

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF JULY, 2020

Deirdre L. Webster Cobb

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Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 12919-19

**IN THE MATTER OF NADIRA DUVAL,
HUDSON, COUNTY DEPARTMENT OF
CORRECTIONS.**

**Timothy J. Prol, Esq., for appellant, Nadira Duval (Alterman & Associates,
LLC, attorneys)**

**Daniel Sexton, Assistant County Counsel, for respondent, Hudson County
Department of Corrections (Donato J. Battista, County Counsel, attorney)**

Record Closed: February 28, 2020

Decided: June 26, 2020

BEFORE JEFFREY A. GERSON, ALJ/Ret., on recall:

STATEMENT OF THE CASE

Nadira Duval was employed as a corrections officer by the Hudson County Department of Corrections until January 14, 2019 when she was suspended for, among other things, conduct unbecoming a public employee. Subsequently, on January 28, 2019, a Preliminary Notice of Disciplinary Action was issued containing several charges, most of them arising out of a contention that Duval was overly familiar with an inmate violating the Fraternalization Policy of the Hudson County Department of Corrections among other rules and regulations in violation of the Civil Service Code.

On April 15, 2019, an amended Preliminary Notice of Disciplinary Action was issued and on July 10, 2019, a hearing at the local level was conducted. On September 4, 2019, a Final Notice of Disciplinary Action was issued sustaining the charges of N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee and neglect of duty and other sufficient cause. This matter was subsequently referred to the Office of Administrative Law and a hearing was conducted on November 19, 2019.

ARGUMENT

Duval does not contest the final determination that she violated the fraternization policy, among other rules and regulations, and concedes that her conduct was “a serious infraction”. Duval does, however, contest the penalty of termination and seeks a less onerous penalty.

A brief discussion of the factual circumstances surrounding Duval’s conduct is warranted prior to determining the penalty.

After approximately eight years of working in the Juvenile Detention Center, Duval became a Security Operator for Hudson County in April 2018.

While Duval was working at the Hudson County Correction Center, her younger brother became an inmate. Duval, being somewhat familiar with the Fraternization Policy, knew that she was required to report to the Director that a family member had become an inmate of the facility. Duval subsequently requested permission to speak with her brother, but that permission was refused. Duval’s brother did however have her phone number and it is inferred from Duval’s testimony that her brother disclosed her phone number to A.H., a prisoner in the facility. According to Duval, she and A.H. knew each other since they were children and, she sometime in 2016, dated him for a while.

A.H. called Duval to discuss with her the charges and issues facing her brother. This was, however, not the last call. A.H. continued to call Duval for what appears to be

more than eighty-six call transcripts of which were supplied to the undersigned tribunal and reviewed. These approximately eighty-six calls took place over a period of fifteen days between December 23, 2018 and January 14, 2019.

Testifying at the hearing was Sgt. Chandra Rosario, Commander IA.

Rosario, an Investigator for the Hudson County Prosecutor's Office reviewed all of the tapes and transcripts now in evidence and broke down the conversations into the following categories:

- Sex talk, as when they discussed cunnilingus. Trans p 90 line 21-25;
- Discussion of operations as when Duval responded to A.H.'s (Hammary's) request that she cover recreation. Tran p. 93 lines 2-5;
- Contraband was identified as a constant topic by Sgt. Rosario. It was noted that A.H. continued to ask for oil treatments and then thanked Duval afterward. T. Trans p 94 lines 18-21.
- Operational issues, such as the shortage of staffing in medical, was noted. Trans p 99 and about other manpower shortages. Tran. P. 100, Sgt. Rosario also noted that CO Duval discussed the make up of tiers with A.H.
- Discussion of crimes by A.H. and others was noted. T. Tran p 102-104
- Sgt. Rosario also testified about the frequent discussion of sports betting. Trans p 107-111.

Sgt. Rosario testified that Duval was interviewed by the Hudson County Prosecutor's Office and that at the time of the interview admitted to having had

five telephone contacts with A.H. and said there was in total less than 10 calls. At the time of the interview, She denied that any of the calls had contained any sexualized talk. Duval was apparently unaware or forgot that phone calls were recorded and transcribed.

Also testifying on behalf of the County was Lt. Brian Williams, a thirteen year veteran of the force who was a member of the Gang Task Force (GTF) from May 2018 until April 2019.

Lt. Williams confirmed that the investigation of Duval was actually a spin-off from a different investigation and was discovered inadvertently. Lt. Williams was reviewing recorded phone calls when he came across a female who was conversing with A.H., who was known to be a gang member.

Lt. Williams went on to indicate that inmate A.H. was under surveillance as a result of illicit activities at the jail and as a result of the phone calls he listened to, he concluded that Duval was engaged in fraternization with an A.H.

Lt. Williams also indicated that he observed what he contended to be inappropriate contact between Duval and inmate A.H. and described it as follows:

. . . we saw video footage of Inmate A.H. leaving his housing unit and going to Officer Duval's housing unit, who was – it was an adjacent housing unit. And that's when she came to the door, spoke with him, went back to her seating area, reached under the cabinet that's under the desk, and grabbed the item and brung [sic] [. When he went back to his housing unit with the item, several other inmates came to that room. They went to room 501, which is the first cell unit to the housing unit. And then several of them disbursed after that.

Lt. Williams also indicated that Duval had done personal favors for inmate A.H. including bringing in food from outside and bringing in cosmetic items like hair gel. Williams indicated that these items were contraband.

Duval testified on her own behalf. The essence of Duval's testimony was that she was unaware that the fraternization policy applied to inmates other than family members. She denied providing inmate, A.H. with any contraband. She also denied being involved in any gambling activities directed by inmate A.H.

