STATE OF NEW JERSEY

In the Matter of Sakinah Beverett-Llanos
Essex County, Department of Citizen Services

CSC DKT. NO. 2017-1746
OAL DKT. NO. CSV 18431-16

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: MARCH 29, 2018 BW

The appeal of Sakinah Beverett-Llanos, Senior Juvenile Detention Officer, Essex County, Department of Citizen Services, removal effective July 19, 2016, on charges, was heard by Administrative Law Judge Leslie Z. Celentano, who rendered her initial decision on December 28, 2017. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority. A reply to reply was filed on behalf of the appellant.

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 March 27, 2018, 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 Sakinah Beverett-Llanos.

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 27TH DAY OF MARCH, 2018

Deirdre' L. Webster Cobb

Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 18431-16
AGENCY DKT. NO. 2017-1746

IN THE MATTER OF SAKINAH BEVERETT-LLANOS, ESSEX COUNTY, DEPARTMENT OF CITIZEN SERVICES.

Paul W. Tyshchenko, Esq., for appellant (Caruso, Smith Picini, attorneys)

Jill Caffrey, Assistant County Counsel, for respondent (Courtney M. Gaccione, County Counsel)

Record Closed: December 20, 2017 Decided: December 28, 2017

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Essex County Department of Citizen Services (County), Juvenile Detention Center), respondent, brings a major disciplinary action against Sakinah Beverett-Llanos, appellant. Appellant appeals the substantiated charges and termination by respondent. Respondent alleges that appellant violated N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; Essex County Juvenile Detention Standard of Conduct and Code

of Ethics Order #08-01; and Essex County Juvenile Detention Center Fraternizing Policy #03-13.

On July 22, 2016, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA) suspending her without pay effective July 19, 2016, and noting the possible disciplinary action of removal. Appellant requested an internal disciplinary hearing, which commenced on October 18, 2016. On November 7, 2016, a Final Notice of Disciplinary Action (FNDA) was issued removing appellant from employment effective July 19, 2016. The FNDA sustained the charges of neglect of duty, conduct unbecoming a public employee, and other sufficient cause as set forth in the Preliminary Notice, as well as violation of Essex County Juvenile Detention Standard of Conduct and Code of Ethics Order #08-01 and Essex County Juvenile Detention Center Fraternizing Policy #03-13. Appellant's removal was upheld. Appellant requested an appeal on November 22, 2017, within twenty days of receiving the FNDA.

On December 7, 2016, the matter was transmitted to the Office of Administrative law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The hearing was scheduled for April 21, 2017; however, discovery was not complete, and the hearing was adjourned at the request of respondent. The hearing was then rescheduled for May 22, 2017, and was held on that date. Following receipt of copies of all exhibits, the record was closed.

TESTIMONY

Captain Garfield Isaacs

Captain Isaacs has been employed by the Essex County Juvenile Detention Center since October 2004, and has served as a captain and supervisor for three years. Prior to that he was a sergeant for two or three years, and prior to that served as a juvenile detention officer. As a tour commander, he is responsible for supervising staff and maintaining the security and safety of officers, residents and the facility.

Captain Isaacs worked with appellant when they were both officers, and also when they both served as sergeants. He became aware of her actions within the facility following the graduation ceremony held for juvenile residents on June 20, 2016. The facility provides educational services to residents and holds a graduation ceremony. Captain Isaacs testified that he learned that appellant had attended the ceremony with S.R., the father of one of the juveniles in the facility who participated in the graduation ceremony, and was concerned that she was a family member of the resident. He considered her attendance a breach of security and was extremely concerned, and he contacted Internal Affairs to advise them. He also asked that the policy regarding familiarity be included in a future training session.

Appellant would have received the Fraternization Policy (R-9) on at least two occasions—first, when entering the facility and receiving the training manual, and at least one other time from staff training, when this topic was highlighted after Captain Isaacs learned of her attendance at the ceremony. She also received the Policy and Procedure manual (R-16), as evidenced by her signature during in-service training on May 8, 2002.

