



STATE OF NEW JERSEY

In the Matter of David Varela
 Hudson County, Department of
 Corrections

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-2964
 OAL DKT. NO. CSR 06246-19

ISSUED: SEPTEMBER 10, 2019 BW

The appeal of David Varela, County Correction Officer, Hudson County, Department of Corrections, removal effective November 28, 2018, on charges, was heard by Administrative Law Judge Caridad F. Rigo, who rendered his initial decision on August 12, 2019. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of September 10, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of David Varela.

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 10TH DAY OF SEPTEMBER, 2019

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 06246-19

AGENCY DKT. NO. N/A

**IN THE MATTER OF DAVID VARELA,
HUDSON COUNTY DEPARTMENT
OF CORRECTIONS.**

**Robert A. Fagella, Esq., for appellant Latera Griffin (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys)**

**John J. Collins, Esq., for respondent Hudson County Department of Corrections
(Hudson County Counsel's Office, attorneys)**

Record Closed: July 17, 2019

Decided: August 12, 2019

BEFORE CARIDAD F. RIGO, ALJ/Ret.,t/a:

STATEMENT OF THE CASE

Petitioner, David Varela, appeals the decision of the respondent, Hudson County Department of Corrections, removing him from his position as a correction officer due to his alleged acts of insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. These charges resulted from petitioner's failure to work mandatory overtime hours.

PROCEDURAL HISTORY

A Preliminary Notice of Disciplinary Action (PDNA) dated July 27, 2018, was issued against the petitioner containing the above-named charges. On April 4, 2019, a Final Notice of Disciplinary Action (FNDA) was issued sustaining all of the charges and removing the petitioner from his position as a correction officer.

Petitioner requested a hearing and filed his appeal with the Office of Administrative Law (OAL) pursuant to N.J.S.A. 40A:14-202(d). A hearing was held on July 17, 2019, and subsequent to oral summations the record closed.

BACKGROUND

Petitioner was hired by the respondent as a correction officer to work in the county jail. He was hired in January 2018. Correction officers in Hudson County pursuant to the collective bargaining agreement are required to work overtime; overtime is anything over forty hours a week. In this case petitioner declined to work overtime on October 5, 6, 7, 12, 13, 14, 15, 16, 19, 21, 22, and 26 of 2018 (twelve times) using false and forged medical documents to support his requests to be excused from overtime work.

Summary of Witnesses Testimony

Gabriel Diaz

Gabriel Diaz (Diaz) is a detective with the Hudson County Prosecutor's Office. At the time he was assigned to the County Jail Internal Affairs office. He had been in that assignment since 2015.

Diaz was given the assignment of looking into the legitimacy of petitioner's written documentation attached to his numerous requests to not work overtime. Diaz explained that a correction officer had to complete a Mandatory Overtime Refusal Form. The form required that a correction officer state the reason for refusing to work overtime

and to support that reason with the appropriate documentation. In this case petitioner stated that his refusal was due to an illness. See Exhibits R-2 and R-3.

Diaz specified that petitioner worked his regular hours but did not work overtime, which is contractually mandatory.

Diaz stated that on November 9, 2018, he notified petitioner orally and in writing that he was the target of an investigation for his constant refusal to work overtime and that he was scheduled to be interviewed on November 27, 2018. See Exhibit R-1.

Diaz furthered that when he interviewed petitioner on November 27, 2018, petitioner admitted that he had changed the dates and otherwise forged the doctor's notes he had attached to his Mandatory Overtime Refusal Form. See Exhibits R-2 and R-3.

Diaz explained that he went to Hoboken Radiology and spoke with the staff and they denied having any copies of the doctors' notes that petitioner had attached to the request to be excused from overtime duty. Diaz also stated that one of the notes was for a Sunday and the doctor's office is not open on Sundays.

Under cross-examination Diaz testified that when he interviewed petitioner on November 27, 2018, he found petitioner to be truthful and readily admitted to the false documentation. He said petitioner gave two reasons for his refusal from overtime work. One reason was because he was too tired from his regular work hours. And, the second reason was that he had to care for his ailing mother.

Diaz said petitioner never asked or discussed Family Leave time with him.

David Varela

David Varela (Varela) is the petitioner. Varela testified that he is currently twenty-nine years old and started working at the county at age twenty-eight. He went through all of the screening processes the drug screens, physical, training classes, Civil

Service test, and the background checks and he passed them all. He stated he always wanted to be an officer in law enforcement. He was born in Jersey City and has always lived in Hudson County. He was raised by his single mother, along with his older brother and two sisters. At the time of his employment with Hudson County Jail he was the sole caretaker and supporter of his mother.

