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STATE OF NEW JERSEY

In the Matter of Vincenzo Billero
Adult Diagnostic and Treatment
Center, Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-2612 & 2015-2613

OAL DKT. NO. CSV 04238-15 & 04235-
15

(Consolidated)

ISSUED: FEB 27 2017 BW

The appeals of Vincenzo Billero, Senior Correction Officer, Adult Diagnostic and Treatment Center, Department of Corrections, 10 working day suspension and 30 working day suspension, on charges, were heard by Administrative Law Judge Michael Antoniewicz, who rendered his initial decision on January 17, 2017. 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, at its meeting on February 22, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

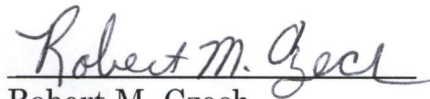
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified in both matters. The Commission therefore affirms these actions and dismisses the appeals of Vincenzo Billero.

Re: Vincenzo Billero

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
FEBRUARY 22, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

OAL DKT. NOS. CSV 04235-15

and CSV 04238-15

AGENCY DKT. NOS. 2015-2612

and 2015-2613

**IN THE MATTER OF VINCENZO
BILLERO, ADULT DIAGNOSTIC AND
TREATMENT CENTER, DEPARTMENT
OF CORRECTIONS.**

Raymond Heck, Union Representative, PBA Local 105, for appellant Vincenzo Billero pursuant to N.J.A.C. 1:1-5.4(a)6

Karen Campbell, Legal Specialist, for respondent Department of Corrections pursuant to N.J.A.C. 1:1-5.4(a)2

Record Closed: December 2, 2016

Decided: January 17, 2017

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Adult Diagnostic and Treatment Center (ADTC), Department of Correction (DOC) suspended appellant for a period of thirty days for conduct unbecoming a public

employee and ten days for insubordination for violating the DOC's Rules and Regulations. Appellant requested a hearing and the Civil Service Commission transmitted the matters to the Office of Administrative Law, where they were filed on March 26, 2015, as a contested cases pursuant to N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. On May 28, 2015, the undersigned issued an Order of Consolidation. The matter was heard on October 11, 2016, and the record closed after submission of post-hearing briefs and any responses on or before December 2, 2016.

TESTIMONY

Senior Correction Officer Angel Santiago

Angel Santiago (Santiago) worked for the DOC for sixteen years. Santiago worked for ADTC since 2001. Santiago was working on November 28, 2014, and worked the shower detail with Peeples. Santiago received a call from the gate and saw Billero at the gate. Billero wanted to be let out. Billero left the area and had a log book with him and it was inside Billero's coat. Santiago found out that Choe's log book was missing.

Correction Officer Daniel Choe

Daniel Choe (Choe) worked for DOC and the ADTC for twelve years. Choe was in charge of the log book. There are eight log books in total. Billero asked Choe for the log book and Choe provided same to him. Choe did not ask Billero why he needed the log book. Choe was aware that he was not permitted to hand out the log book. A corrections officer needed permission from a supervisor in order to obtain log books. Choe was later charged for giving Billero the log book without proper authorization and received a five-day suspension. I **FIND** that Choe was a credible witness. His testimony withstood cross examination, and was basically unchallenged.

Senior Correction Officer Anthony Peeples

Anthony Peeples (Peeples) worked for the DOC for over thirteen years. Peeples worked for ADTC since 2009. Peeples testified that Billero placed the log book in his jacket, which he considered to be an unusual event. In response to seeing this event, Peeples advised Supervisor Schonyers and was told to prepare a report.

Accordingly, Peeples wrote and signed the report. (R-4.) Peeples was also interviewed by Lieutenant Sullivan regarding the incident. I **FIND** that Peeples's testimony was believable.

Sergeant Toren Schonyers

Toren Schonyers (Schonyers) worked as a guard for the DOC for over twenty-five years. Schonyers worked for ADTC as a sergeant. On November 28, 2014, Schonyers was working in the Closed Custody Unit (CCU). Schonyers was contacted by Peeples and was told by Peeples that Billero took a log book in a "suspicious manner." Schonyers then wrote a report regarding the incident. (R-3.)

On cross-examination, Schonyers recalled that November 28, 2014, was the day after Thanksgiving. Schonyers was then off on the November 29, 2014, of that month and he returned to work on the November 30, 2014. Schonyers stated that a log book is located at all units and the supervisor's areas. He stated that the supervisor's office is located on the first floor. The rank and file has access to the supervisor's office.