The most recent training conducted was attended by appellant, as evidenced by her signature on July 12, 2016 (R-17). After this training, another situation transpired that caused him to write her up, after she was observed getting out of a car driven by S.R., who had been seen visiting his son. After this happened Captain Isaacs reassigned appellant to a different area of the facility, as she had also been observed on multiple occasions on the fourth floor visiting the inmate. Discipline was then initiated because this is an extreme security concern, and he had personally observed appellant going to see the resident on multiple occasions. There are cameras all over the facility and they are monitored by supervisors.

Appellant was a supervisor with unfettered access to the facility, which officers do not have, as they are each assigned to a specific area. His biggest concern was the safety and security of the building, and as a supervisor, appellant was expected to know the rules.

Captain Isaacs testified that appellant also violated the Code of Ethics, in that she gave no prior notice of her relationship with the inmate's father, S.R., who had been coming to the facility for a few years. This was a huge security concern for him, as, among other things, the juvenile was incarcerated for having committed a very serious crime.

The Standards of Conduct within the Code of Ethics, Order 08-01, (R-10) on page 5 notes the prohibited associations and establishments. In particular, paragraph 10A on page 5 of that policy prohibits a social relationship with an immediate family member of people in the custody of the agency, and appellant violated that provision, as well as paragraph B, for her relationship with the juvenile. In law enforcement, personal relationships with those incarcerated or immediate family members can lead to undue pressure or blackmail, and create a serious breach of security.

Captain Isaacs agreed on cross-examination that with prior notification to the facility, relationships are not prohibited with the family of a resident or a resident. He did not know when appellant's relationship with the inmate's father began, but knew that he had been coming there for several years to see his son, and he had been observed on the camera system getting out of appellant's car. While appellant was not restricted from going to the floor that the juvenile was on, she was a supervisor of another floor, yet went up and spoke often to this particular inmate and did not talk to any of the more than forty-four other juveniles on that floor. One of Captain Isaacs's major security concerns was that the inmate in question had been found on multiple occasions with contraband, and it was clear that appellant had a relationship both with the juvenile and with his father. After the disciplinary process was commenced, then appellant provided a report indicating she was in a relationship with the inmate's father, but even if it had not been a romantic relationship it was still an egregious violation of the policy. The appearance of impropriety was a huge concern even before the investigation in terms of the security of the facility, because appellant could have been the one who brought the multiple items of contraband to the inmate that he has been caught with over the years.

Aundrea Williams

Investigator Williams has been employed for twenty-one years at the Essex County Juvenile Detention Center and has previously served as an officer, then a sergeant, a lieutenant, a captain, and an Internal Affairs investigator. He has been in Internal Affairs for nine years conducting investigations. His captain asked him to do an in-service training on the Code of Ethics related to the reporting duty where there are relationships with an inmate or family member. He conducted training on the Code of Ethics policy (R-10) in the Policy and Procedure manual and on the Fraternization Policy (R-9).

Investigator Williams testified that the investigation of appellant began on a Wednesday, a visitation day, after appellant was observed being dropped off by S.R., the father of the inmate. Appellant's vehicle was parked on Dickerson Street and he parked behind her car, a black Mercedes, and waited for S.R. to come out of the facility after visiting his son. Williams knew it was appellant's car because she is in it all of the time. He observed S.R. exit the facility and pull out in appellant's car, and he returned inside to look at the surveillance tape and took still photographs of appellant with S.R. (R-11.)

Within R-11, picture #1 is appellant wanding S.R. on July 13, 2016. Picture #2 is S.R. at 5:00 pm. on the same date. Picture #3 is the appellant checking lockers at 5:07 p.m., and #4 is of appellant swiping at 8:46 p.m. Picture #5 depicts appellant and S.R., who had pulled in to pick up appellant in her car. Picture #6 shows them getting in the car, with S.R. going in the passenger side at 8:51 p.m. Picture #7 shows appellant returning to the facility in her car at 9:39 p.m. and swiping back in, and picture #8, also at 9:39 p.m., shows appellant walking right back out of the building. Picture #9 shows appellant returning to the facility at 10:19 p.m., approximately forty minutes later, after having swiped back in from her break earlier. This is a violation of policy. Investigator Williams also made copies of the visitation log, which revealed that S.R. came to the facility often over three years to see his son, and when Williams compared this information to appellant's work schedule, he learned that S.R.'s visits often coincided with the days she worked. (R-12.)

