



STATE OF NEW JERSEY

In the Matter of Sha-Keana Davis
Mercer County Correction Center

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2017-3577
OAL DKT. NO. CSV 07308-17

ISSUED: MAY 4, 2018

BW

The appeal of Sha-Keana Davis, County Correction Officer, Mercer County Correction Center, 10 working day suspension, on charges, was heard by Administrative Law Judge Judith Lieberman, who rendered her initial decision on March 26, 2018. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority. A reply to the 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, at its meeting on May 2, 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 suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Sha-Keana Davis.

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 2ND DAY OF MAY, 2018



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. CSV 07308-2017

AGENCY DKT. NO. 2017-3577

**IN THE MATTER OF SHA-KENANA DAVIS,
MERCER COUNTY CORRECTIONS CENTER,**

Respondent.

DAVID BECKETT, Esq., for appellant (Law Offices of David Beckett, attorneys)

KRISTINA E. CHUBENKO, Esq., Assistant County Counsel, for respondent
Mercer County Corrections Center (Paul R. Adezio, County Counsel)

Record Closed: February 9, 2018

Decided: March 26, 2018

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

The appellant, Sha-Keana Davis, appeals the determination by the respondent, Mercer County Corrections Center (Appointing Authority), that she committed Conduct Unbecoming a Public Employee and violated Administrative Procedures and/or Regulations involving Safety and Security, for which she received a ten-working-day suspension.

PROCEDURAL HISTORY

On February 10, 2017, the Appointing Authority issued a Preliminary Notice of Disciplinary Action (PDNA) setting forth the charges and specifications made against appellant. After a departmental hearing, which was held on April 4, 2017, the Appointing Authority issued a Final Notice of Disciplinary Action (FNDA) (J-1) on May 2, 2017, sustaining the charges in the PDNA and suspending the appellant from employment for ten working days, effective May 15, 2017, and ending May 29, 2017, for failing to attend mandatory harassment training. The appellant filed a timely appeal on May 8, 2017, and the matter was transmitted to the Office of Administrative Law on May 22, 2017, for hearing as a contested case. The case was heard on November 16, 2017. The record remained open for the receipt of written summations by the parties. On February 9, 2018, all summations were received, and the record closed.

FACTUAL DISCUSSION

Joint stipulations:

1. Officer Sha-Keana Davis has been employed with the County of Mercer since July 6, 2010, in the position of County Correction officer [sic] for the Mercer County Correction Center ("MCCC").
2. This Stipulation concerns disciplinary charges set forth in a Final Notice of Disciplinary Action, dated May 2, 2017, a copy of which is attached as Exhibit J-1.
3. From November 2016, through January 2017, Officer Davis' bidded shift was A-Tour, which is 11:00 p.m. to 7:00 a.m.
4. On or about November 5, 2016, a memorandum was issued at MCCC with the subject Mandatory Training – Harassment listing times and dates for such training. A copy of that Memorandum is attached as Exhibit J-2.

5. The attached calendar shows scheduled days of work and leave for Officer Davis at relevant times from November 2016, through January 2017. See Exhibit J-3.
6. During the time period between November 5, 2016, and January 18, 2017, Officer Davis worked a total of 209.280 overtime hours.
7. The attached time keeping records show certain overtime shifts worked by Officer Davis during that time period, and are attached as Exhibit J-4.
8. On December 7, 2016, Officer Davis was absent from work; the absence was covered by the Family Medical Leave Act ("FMLA"). Exhibit J-3.
9. On December 8, 2016, Officer Davis worked overtime on B-Tour which is 7:00 a.m. to 3:00 p.m. (Id.)
10. On December 15, 2016, Office Davis worked a mandatory overtime shift on B-Tour which is 7:00 a.m. to 3:00 p.m. (Id.)
11. On December 19, 2016, Officer Davis was absent from work and the absence was covered by FMLA. (Id.)
12. On January 4, 2017, Officer Davis worked overtime on C-Tour, which is 3:00 p.m. to 11:00 p.m. and stayed for her regular shift for A-Tour, which is 11:00 p.m. to 7:00 a.m., on January 5, 2017. (Id.)
13. On January 9, 2017, Officer Davis worked overtime on B-Tour, which is 7:00 a.m. to 3:00 p.m.
14. On January 18, 2017, and January 19, 2017, Officer Davis was absent from work on a job-related injury.
15. Officer Davis's disciplinary history is set forth in Exhibit J-5.