Retired Lieutenant Edward Sullivan

Edward Sullivan (Sullivan) worked thirty-two years for the DOC. In April 2001, Sullivan worked for ADTC. Sullivan retired May 2016 from service. Sullivan recalled that there was an investigation regarding the removal of the log book. The log book was taken from the CCU and Sullivan interviewed the following individuals as part of the investigation: Peeples, Choe, Santiago, and Billero. It was Sullivan's conclusion that

Billero obtained the log book without proper authorization. Sullivan was aware that he was named by Billero in an Equal Employment Division (EED) dispute.

Sullivan stated that each housing unit had a log book. The daily activities must follow the Internal Managerial Procedures (IMP). Sullivan interviewed Billero, with a union representative present, regarding the removal of the log book. Billero refused to participate in this investigation. As a result, Sullivan contacted Major White and advised White that Billero would not cooperate in the investigation. Thereafter, Billero was ordered by White to cooperate in the investigation, as non-cooperation could result in discipline. Afterward, Sullivan reviewed surveillance DVDs and then again interviewed Billero. Once again, Billero refused to cooperate.

Subsequently, Sullivan wrote a report. The report concluded that Billero removed the log book from its location and Billero was not cooperative in the investigation at the first interview. Billero was only cooperative on December 18, 2014.

On cross-examination, Sullivan said that IMP #143 applies to the log book. The policy states that the log book must be at each housing unit.

Major William Gamba

William Gamba (Gamba) is a Major (as of 2014) in the DOC and worked one year at the ADTC. Gamba was working on November 28, 2014. Gamba was aware that there was a current IMP #143, which dealt with log book management and handling. Gamba wrote a report regarding the missing log book. (R-9.) Sullivan conducted an interview with Billero and other relevant individuals. It was Gamba's understanding that Billero was uncomfortable with Sullivan conducting the interview. However, Major White ordered Billero to cooperate with the investigation. It was Gamba's opinion that there was no good reason for Billero to not comply with the order given by Major White. It was Gamba's position that Billero was told two or three times to cooperate with the interview and that by failing to cooperate with the reasonable order, Billero was insubordinate.

On cross-examination, Gamba stated that Billero was uncomfortable with Sullivan conducting the interview because he had filed an EED complaint against Sullivan. Gamba believed that Sullivan was fully qualified to do the investigation. There was no reason to remove Sullivan from this position. Gamba spoke with Administrator Yates about this issue and this was his position as well. If the EED stated not to use Sullivan, he would have complied, but they did not.

Major Michael White

Major Michael White (White) worked for DOC for nineteen years. In 2013, White was assigned to ADTC. On December 4, 2014, White instructed Sullivan to do an investigation regarding the removed log book. White confirmed Billero's position that he was uncomfortable with Sullivan conducting the investigation regarding the log book because of the EED complaint. It was White's position that the EED complaint did not support Sullivan being barred from the investigation. White spoke with Administrator Yates, who stated that it was fine for Sullivan to do the investigation.

White recalled that Billero requested and received a new union representative. White then ordered Billero to participate in the investigation. Billero continued to not cooperate because he said he felt uncomfortable. White gave Billero a "direct order" to cooperate. White confirmed that Yates found that there was nothing to prevent Sullivan from doing the interview. They had forty-five days to complete the investigation. R-10 was the report prepared by White. It was White's position that Sullivan was the right person to conduct the investigation because he was in charge of the CCU and had knowledge of the events.

Major Colin Foley

Major Colin Foley (Foley) began working in the ADTC in 2000 and was transferred to other venues and came back to ADTC in 2014. Foley was a major at that time. R-14 was the IMP for CCU. Foley stated that the rules and procedures stated

that a log book must be present at each unit and is a legal document. The IMP #143 speaks about the log book. Taking the log book without proper permission is a violation of policy. Full log books must be in a secured location because it is evidence.

On cross-examination, Foley stated that an officer can write in a log book and would write his name next to the entry. It was clear to Foley, however, that someone cannot take a log book without permission. Permission must be obtained from the major to take a log book. Foley further stated that he could not state for sure as to whether the log book IMP was in the unit because he did not work in that unit at the time in question.

