



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 23<sup>RD</sup> 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. CSR 18164-17

AGENCY DKT. NO. N/A

**IN THE MATTER OF KARSHAWN J. BATIE,  
BURLINGTON COUNTY JAIL.**

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**Daniel M. Rosenberg, Esq.,** for appellant Karshawn J. Batie (Daniel M. Rosenberg and Associates, LLC, attorneys)

**Andrew C. Rimol, Esq.,** for respondent Burlington County (Capehart and Scatchard, attorneys)

Record Closed: March 6, 2018

Decided: April 16, 2018

**BEFORE PATRICIA M. KERINS, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Appellant Karshawn J. Batie (Batie) appeals his termination from his position as a Burlington County correction officer for failing to conduct required security checks and for making false entries in the facility's logbook that he had performed those security checks. Batie does not dispute that he falsified the entries and failed to conduct the required security checks, but asserts that the penalty of termination is excessive.

Respondent Burlington County (Burlington) terminated Batie on November 13, 2017, by two Final Notices of Disciplinary Action (FNDA). On August 4, 2017, Burlington had issued two Preliminary Notices of Disciplinary Action (PNDA) against Batie charging him with N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violations of Policies and Procedures Manual sections 1007, 1023, 1030, 1031, 1038, 1065, 1066, 1172, 1190, 1192, and 1250, for failure to conduct required security checks and making false entries regarding those security checks. The first PNDA cited events occurring on June 27 and 28, 2017, while the second cited the same conduct occurring on June 30 and July 1, 2017. Batie had waived a departmental hearing, and Burlington then issued two Final Notices of Disciplinary Action, each terminating appellant effective November 13, 2017. His appeal was received at the Office of Administrative Law on December 4, 2017 (N.J.S.A. 40A:14-202(d)), and scheduled for hearing on January 3, 2018. However, when he filed his appeal form, the FNDA for the June 30 and July 1, 2017, charges was attached, but only the PNDA for the June 27 and 28, 2017, charges, not the FNDA, was attached.

During a telephone status conference held on January 2, 2018, the parties requested an adjournment of the January 3, 2018, hearing date, and the matter was rescheduled for February 8, 9, and 13, 2018, and a letter was received from appellant's counsel regarding the excludable time under N.J.A.C. 4A:2-2.13(h)(8). The hearing date of February 8, 2018, was adjourned at the parties' request, and the matter was heard on February 9, 2018. At the hearing on February 9, 2018, respondent for the first time raised the issue of whether the matter was moot due to Batie's failure to attach the second FNDA to his appeal. Burlington contended that since only the second PNDA was attached to the appeal, Batie's termination on the charges regarding incidents on June 27 and June 28, 2017, was uncontested and therefore final. As such, it asserted that his appeal on the other FNDA was moot. The appellant disagreed, and the hearing proceeded on both FNDAs, with a decision on Burlington's argument reserved.

Testimony concluded on February 9, 2018, and the record remained open for post-hearing submissions. The record closed on March 6, 2018, after the receipt of the submissions and the appellant's disciplinary history.

### **FACTUAL DISCUSSION**

The material facts in this matter are not in dispute. Batie was employed as a correction officer by Burlington County. On two shifts in 2017, June 27–28, and June 30–July 1, he did not perform required periodic tours of I Wing, the section of the Burlington County Detention Center ("the facility") to which he was assigned. Despite not having performed the inspections, he documented that he had performed the inspections in the facility's log. Batie's failure to perform the inspections came to light following an examination of video recordings of I Wing that had resulted from a request made by the attorney for another officer facing disciplinary action in an unrelated matter. Batie was charged in two separate Preliminary Notices of Disciplinary Action (PNDA), one for each shift, with violations of the New Jersey Administrative Code, as well as violation of various internal policies. Batie does not deny that he did not perform the inspections set forth in the specifications.

At the hearing, Burlington presented the testimony of Captain Matthew Leith (Leith), the current administrative captain of the facility. He testified as to the investigation conducted by Captain McDonnell, who reviewed video recordings on the unit for the shifts in question. That review showed that Batie failed to conduct security tours on the 1800–0600 (6-p.m.-to-6-a.m.) shift on June 27–28, 2017, at 2130, 2202, 2225, 2301, 2331, 0001, 0028, 0128, 0201, 0206, 0224, 0303, 0324, 0401, 0429, and 0501. He then entered false entries into the official logbook for these security checks, when in fact he had not performed them. Additionally, on the 1800–0600 shift on June 30–July 1, 2017, Batie failed to perform security tours at 1800, 1925, 2131, 2158, 2201, 2227, 2301, 0058, 0130, 0150, and 0328. In each instance he again entered false entries into the logbook showing that he had conducted the inspections.