DISCUSSION

Corrections contends that Duval's conduct in this matter violates of Hudson County Department of Corrections Fraternalization Policy.

The significant portions of the policy are as follows:

1. PURPOSE

The purpose of this policy is to illustrate the various forms of fraternization which are prohibited by the Hudson County Department of Corrections of Rehabilitation (HCDOC & R) and outline the approved procedures for addressing instances where relatives or associates become incarcerated at the Hudson County Department of Corrections and Rehabilitation (HCDOC & R).

II. POLICY

It is the policy of the HCDOC & R to maintain a Zero Tolerance Policy regarding fraternization between its employees and any Individual under its actual or constructive control. In the event that a relative or associate becomes incarcerated at this or any other correctional facility, the employee is obligated to notify, in writing, the Director of Corrections so that the proper level of security is maintained at the HCDOC & R. Failure to comply with this policy shall result in disciplinary actions, up to and including termination.

III. PROCEDURES

A. Fraternization Regarding Incarcerated Relatives or Associates.

1. Custody staff members of the HCDOC & R, employees of contracted departments, and contractors, working on grounds of HCDOC & R must notify the Director of Corrections, in writing, when an associate, relative or

suspected relative becomes incarcerated at the HCDOC & R. The Director of Corrections will determine the appropriate adjustment to work assignment, if any, to maintain the proper level of security within the HCDOC & R.

2. Relatives are defined as persons related through birth, marriage, or adoption, including, but are not limited to:
 - a. Father, Step father, Father-in-Law
 - b. Mother, Step mother, Mother-in-Law
 - c. Husband
 - d. Wife
 - e. Son, or Step son
 - f. Daughter or Step daughter
 - g. Brother
 - h. Sister
 - i. Grandparents
 - j. Grand children
 - k. Cousins
 - l. Uncles
 - m. Aunts
 - n. Nephews, Nieces

3. Associates include, but are not limited to:
 - a. Friends
 - b. Girlfriend
 - c. Boyfriend
 - d. Roomate/Live-in companion/Domestic partner
 - e. Fiancé or Fiancée

B. Employee Visits or Communications with incarcerated Relatives or Associate

1. Employees shall be permitted to visit or communicate with relatives or associates incarcerated at the HCDOC & R, provided that the Director of Corrections or designee is satisfied that there is no threat to the orderly operation of the correctional facility. Before visiting or

communicating with any Inmate/Detainee, the employee must satisfy the following guidelines:

- a. Notify the Director of Corrections that the employee has a relative or associate incarcerated at the facility.
 - b. Submit a written request to the Director of Corrections for permission to visit the Inmate/Detainee.
2. An employee who wishes to communicate by telephone, correspondence, or any other means with an Inmate/Detainee (whether or not they are relative or an associate) shall submit a written request for permission to communicate with the Inmate/Detainee to the Director of Corrections.

...

(Exhibit A-2) (emphasis added).

Over a period of approximately three weeks, Duval had at minimum eight-six calls from inmate A.H.

A review of these phone calls contained both in actual form and transcript form testified to by Sgt. Rosario amount, very clearly, to a violation of the Fraternalization policy.

Nothing can be more important in a correctional facility than security. Duval's conduct in participating in excess of eighty-six phones over a short period of time cannot under any circumstances, be considered harmless. At the very least, inmate A.H. was grooming Duval for further illicit activities and her failure to recognize the gravity of her contact with inmate A.H. is, to say the least, suspicious.

These phone calls involved not only casual conversation but serious sexual discourse. They also contained clear indications that Duval was involved in gambling activities governed by inmate A.H. Casual information, such as Duval's attendance and where her security would be assigned could easily lead to information obtained by inmates that could be converted to undesirable activities.

Duval's credibility was at best suspect. Originally, she denied the extent of the calls and denied the illicit content. She defends contending that she was unaware that the fraternization policy applied to others than "blood relatives" which is simply incomprehensible for any type of security personnel at a jail.

PENALTY

The undersign's review of the telephone conversation between Duval and inmate A.H. leads me to the conclusion that they are anathema to any type of correctional facility.

The Hudson County Department of Corrections maintains a zero tolerance policy regarding fraternization. Duval's contention of "ignorance" of the details in the fraternization policy is so acutely disparate that none of her testimony could be considered remotely credible.

Though Duval's more recent disciplinary history is unremarkable, she has a history of major discipline from 2008-2013 showing seven prior suspensions, five of which exceeded twenty days and two which were forty and forty-five days.

It is the determination of this tribunal that Duval's conduct in this incident is alone enough to warrant termination.

CONCLUSION

Nadira Duval is terminated from her position of correction's officer as of January 14, 2019.

ORDER

It is so **ORDERED**.

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.

June 26, 2020



DATE

JEFFREY A. GERSON, ALJ

Date Received at Agency:

June 26, 2020

Date Mailed to Parties:

June 26, 2020

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APPENDIX

WITNESSES

For Appellant:

Nadira Duval
Derrick James

For Respondent:

Sgt. Chandra Rosario, Commander IA.
Lt. Brian Williams
Kevin Dille

EXHIBITS IN EVIDENCE

Joint

J-1 NDA's

For Appellant:

A-1 Information Re: Inmate A.H.
A-2 Signed Fraternalization Policy
A-3 Lt. Williams Initial Report
A-4 Lt. Williams' Second Report
A-5 ID Only
A-6 The Call Log
A-7 Lt. Patterson's Report
A-8 Transcripts

For Respondent:

R-1 List of Calls