Senior Correction Officer Vincenzo Billero

Appellant Vincenzo Billero (Billero) worked with the ADTC for just over sixteen years. Billero testified that he took the log book after seeing same in the CCU on November 28, 2014. Billero stated that he took the log book about 100 feet away and then looked at the book in order to determine when he was working on a certain day. Thereafter, Billero returned the book to its assigned area. Billero did place the book inside his jacket. Billero also stated that he did not believe that his taking the log book was a breach of safety and/or security.

Billero was advised that the individual who was conducting the interview was Sullivan. Billero advised the supervisors that he had concerns about Sullivan conducting the investigation because he had filed an EED complaint in 2011 against Sullivan. Billero testified that he did not refuse to comply with the investigation. Billero advised White and Gamba about his concerns. Billero stated that he did answer the questions on December 18, 2014.

On cross-examination, Billero stated that he took the log books for Lieutenant Gonzalez and Lieutenant Philips. Although Billero stated that he took the log book, he further stated that he never gave the log book to any other officer. Billero also testified that he never had any problems with any other employees. Billero admitted that he

received an order from Major White to cooperate with the investigation. Billero further admitted that he never obtained any permission from any supervisor to review the log book.

I had an opportunity to observe appellant as he testified. He appeared unbelievable in many ways on both direct and cross-examination. Billero refused to accept responsibility and maintained his position that he was unaware that taking the log book was a violation of IMP. As a result of the foregoing, I **FIND** that Billero's testimony was unreliable.

FINDINGS OF FACT

1. Billero is a Senior Correction Officer at the ADTC.
2. On November 28, 2014, Billero appeared at the CCU and removed a log book by placing it inside his jacket and taking it away from the CCU. Billero then reviewed the contents of the log book and returned it to the CCU after reviewing same.
3. Billero made alteration of addition to the log book.
4. At no time prior to taking the log book did Billero ask for or obtain any authorization to take the log book.
5. Billero gave the log book to SCO Santiago, who then gave the log book to SCO Choe, who was in charge of the log book for that unit.
6. SCO Peeples also witnessed Billero take the log book, who found Billero's actions to be very strange.
7. SCO Peeples reported Billero's actions to Schonyers, who was told by Assistant Superintendent Davis to write a report of these events.

8. Based on the events, Major White instructed Lieutenant Sullivan to conduct an investigation into the removal of the log book from the CCU.
9. Sullivan interviewed Choe, Santiago, and Peeples and reviewed the reports of Schonyers and Peeples.
10. Both Choe and Santiago were disciplined for their actions regarding the removal of the log book.
11. Sullivan ordered Billero to report to the office for an interview as part of the investigation on December 5, 2014.
12. Billero appeared as directed, with his union representative, and was administered his Weingarten Rights.
13. Sullivan began to question Billero regarding the removal of the log book.
14. Billero stated that he was not comfortable with answering any questions asked by Sullivan because Sullivan was named in an EED complaint by Billero.
15. Sullivan informed Billero that the investigation was ordered by Major White and had nothing to do with the EED complaint.
16. Billero continued to refuse to answer any questions.
17. In response to Billero's refusal to answer questions, Sullivan contacted Major White and advised White that Billero was refusing to participate in the investigation.
18. Thereafter, Majors White and Gamba appeared at the office of the investigation and White gave a direct order to Billero to cooperate in the investigation.

19. After receiving White's direct order and being advised that his continued refusal could subject him to disciplinary action, Billero further refused to cooperate in the investigation.
20. On December 18, 2014, Billero was ordered to report to the major's office with his union representative.
21. In the second interview, Billero admitted to removing the log book from the CCU without prior authorization.
22. Billero looked at the log book because he wanted to check as to whether he worked on a certain date.

LEGAL DISCUSSION

Respondent, as the appointing authority, bears the burden of proof of facts upon which its disciplinary charges are based and must prove facts essential to its charges by a reasonable probability, *i.e.*, by the preponderance (greater weight) of the competent and credible evidence. N.J.S.A. 11A:2-6(a)(2), -21; N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. See Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

The appointing authority must prove its case by a preponderance of credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). An appeal requires the Office of Administrative Law to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

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." Appellant's

testimony about his not knowing that taking a log book as being a violation of the IMP, is of no consequence. Billero testified that he took the log book and placed it inside his jacket. Such testimony makes his position that he was unaware that by taking the log book was a violation of the appointing authority's rules and regulations, as not believable.