A year or two earlier, the inmate, S.A., had been released on electronic detention, and when this happens the inmate has to provide his birth certificate; S.A.'s birth certificate shows S.R. as his father. (R-14.)

Investigator Williams testified that he contacted appellant through the union shop steward, Sergeant Lovejoy, and instructed appellant to write a memo regarding the relationship, which appellant did. (R-7.) He indicated that he has received other memos from officers in the past regarding relationships with juveniles at the facility. The purpose of the disclosure is to prevent retaliation, and for safety and security. Other officers have written letters before regarding their own children who were incarcerated, and when an officer has a relationship with someone in a facility they need to make certain they have no contact to prevent collusion.

Superintendent Gina Saunders

Superintendent Saunders has been in her position for almost three years and has been employed at the Essex County Juvenile Detention Center since 1996. She previously served as an assistant superintendent for five or six years, and prior to that as a captain, a lieutenant and a sergeant. Her responsibilities are similar to those of a warden, in that she runs the building, making sure that the facility has the proper amount of officers, medical and health facilities, social-services attention, education, and the like. She is responsible for the care, custody, and control of the residents.

With regard to the work schedule (R-13), it is the captain who determines who attends visitation. Nearly all sergeants have to report, and then the captain may send some back to the various floors. Captain Saunders testified that she is familiar with appellant's disciplinary history, which includes the current charges, which resulted in a removal effective July 9, 2016, and a Final Notice of Disciplinary Action dated November 7, 2016 (R-1) following the initial suspension (R-2). Her prior history included a settlement agreement entered into on November 19, 2015 (R-8), which included a one-year probationary period for compliance with all work standards and all policies and procedures. The superintendent noted that the current infraction is within that one-year probationary period.

Another prior disciplinary matter also resulted in a settlement in June 2013 (R-21), and in that case the charges were neglect of duty, incompetency/inefficiency, insubordination or serious breach of discipline, and willful violation of policies and procedures. Those charges were sustained and a settlement was entered into which resulted in a one-and-a-half-day suspension.

There was also a disciplinary matter in October 2008 (R-20) regarding violation of attendance policies and chronic or excessive absenteeism, as well as charges of inability to perform duties and neglect of duty, the latter two of which were dismissed in the settlement. That settlement resulted in a probationary period from November 1, 2008, to October 31, 2009, and a six-day suspension.

Superintendent Saunders testified that policies are given to all new employees, and any changes or new policies are circulated and need to be signed for. Employees are also trained on new policies and receive in-service training as required. Other employees have disclosed relationships before with inmates, including herself when her own nephew was there.

FACTUAL DISCUSSION

Credibility determinations

Appellant was available to testify, but did not do so. Nevertheless, the trier of fact must weigh the witnesses' credibility in order to make factual findings. Credibility is the value that the fact finder gives to testimony of a witness and contemplates an overall assessment of the witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base credibility decisions on his or her common sense and life

experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and the finder of fact is not bound to believe the testimony of any witness, In re Perrone, 5 N.J. 514, 521–22 (1950).

I found Captain Isaacs, Investigator Williams, and Superintendent Saunders to be extremely credible witnesses offering truthful testimony. Each testified clearly and concisely as to how each was involved in this matter and the steps taken to investigate this matter, and no competent evidence was presented to dispute any of their testimony. Accordingly, I **FIND** and adopt the entirety of the testimony of Captain Isaacs, Investigator Williams, and Superintendent Saunders as **FACT**.

I also **FIND** the following additional **FACTS**:

1. Officer Sakinah Beverett-Llanos has been employed as a juvenile detention officer since September 17, 2001. She is a graduate of the Correction Officer Training Academy.

2. On June 20, 2016, a graduation ceremony was held for the juvenile residents of the facility. The facility provides educational services to residents, and holds a graduation ceremony. Appellant attended the ceremony with S.R., the father of S.A., an inmate in the juvenile-detention facility who participated in the graduation ceremony. Her attendance was considered a breach of security by her superiors and Internal Affairs was contacted.