Leith also testified as to the importance of the periodic tours that officers are required to conduct during their time assigned to a wing. I Wing is a small wing which

houses new admissions to the facility. He described it as a dormitory-like area with bunks. As there is no desk for an officer directly on the wing, officers must be buzzed in and out of the control room to make their rounds. On cross-examination, Leith admitted that two superior officers assigned to I Wing during this period were not disciplined when a review of the videos showed that they had not conducted their required tours as set forth in P-3 and P-4, duties for sergeant and lieutenant, respectively. He was also questioned about discipline imposed in 2014 by Burlington on an officer for infractions similar to those of Batie. Those charges only resulted in a suspension (P-1; P-2). Leith stated that the new administration of the facility has chosen to impose a harsher penalty for such infractions.

Leith identified several policies and procedures of the facility that are applicable and that spell out the responsibilities of correction officers—policies and procedures that the County charges Batie violated. Policies and Procedures Manual section 1007 provides that officers are to listen for unusual sounds in cell blocks, changes in noise levels, and calls for help; detect unusual odors; prevent escapes and suicides; and patrol cell-block areas to check for safety-and-security hazards such as fires, smoke, broken pipes or windows, etc. This is all done in order to “protect the security and safety of the inmates and the institution.” (J-7.)

Burlington’s Policies and Procedures Manual sections 1012–1074 provide that officers are subject to discipline, including dismissal, for any violation of the policies and procedures. Policy 1023 specifically requires such compliance with the policies. Policy 1030 holds officers responsible for “the efficient performance of duties assigned and for the proper supervision of any inmate in his/her custody.” Policy 1031 requires that officers “promptly obey any lawful order.” Policy 1038 prohibits officers from acting in any manner that is to the officer’s, or the department’s, discredit. Policy 1065 prohibits any officer from making “any false or misleading statements or written reports by intentional omission or misrepresentation of facts or information known to the officer.” And Policy 1066 provides that “[n]o officer shall . . . enter, in any official book or record, any false or misleading statements.” (J-8.)

Policy 1172 specifically provides for the maintenance of logbooks, in which are to be recorded any events, inmate movements, incidents, and situations of special circumstance. Officers are trained in the use and maintenance of these logs. Section C.15 of this Policy provides that the logbook contains "Officer security/touring wing (30 min general security check)." Section A.4 of this Policy provides that "falsification of these documents will not be tolerated; offender(s) are subject to disciplinary action and/or criminal charges (Official Misconduct)." (J-9.) Leith noted that the jail's logbooks are legal documents used for official purposes, even becoming evidence in legal proceedings.

Policy 1190, section C, provides that "Security tours will be made approximately every thirty (30) minutes at irregular intervals. An accounting of inmates is also done during security tours, which enables the shift to accomplish the dual requirements of security and count procedures." (J-10.) Policy 1250, section A.15, requires "routine tours of the entire tier or post" to be made "approximately every thirty (30) minutes. This duty requires the officer to physically walk around to make an inspection. The officer will document in the post logbook when such duty was performed and note findings of each tour." (J-11.)

Burlington also entered into evidence a 2012 receipt signed by Batie confirming that the Policies and Procedures Manual had been received and was in effect. (J-12.)

Based on the record in this matter, I **FIND** that Officer Batie did not perform the required walking inspections of I Wing on June 27–28, 2017. He made false entries in the logbook to indicate that he had performed these inspections. Further, I **FIND** that on June 30–July 1, 2017, he failed to perform the required walking inspections and, again, he made false entries in the logbook to show that he had performed the tours.

### **LEGAL DISCUSSION**

In a civil-service disciplinary action, the appointing authority bears the burden of establishing alleged violations of Administrative Code provisions that subject the employee to disciplinary sanction. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The

proof must be by a preponderance of the credible evidence. In re Polk, 90 N.J. 550 (1982).

Burlington asserts that Batie violated N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. This latter charge alleges violations of Policies and Procedures Manual sections 1007, 1023, 1030, 1031, 1038, 1065, 1066, 1172, 1190, 1192, and 1250. During the hearing, Burlington withdrew the charge of violation of Policy 1192.