A Preliminary Notice of Disciplinary Action (PNDA) was issued on January 7, 2015. Appellant was also provided with a Final Notice of Disciplinary Action (FNDA) which indicated that he violated N.J.A.C. 4A:2-2.3 as follows:

- 1.) Violation of Administrative Procedures involving Safety and Security;
- 2.) Insubordination;
- 6.) Conduct Unbecoming a Public Employee; and
- 12.) Other Sufficient Cause.

Billero is a law enforcement officer and, as such, is held to a high standard of fidelity, honesty, integrity and good faith. Reinhard v. East Jersey State Prison, CSV 1605-96, aff'd, 97 N.J.A.R.2d (CST) 166 (1993). It is well settled that law enforcement officers are held to a higher standard of conduct. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965).

Even if the undersigned accept some of Billero's explanations, i.e., that he was unaware of the regulation regarding the log book and that he was only looking at the log book for purposes of seeing when he worked on certain days, that does not excuse the clear violation of the rules and regulations regarding log books being removed from the assigned unit without prior authorization. The applicable IMP #143 clearly establishes the guidelines for the use, control and inventory of log books. (R-13.)

Based upon the testimony provided by the respondent's witnesses, I find that the respondent has satisfied its burden that it is more likely than not that appellant Billero, without dispute, removed a log book from the CCU without prior authorization.

I further **FIND AS FACT** that Billero was given a direct order to cooperate in the investigation and that he failed to comply with that direct order. The testimony and documentary evidence presented in this case, confirms that Billero refused a direct order (which I find was reasonable) to participate in the investigation regarding his actions surrounding the log book removal. Billero was given several chances to comply with those orders and Major White provided Billero with a direct and clear order to participate in the interview/investigation. Billero continued to refuse to cooperate, despite this direct order. Billero's explanation, regarding the EED complaint (and the fact that he felt uncomfortable) is not an acceptable basis for disobeying the order.

I find that the appellant offered no competent evidence or testimony which would tend to refute or diminish the testimony provided by the respondent's witnesses, particularly since I find that appellant's own testimony was simply unreliable.

PENALTY

Ordinary progressive discipline applies to civil service disciplinary actions. West New York v. Bock, 38 N.J. 500, 522 (1962). However, the seriousness of Billero's actions, warrant a thirty-day suspension for removing the log book and a ten-day suspension for insubordination. When an employee's actions are of such an egregious nature, the imposition of a penalty, up to and including removal is appropriate, without regard to the employee's previous disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980).

I **CONCLUDE** that a forty-day (thirty days plus ten days) suspension in this matter comports with the principles of Bock, supra, and is, therefore, appropriate. As a result, the determination of the respondent must be affirmed.

ORDER

I **ORDER** that the decision of the respondent Adult Diagnostic and Treatment Center, Department of Corrections suspending the appellant for ten days (as to CSV

04235-15) and thirty days (as to CSV 04238-15), be **AFFIRMED** and the appellant's action be **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, 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.

January 17, 2017
DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency:

January 18, 2017

JAN 20 2017

**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

Date Mailed to Parties:

jb

APPENDIX

WITNESSES

For Appellant:

Vincenzo Billero

For Respondent:

Michael White

Edward Sullivan

Daniel Choe

Anthony Peeples

Angel L. Santiago

Torren Schonyers

William Gamba

Colin Foley

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Preliminary and Final Notices of Disciplinary Action
- R-2 Investigative Report by Lt. Edward Sullivan dated December 26, 2014
- R-3 Special Custody Report by Sgt. Toren Schonyers
- R-4 Special Custody Reports, by SCO Anthony Peeples dated December 1, 2014, and December 4, 2014
- R-5 Weingarten Administrative Rights form and Special Custody Report by SCO Angel Santiago dated December 4, 2014
- R-6 Weingarten Administrative Rights form and Special Custody Report by SCO Daniel Choe dated December 4, 2014

- R-7 Weingarten Administrative Rights form and Special Custody Report by SCO Vincenzo Billero dated December 4, 2014
- R-8 Special Custody Report by Lieutenant Sullivan dated December 6, 2014
- R-9 Special Custody Report by Major Gamba dated December 5, 2014
- R-10 E-mail d by Major Michael White dated December 5, 2014
- R-11 Weingarten Administrative Right form and Accused Statement by SCO Billero, dated December 18, 2014
- R-12 Not admitted
- R-13 Internal Management Procedure #143 "Custody Logbooks"
- R-14 internal Management Procedure #48 "Close Custody unit"