3. An in-service training session conducted on July 12, 2016, included review of the policy regarding familiarity and fraternization, a policy which appellant received on at least two occasions, including first when entering the facility, and on at least one other occasion during in-service training.

4. On July 13, 2016, the day after the in-service training session that appellant attended which included review of the policy regarding fraternization,

appellant was observed getting out of her own car being driven by S.R., the father of the juvenile S.A. S.R. parked the vehicle after dropping off appellant and went in to visit his son. S.R. was later observed exiting the facility and driving away in appellant's car. On that date, when S.R. entered the facility to visit his inmate son, it was appellant who wanded him at the security checkpoint.

5. Later that date, at 8:46 p.m. appellant swiped out for her break. She then got into her car, with S.R. in the passenger seat, at 8:51 p.m. and pulled away. At 9:39 p.m. appellant returned to the facility and swiped back in, but then walked back out of the facility, a violation of policies and procedures. Appellant did not return to her post until after reentering the facility at 10:19 p.m., approximately one hour and thirty-three minutes after initially swiping out.

6. A review of the visitation log revealed that S.R. had visited his son often over the previous three years. When the information in the log was compared with the facility assignment schedule, it revealed that S.R.'s visits often coincided with dates that appellant worked.

7. S.A. has been caught on multiple occasions with contraband.

8. After these events, appellant was reassigned to a different area of the facility that she had been posted to, as she had also been observed on multiple occasions visiting the juvenile inmate on the fourth floor of the facility. This was considered to be an extreme security concern; a risk to the safety and security of the building; and a violation of the policies and procedures.

9. Appellant at this juncture had still failed to comply with the requirement of the Code of Ethics that she give prior notice of her relationship with an inmate's father. The report was eventually provided by appellant on July 15, 2016.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The New Jersey Civil Service Law protects classified employees from arbitrary dismissal and other onerous sanctions. Prosecutor's, Detectives & Investigators Ass'n v. Hudson Cnty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). The law provides relief to civil service employees from public employers who may attempt to deprive them of their rights. Prosecutor's, supra, 130 N.J. Super. at 41. To this end, the law is liberally construed. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). Consistent with this policy of civil service law, there is a requirement that in order for a public employee to be fined, suspended, or removed, the employer must show just cause for its proposed action. The Civil Service Commission is charged with the duty of ensuring that the reasons supporting disciplinary action are sufficient and not arbitrary, frivolous, or "likely to subvert the basic aims of the civil service program." Prosecutor's, supra, 130 N.J. Super. at 42 (quoting Kennedy v. Newark, 29 N.J. 178 N.J. 189–90 (1959)).

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.3. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12). If sufficient cause is established, then a determination must be made on what is a reasonable penalty.

In disciplinary cases the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the officer and lodge the charges. See Coleman v. E. Jersey State Prison, CSV 1571-03, Initial Decision (February 25, 2004) (citations omitted), adopted, Merit System Board (April 13, 2004), <http://njlaw.rutgers.edu/collections/oal/>; see also N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982); In

re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971); N.J.S.A. 11A:2-6(a)(2), -21; N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. A preponderance of evidence has been defined as that which "generates belief that the tendered hypothesis is in all human likelihood the fact." Martinez v. Jersey City Police Dep't, CSV 7553-02, Initial Decision (October 27, 2003) (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), rejected, Merit System Board (March 28, 2004), <http://njlaw.rutgers.edu/collections/oal/>).

Essex County Juvenile Detention Center Standards of Conduct and Code of Ethics and Fraternizing Policy

The Essex County Juvenile Detention Standards of Conduct and Code of Ethics Order #08-01 states, in part:

> 10. Prohibited Associations and Establishments:
>
> b. Officers shall not knowingly commence or maintain a relationship with any person who is under criminal investigation, indictment, arrest or incarceration by this or another police or criminal justice agency, and/or who has an open and notorious criminal reputation in the community (for example, persons whom they know, should know or have reason to believe are involved in felonious activity), except as necessary to the performance of official duties, or where unavoidable because of familial relationships.