Testimony

For respondent:

Deputy Warden Phyllis Oliver testified that all officers were required to attend one session of the harassment training. Training sessions for non-supervisory officers were scheduled on various days, starting December 7, 2016, and ending January 19, 2017. A memorandum advising of the training was read aloud by shift commanders during lineup for seven consecutive days and was displayed in the lobby and officer's dining room. The memorandum stated that failure to attend the training would result in discipline. The officers were given early notice of the training requirement so that they could adjust their schedules to be able to attend. Officers were to attend on their own time and would be compensated for attendance. They did not need to register in advance; attendance was on a first come, first served basis.

December 8, 2016, was the first training day that the appellant could have attended. That day, training sessions were scheduled for 7:30 a.m. and 12:00 p.m. The appellant worked the 11:00 p.m. to 7:00 a.m. shift preceding the training sessions and could have attended both training sessions. However, she worked a voluntary overtime shift on December 8, 2016.

December 15, 2016, was the next day the appellant could have attended a training session. She was unable to attend because she was assigned mandatory overtime.

January 5, 2017, was the next day the appellant could have attended a training session. The appellant worked a voluntary overtime shift from 3:00 p.m. to 11:00 p.m. on January 4, 2017, and then her regular shift, 11:00 p.m. to 7:00 a.m., from January 4 to January 5, 2017. After departing at 7:00 a.m. on January 5, 2017, she could have returned to the facility to attend either the 12:00 p.m. or 3:30 p.m. session that day.

The next training sessions that the appellant could have attended were scheduled for January 9, 2017. The sessions were held 7:30 a.m. and 12:00 p.m. The appellant could have attended either training session but instead worked a voluntary overtime shift from 7:00 a.m. to 3:00 p.m. that day.

Oliver testified that the appellant would have been able to attend the January 18 and 19, 2017, sessions had she not been injured while working on January 18.

Oliver testified that the training schedule was issued early to allow officers to adjust their schedules in advance so they would be able to attend a session. Oliver added that ninety percent of the officers attempt to be the first to attend mandatory training sessions to ensure that they comply in the event they are later prevented from being able to do so. The appellant was on notice that the training was mandatory and that failure to attend would result in discipline. The appellant failed to comply, notwithstanding that she could not attend training during the last two days.

The appellant was disciplined pursuant to the Mercer County Public Safety Table of Offenses and Penalties that applied to the Correction Center. The offense was "Violations of Administrative Procedures and/or Regulations Those Involving Safety and Security." (D6). The "step charge" was "step two", which indicated a three-day removal for a second infraction. (R-1.)

For appellant:

Sha-Keana Davis testified that between November 2016, and January 2017, she was assigned to the 11:00 p.m. to 7:00 a.m. shift. She had attended training sessions in the past and understood that she would either be paid or receive compensatory time for attendance at a mandatory training session.

The appellant is the parent of three children who have asthma who need to utilize a machine every three to four hours to help them when they are ill. The appellant used family leave time to be with her children when they were ill. She would also use compensatory time when she needed to tend to the children.

The appellant testified concerning the assignment of overtime shifts. The need for officers to accept overtime varied from day to day; sometimes fifteen officers would be needed to work overtime, while on another day, it might be seven. An officer was often required to work an overtime shift even though she may have indicated she did not want

to do so. Two consecutive overtime shifts would result in a total of sixteen hours of work. Officers were prohibited from attending training if they previously worked sixteen hours.

Officers with less seniority were more likely to be required to work an overtime shift. The appellant estimated there were three officers with less seniority than her in December 2016. Therefore, she was more likely than more senior officers to be "stuck" with overtime. However, once she worked an overtime shift, she would be less likely to be required to work a subsequent overtime shift, given the prohibition on working more than sixteen consecutive hours. A more senior officer would be required to cover an overtime shift under these circumstances. The appellant would opt to work an overtime shift knowing that she would be able to tend to her children the next day.