Varela furthered that his mother suffered from various injuries, illnesses, and conditions that required him to care for her. He had to do all of the daily household chores as well as attend to his mother's personal care. He basically said that it was all too much for him especially if he worked overtime. He said overtime was usually an additional five to eight hours on top of his regular eight hours. He always worked his regular eight hours.

Varela stated he had heard about the Family Leave Act from a coworker, but he did not think he had enough time on the job to apply. He said he told his union representative.

Varela admitted to forging the doctor's notes. He said he forged the notes because he could not afford the doctor's visit co-pay.

Under cross-examination Varela acknowledged that a law enforcement officer more than anyone else has to be truthful. He was aware of the mandatory overtime that his position required. He explained that although he was hired in January 2018, he actually started working at the end of April or early May of 2018, after graduation from the academy. He stated that initially he worked overtime because he wanted to make a good impression.

He testified that he knew what was the subject of the investigation when he received notice from Internal Affairs that he was under investigation. See Exhibit R-1.

FACTUAL FINDINGS

After reviewing the exhibits and having heard the testimony of the witnesses, I **FIND** the following:

David Varela knowingly and deliberately provided false documentation to avoid working the mandatory overtime and he did so twelve different times between October 5 and October 26 of 2018.

LEGAL DISCUSSION

This matter involves the major disciplinary action of termination or dismissal. An appeal to the Merit System Board, as in this matter, requires the Office of Administrative Law to conduct a hearing de novo to determine petitioner's guilt or innocence as well as the appropriate penalty. Respondent, Hudson County Department of Corrections has the burden of proof and must establish by a fair preponderance of credible evidence that petitioner was guilty of the charges. However, in this case petitioner did not contest the veracity of the charges because he readily admitted to falsifying the doctor's notes. However, petitioner does question the need for such a harsh penalty as termination.

Petitioner is charged with insubordination. The Civil Service Commission defines it as more than a simple refusal to obey an order. Through case law it has developed to include failing or refusing to provide complete and accurate information when requested by a superior. In re Lyons, A-2488-07T2 (App. Div. April 26, 2010), <http://njlaw.rutgers.edu/collections/courts/>. Here, petitioner was required or ordered to produce medical documentation when asking to be relieved of mandatory overtime work. In this case, there is sufficient evidence (twelve forged doctor notes) that petitioner was insubordinate.

Petitioner is also charged with neglect of duty. Neglect of duty is not defined under the New Jersey Administrative Code but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). It has been applied both

to not fully carrying our duties and to acting incorrectly. In this case, petitioner failed to act as required because overtime was mandatory.

Petitioner was charged with conduct unbecoming a public employee. This charge 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. In this case petitioner was a correction officer, it is sufficient that his complained of conduct are such that offend accepted standards of decency and behavior. Kerins v. City of Atl. City, 152 N.J. 532, 554 (1998). His misconduct violates the very core of what is morally and legally correct, especially of a correction officer.

I further **FIND** that Varela's actions were deceptive and **CONCLUDE** this conduct is unbecoming a public employee. He neglected his duty by failing to work the mandatory overtime causing a burden on his superiors and co-workers. I also **FIND** he was insubordinate. To put it bluntly Varela lied and cheated in order to be excused from working overtime. His actions speak ill to his role as a correction officer.

I further **CONCLUDE** that the penalty of removal although harsh, in this case is warranted.

ORDER

Based on all of the foregoing, it is **ORDERED** that all of the charges against Varela are **AFFIRMED**. It is further **ORDERED** that Varela's removal is **AFFIRMED** and his 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. 40A:14-204.

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, 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.

August 12, 2019
DATE



CARIDAD F. RIGO, ALJ, Ret., t/a

Date Received at Agency: August 12, 2019

Date Mailed to Parties: August 13, 2019

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APPENDIX

WITNESSES

For Petitioner:

David Varela

For Respondent:

Detective Gabriel Diaz

EXHIBITS

Joint:

J-1 Preliminary Notice of Disciplinary Action (three pages)

For Petitioner:

P-1 Letter dated July 11, 2018, from petitioner's mother

P-2 Undated letter from petitioner's mother

P-3 Hudson County Corrections Department Incident Report dated July 13, 2018

For Respondent:

R-1 Internal Affairs Complaint Notification dated November 7, 2018

R-2 Mandatory Overtime Refusal Form (fourteen pages)

R-3 Hoboken Radiology (thirteen pages)

R-4 Notice of Administrative Investigations Only dated November 27, 2018

R-5 Internal Affairs Report dated November 28, 2018 (four pages)

R-6 Recommendation to Suspend dated November 27, 2018