The Essex County Juvenile Detention Center Order #03-13, Fraternization, states, in part:

> Employees are [prohibited][1] from fraternizing, or socializing with the current residents and shall not indulge in over familiarity with current residents or socializing with the current residents and shall not indulge in over familiarity with current residents or permit residents to be unduly familiar with them. Fraternizing or socializing shall be identified but not limited to phone contact, U.S. Mail services, etc.

[1] The language in the Order states "permitted" however, as the remainder of the policy uses the word "prohibited" it is clear that this is a typographical error.

. . . .

> Any employee who believes they may have inadvertently established a pattern of fraternizing with a current resident must immediately notify the facility Administrator in writing so the Administrator can determine the appropriate adjustment to work assignment, if warranted.
>
> Failure to comply with the above shall result in disciplinary action, up to and including termination.

In the within matter, respondent asserts, and I agree, that appellant violated the Essex County Juvenile Detention Standards of Conduct and Code of Ethics and the Fraternizing Policy. Appellant failed to disclose her relationship with S.R., the father of S.A., who was incarcerated in the facility. Appellant had training that included discussion about the prohibition against fraternization. There is credible witness testimony that appellant received at least two forms of training that informed her of her obligation to disclose the relationship with an inmate's father. Moreover, she had extended and repeated visits with the inmate, even after having been moved to a different unit, thereby affording him special attention for no reason. The County's significant obligations include the need to maintain safety and discourage preferential treatment, as well as prevent contraband from entering the facility. While appellant ultimately did submit an administrative report on July 15, 2016, acknowledging the relationship with S.R., it was untimely at best, and likely done in anticipation of disciplinary charges being brought. Accordingly, there is sufficient evidence in the record to support the charged violation of the Essex County Juvenile Detention Standards of Conduct and Code of Ethics Order #08-01, and Fraternizing Policy #03-13, and I, therefore, **CONCLUDE** that the charges are sustained.

Conduct Unbecoming a Public Employee

"Conduct unbecoming" a public employee is an elastic phrase that 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 Atl. 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 (Pa. 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)).

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

Respondent has charged Beverett-Llanos with the willful violation of Essex County Policies and Procedures by continually and consistently fraternizing with the father of an inmate who was incarcerated in the facility, and failing to notify respondent of the nature, extent, and history of their relationship despite the policy requiring her to do so. The testimony also established that on July 13, 2016, one day after an in-service training session which included review of the policy regarding familiarity and fraternization, appellant was seen emerging from her own vehicle, driven by S.R., who then went in to visit his son. As S.R. entered the facility, it was appellant who wanded him. Also later that day, appellant swiped out for her break at 8:46 p.m., got into her car with S.R., swiped back in at 9:39 p.m. and went back out of the facility, returning at 10:19 p.m., one hour and thirty-three minutes after swiping out. I **CONCLUDE** that this conduct amply supports the charge of conduct unbecoming, N.J.A.C. 4A:2-2.3(a)(6).

Neglect of Duty

Neglect of duty has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the within matter, the record reflects that appellant was observed on multiple occasions leaving the floor she was assigned to, and visiting S.A. on another floor. As a supervisor, appellant had access to the entire facility, and was not restricted to her floor; however, her primary responsibility was the safety and security of the floor to which she was assigned. When she visited S.A., she was not performing her duties at her own post. This behavior from a supervisor clearly could adversely affect the morale of the facility and undermine public respect.

Moreover, on July 13, 2016, appellant swiped out for her break at 8:46 p.m., swiped back in at 9:39 p.m., and then left again, returning at 10:19 p.m., one hour and thirty-three minutes after swiping out.

Based upon the foregoing, I **CONCLUDE** that the appointing authority has proven by a preponderance of the credible evidence that the charge of neglect of duty, N.J.A.C. 4A:2-2.3(a)(7), should be and hereby is sustained.

Other Sufficient Cause

Having determined that appellant violated the Essex County Juvenile Detention Standards of Conduct and Code of Ethics, as well as the Essex County Juvenile Detention Center Fraternization Policy, I **CONCLUDE** that appellant has given other sufficient cause for disciplinary action, and that the appointing authority has demonstrated by a preponderance of the credible evidence that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, must be and is hereby sustained.