The appellant testified concerning the days she did not attend the training session. December 8, 2016, was the first day she could have attended the training session.¹ However, she worked a voluntary overtime shift from 7:00 a.m. to 3:00 p.m. after her regular 11:00 p.m. to 7:00 a.m. shift. She voluntarily worked overtime so that it would be less likely that she would be "stuck" with overtime afterward.

January 5, 2017, was the next day she could have attended a training session. She worked an overtime shift, 3:00 p.m. to 11:00 p.m. the prior day, January 4, 2017, and then worked her regular 11:00 p.m. to 7:00 a.m. shift on January 5, 2017. She opted to work overtime on January 4, 2017, so that she would not be "stuck" after 7:00 a.m. on January 5, 2017, and be able to take her daughter to school.

On January 9, 2017², the appellant worked a voluntary overtime shift from 7:00 a.m. to 3:00 p.m.

¹ The parties stipulated that the appellant was unable to attend training sessions on December 7 and 19, 2016, because she used FLMA leave those days. They also stipulated that she was unable to attend a training session on December 15, 2016, because she was assigned mandatory overtime that day.

² During direct examination, the appellant referred to January 9, 2017, as the next day listed on the training memorandum. Rather, the next training session listed on the memorandum was January 8, 2017, to which the appellant stipulated.

The appellant testified that she intended to attend the 3:30 training session on January 18, 2017. She worked an overtime shift from 3:00 p.m. to 11:00 p.m. on January 17, 2017, and then her regular shift, 11:00 p.m. to 7:00 a.m. on January 18, 2017. She sustained an injury during the overnight shift. She was sent for a medical appointment at 2:30 p.m. on January 18, 2017, and the medical staff ordered a two-week medical leave. She was not permitted to attend the training while she was out of work.

On cross-examination, the appellant testified that she could have attended the 3:30 p.m. training session on January 5, 2017. She did not ask anyone if she could attend the 12:00 p.m. session that day, as she would have been prohibited because she previously worked sixteen hours.

Officer James Chambers is a corrections officer for the respondent and Acting President of the PBA. He testified that overtime was frequently required in November 2016. Knowing this, officers would attempt to schedule their work hours in advance, as an assignment would likely continue throughout the week. The officers would utilize scheduling strategies to be able to attend trainings or tend to family matters.

Because overtime was often mandatory, officers would need to come to work on their days off to attend training sessions. However, the appellant was unable to do this here, as none of the training sessions was scheduled on her days off. Officers may not work more than sixteen hours in twenty-four hours. Any hours worked beyond sixteen are considered "double time" and such assignments are "frowned upon."

After having the opportunity to review the evidence and consider the testimony, and the joint stipulation, I **FIND** the following additional **FACTS**:

1. The appellant was aware of her obligation to attend mandatory harassment training on one of the specified days.
2. The appellant was aware that officers who failed to attend the training session would be disciplined.

3. On December 8, 2016, the appellant voluntarily worked an overtime shift that precluded her from attending training sessions that day.
4. On January 4, 2017, the appellant worked an overtime shift prior to her regular shift on January 5, 2017, so that she would not be required to work after her regular shift. She did not attend training sessions scheduled for 12:00 p.m. and 3:30 p.m. on January 5.
5. On January 8, 2017, the appellant worked a voluntary overtime shift instead of attending either training session that day.
6. The appellant believed she would not be permitted to attend a training session after having worked sixteen consecutive hours.
7. The appellant knew she would not be able to attend a training session on any of her regularly scheduled days off.
8. The appellant did not alert a supervisor that she was unable to attend the training session due to overtime assignments or medical leave.

CONCLUSIONS OF LAW

Appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated there under. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A2-2.2, -2.3

The Appointing Authority has the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to

a given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

As a corrections officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). Corrections officers 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.” Township of 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, 50 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).

“Conduct unbecoming a public employee”, pursuant to N.J.A.C. 4A:2-2.3(a)(6), is an “elastic” phrase that encompasses conduct that “adversely affects the morale or efficiency of a governmental unit ... [or] which 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)(citing 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, 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)).

