecoming can 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. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960); Bowden v. Bayside State Prison, 268 N.J. Super. 301 (App. Div. 1993).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant. An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the employee's guilt or innocence, as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). The appointing authority has the burden of proof and must establish by a fair preponderance of the credible evidence that the employee was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1980). Evidence is found to preponderate if

it establishes that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Applying the law to the facts in this case, I **CONCLUDE** that the respondent has proven the charges by a preponderance of the credible evidence. I **CONCLUDE** that appellant engaged in conduct which constituted a violation of the policy prohibiting discrimination, conduct unbecoming an employee, neglect of duty, violation of general Orders #73 and #74 regarding curtesy and conduct of employees. I also **CONCLUDE** that the respondent has proven that appellant was initially untruthful about the conduct during the internal affairs investigation.

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. With respect to the discipline, under the precedent established by Town of West New York v. Bock, supra, courts have stated, “[a]lthough we recognize that a tribunal may not consider an employee’s past record to prove a present charge, West New York v. Bock, Id. at 523, “that past record may be considered when determining the appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, “it is the appraisal of the seriousness of the offense which lies at the heart of the matter.” Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

In the instant matter, the appointing authority considered not only the nature of the charges, but the previous disciplinary history of the appellant. The appellant has been charged with approximately twenty prior infractions, with a prior offense carrying a ninety day penalty, which was upheld. Accordingly, the imposition of a 180 penalty for the charges at issue is not unreasonable. Moreover, considering the subsequent

termination which was upheld, it is in fact only a seventy-seven day suspension, which was clearly warranted under the concept of progressive discipline.

ORDER

I **ORDER** that the action of the penalty of the appointing authority is sustained and the appeal is dismissed.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, 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 19, 2016 _____

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

July 19, 2016 (mailed)

Date Mailed to Parties:

July 19, 2016 (mailed)

SGC/mel

APPENDIX

WITNESSES

For Appellant:

Officer Takia Johnson

For Respondent:

Investigator Joseph Coleman

Corrections Officer Alisha Cabrera

Corrections Officer Valerie Santiago

Corrections Officer Michelle Tillman

Captain Linda Taylor

EXHIBITS

For Appellant:

- P-1 Dance recorded testimony
- P-2 Martinez recorded testimony
- P-3 Interrogatory Answers

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action (31A) dated November 21, 2014, and Final Notice of Disciplinary Action (31B) dated May 19, 2015
- R-2 Internal Affairs Report
- R-3 General Incident Report Authored by C/O Valerie Santiago dated September 28, 2014
- R-4 General Incident Report Authored by C/O Alisha Cabrera dated September 28, 2014

- R-5 Video
- R-6 General Incident Report Authored by Takia Johnson dated October 10, 2014
- R-7 Definition of the Term "guala guala"
- R-8 Transcript of an Internal Affairs Interview of C/O Alisha Cabrera dated October 17, 2014
- R-9 Transcript of an Internal Affairs Interview of C/O Valerie Santiago dated October 17, 2014
- R-10 Transcript of an Internal Affairs Interview of C/O Michelle Tillman dated October 17, 2014
- R-11 Transcript of an Internal Affairs Interview of C/O Renee Little dated October 17, 2014
- R-12 Transcript of an Internal Affairs Interview of C/O Takia Johnson dated October 17, 2014
- R-13 Supervisor's Staff Complaint Authored by Investigator Joseph Coleman dated November 7, 2014
- R-14 Camden County Department of Corrections Internal Affairs Order #001
- R-15 Camden County Department of Corrections Rules of Conduct
- R-16 Camden County Department of Corrections General Order #073 Personal Conduct of Employees
- R-17 Camden County Department of Corrections General Order #074 Personal Conduct
- R-18 C/O Takia Johnson Chronology of Discipline