PENALTY

In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in West New York v. Bock, 38 N.J. 500, 519 (1962). A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, supra, 38 N.J. at 522–24.

In the present case, there are several instances of a prior disciplinary action against appellant. On May 10, 2013, appellant was suspended for 1.5 days following charges of neglect of duty, incompetency or inefficiency, insubordination or serious breach of discipline, and willful violation of policies and procedures (R-21). Appellant was also suspended for six days effective October 21, 2008, and placed on a one-year probationary period for November 1, 2008, through October 31, 2009, following charges of chronic or excessive absenteeism or lateness and violation of County attendance policies and procedures and absent without official leave (R-20). Appellant also entered into an agreement with the County on November 19, 2015, which included another one-year probationary period, to resolve time and attendance issues, and included a

reiteration of appellant's obligation to abide by and adhere to the County policies and procedures.[2]

There is sufficient credible evidence that appellant should have been fully familiar with the policy regarding fraternization, and a more detailed analysis of the appellant's past disciplinary history is unnecessary since it is clear that removal is the proper penalty. Appellant was in a position where she was entrusted with the supervision of juvenile inmates in a secure facility. If there was any question at all regarding the appropriateness of a relationship, it should have been disclosed, as the safety and security of the facility must be maintained. The complete and utter lack of judgment displayed by appellant in wanding S.R. at the security checkpoint on the way in to see his son, a few minutes after he had dropped appellant off and parked her car, is staggering. Appellant placed her friendship with S.R. ahead of her duties as a juvenile detention officer, when her professional responsibilities should have come before the friendship. It is imperative to prevent correction personnel from being manipulated by individuals in the system and risking compromising the safety and security of all those in the system.

Accordingly, I **CONCLUDE** that the respondent's action in removing the appellant from her position was justified.

DECISION AND ORDER

The appointing authority has proven by a preponderance of the credible evidence the charges against appellant with violations of N.J.A.C. 4A:2-2.2, N.J.A.C. 4A:2-2.3(a)(6), N.J.A.C. 4A:2-2.3(a)(7), and N.J.A.C. 4A:2-2.3(a)(12), as well as Essex County Juvenile Detention Standard of Conduct and Code of Ethics order #08-01 and Essex County Juvenile Detention Center Fraternization Policy #03-13, and it is **ORDERED** that the charges be and hereby are sustained and the penalty of removal is **AFFIRMED**.

[2] The conduct forming the basis of the current charges violates the one-year probationary period set forth in the November 19, 2015, agreement, which indicates that failure to comply will result in suspension, demotion, or termination.

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.

December 28, 2017
DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency: 12-28-17

Date Mailed to Parties: December 29, 2017

dr

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For Appellant:

None

For Respondent:

Captain Garfield Isaacs

Aundrea Williams

Superintendent Gina Saunders

Exhibits

Joint Exhibit:

J-1 Transcript

For Appellant:

None

For Respondent:

R-1 Final Notice of Disciplinary Action dated November 7, 2016

R-2 Preliminary Notice of Disciplinary Action dated July 22, 2016

R-3 no exhibit

R-4 Letter dated July 16, 2016 from Captain Garfield Isaacs to Superintendent Saunders re: Code of Ethics Violation

R-5 no exhibit

R-6 no exhibit

R-7 Administrative Report from Beverett-Llanos to Director, ECJDC, dated July 17, 2016

R-8 Settlement Agreement dated November 20, 2015

R-9 Order #03-13, Fraternization Policy

R-10 Order #08-01, Standards of Conduct, Code of Ethics

R-11 Pictures

R-12 Visitor Log

R-13 Tour schedules

R-14 Memorandum from Aundrea Williams to Keisha Clark dated September 13, 2016

R-15 no exhibit

R-16 Signed receipt for In-Service Training on the Policy and Procedures Manual May 8, 2002 and a copy of the Manual

R-17 Signed Registration Form for In-Service Training on July 12, 2016

R-18 no exhibit

R-19 no exhibit

R-20 Final Notice of Disciplinary Action dated October 14, 2008 with Settlement Agreement

R-21 Notice of Minor Disciplinary Action dated May 10, 2013 with Settlement Agreement