Here, the appellant had been employed by the Appointing Authority for over six years at the time she was disciplined. She previously attended mandatory training sessions, and was fully aware of her responsibility to attend the mandatory training session at issue. There was a limited number of days during which the appellant could

have attended the training session. She knew that she could not attend training sessions on her days off and that she could be required to work a mandatory overtime shift that would conflict with a scheduled training session. Despite this, she opted to work voluntary overtime shifts on three days, December 8, 2016, January 4, 2017, and January 8, 2017, even though those shifts prevented her from attending training sessions. As such, the appellant waived her limited opportunities to attend the mandatory training session when she could.

The appellant did not alert any of her supervisors that she was having difficulty attending the training session. She did not alert a supervisor that her work-related injury would cause her to lose her last opportunities to attend the training session. Rather, she made clear, through her testimony, that she would utilize the overtime scheduling system to her best advantage, when possible.

The complexities associated with involuntary overtime assignments are significant. However, it was incumbent upon the appellant to ensure that she complied with mandatory work duties. Compliance is essential to the morale and efficiency of a governmental unit. This would necessarily impact the operations of the corrections center, which requires discipline and rule compliance.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a Public Employee), and that such charge must be **SUSTAINED**.

The charge of violating N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, is based on an allegation of violation of a rule, regulation, policy, procedure, order or administrative decision. Here, the record reflects that the appellant failed to satisfy her clearly stated obligation. Accordingly, I **CONCLUDE** respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)

(12) (Other Sufficient Cause), and that such charge must be **SUSTAINED**.³

PENALTY

A civil service employee who commits a wrongful act related to her 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). This requires a de novo review of appellant's disciplinary action. In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). The question to be resolved is whether the discipline imposed in this case is appropriate.

The Appointing Authority seeks to suspend the appellant ten-working-days for her actions. In her seven years as an officer for the Appointing Authority, the appellant has been disciplined multiple times. (J-5.) On February 28, 2013, she received a written reprimand for chronic, excessive absenteeism. On June 28, 2013, she received a written reprimand for having been absent without proper notice. On July 1, 2013, she was suspended ten days for neglect of duty, conduct unbecoming and for violating a rule, regulation or policy. On February 5, 2016, she received a written reprimand for chronic, excessive absenteeism. On June 21, 2016, she was suspended five days for chronic, excessive absenteeism. On January 5, 2017, she received a written reprimand for having been absent without proper notice. Ibid. Here, the petitioner has been disciplined once before for Conduct Unbecoming an Officer and for violating a rule, regulation or policy.

³Appellant argued that the respondent applied its rules inequitably because Deputy Warden Oliver did not attend the training sessions at issue. As discussed during the hearing, it is of no moment whether the Deputy Warden attended the training. Nonetheless, the appellant was provided an opportunity to offer evidence that officers, similarly situated to the appellant, failed to attend the training and were not disciplined. The appellant did not offer such evidence.

After having considered the proofs offered in this matter and the impact of the appellant's behavior upon the institution, and after having given due deference to the principal of progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon her the seriousness of the failure to comply with training mandates. The petitioner did not conduct herself in a manner intended to ensure she would be in compliance. As this is a second violation for Conduct Unbecoming and Public Employee and violation of Administrative Procedures and/or Regulations, I **CONCLUDE** that the action of the appointing authority in suspending the appellant for ten working days is reasonable and consistent with progressive discipline, and should be affirmed.

ORDER

I hereby order that the charges are sustained. Accordingly, I order that the action of the Appointing Authority is **AFFIRMED**, and the appellant shall be suspended for ten working days.

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.

March 26, 2018
DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency:

3/26/18

Date Mailed to Parties:

3/26/18

/vj

APPENDIX

LIST OF WITNESSES

For appellant:

Sha-Kenana Davis
Officer James Chambers

For respondent:

Deputy Warden Phyllis Oliver

LIST OF EXHIBITS

For appellant:

P-1 Union Contract between the County of Mercer and P.B.A. Local 167

For respondent:

R-1 Mercer County Public Safety Table of Offenses and Penalties—Correction Center

Joint:

- J-1 Final Notice of Disciplinary Action
- J-2 November 5, 2016, Mandatory Training Memorandum
- J-3 Time and attendance record for appellant
- J-4 Hours Detail Inquiry for appellant
- J-5 Appellant's disciplinary history