The first issue that must be addressed is the procedural motion made by Burlington that the matter is moot, as Batie did not include the FNDA for the June 27–28, 2017, charges with his appeal form. Rather, he admittedly only included the PNDA for those charges. Burlington contends that since that FNDA for the June 27–28, 2017, charges—which was issued on the same day as the FNDA for the June 30–July 1, 2017, charges—was not included in the appeal transmittal, that termination was effective, and any appeal of the other FNDA is moot. Appellant disagrees, disputing whether he was even served with the second FNDA, pointing out that Burlington has not presented a certified mail receipt for the June 27–28, 2017, FNDA.

It should be noted that in determining whether appellant perfected the appeal for the FNDA relating to the events of July 27–28, 2017, both parties admitted on the first day of hearing that they had just noticed the discrepancy in the appeal documents. No motion regarding the mootness of the appeal had been made prior to that time and respondent had filed no objection to the appeal going forward. Additionally, the matter had been transmitted to the OAL for hearing without the discrepancy being noted. Further, both FNDAs were issued on the same day and, other than the date of the incident, mirror each other in specifications and charges.

Appellant's inclusion of the PNDA for the July 27–28, 2017, charges, rather than the FNDA, shows an intent to appeal both sets of charges. While his inclusion of the wrong form was in error, there was no prejudice to either side, and the error was likely



the result of confusion engendered by Burlington's choice to file two sets of identical charges for the same conduct that took place over two shifts. As such, Burlington's request to dismiss the appeal as moot is **DENIED**.

Appellant has readily acknowledged that on June 27, 28, and 30, and July 1, 2017, he did not conduct required walking-tour inspections of his assigned post on I Wing. Further, he admitted that his entries in the logbook make it appear that he had in fact performed the required tours. He therefore does not contest that he violated the several policies and procedures discussed above.

I **CONCLUDE** that Batie violated N.J.A.C. 4A:2-2.3(a)(1), failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, in that he entered false information and neglected his vital duties in a correctional setting, acts that have the ability to undermine the public's trust in government and its employees and bring discredit to the institution, Karins v. Atlantic City, 152 N.J. 532, 557 (1998); N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, in that he violated Policies and Procedures Manual sections 1007, 1023, 1030, 1031, 1038, 1065, 1066, 1172, 1190, and 1250.

### **DISCIPLINARY HISTORY**

Appellant's disciplinary history is contained in R-1. It shows three suspensions, consisting of one, three, and five days, respectively, as well as several reprimands and warnings.

### **SANCTION**

While Batie does not deny that he is guilty of failing to perform his duties on the two days in question, he argues that removal is too harsh a penalty. He claims that he is the subject of disparate treatment as to the penalty imposed, and in even being charged with these violations. He cites two bases for his assertion. The first is that Burlington's review of video recordings of the facility's wings first focused upon I Wing, his assigned post. As a result, other officers assigned to other wings of the jail, who

may have similarly failed to perform the required tours, were not identified, as the video recordings of the other wings of the institution were not reviewed.

Additionally, the recordings showed that a Sergeant Hernandez, also assigned to I Wing, and a lieutenant, also assigned to that wing, failed to perform their required inspection tours, and yet they were not disciplined. Further, Batie cites In re Cox, Mercer County Department of Public Safety, No. A-02471-14 (App. Div. December 7, 2016), <https://njlaw.rutgers.edu/collections/courts/>, a matter involving a Mercer County correction officer found guilty of the same offenses as Batie who was only given a forty-five-day suspension by the appointing authority, which was upheld by the Civil Service Commission and then affirmed by the Appellate Division.

The appellate courts of New Jersey have analyzed the factors to be considered in determining the proper penalty when a correction officer fails to perform required security checks, thereby neglecting his/her duty, including the additional complication of the officer falsifying records. In Henry v. Rahway State Prison, 81 N.J. 571 (1980), the Civil Service Commission reduced a penalty imposed from removal to a ninety-day suspension where a correction officer had falsified a report. On appeal, the Supreme Court held that the Civil Service Commission had acted arbitrarily when it failed to consider a relevant factor, namely, the seriousness of a single instance of a State correction officer's falsification of a report, particularly in the context of a prison setting, where order and discipline are necessary for safety and security. As the Court said, "The falsification of a report can disrupt and destroy order and discipline in a prison." Henry, 81 N.J. at 580.

In In re Warren, 117 N.J. 295 (1989), the Court considered an appeal of Warren's thirty-day suspension. The appointing authority had removed him, but the administrative law judge (ALJ) imposed only a thirty-day suspension. On appeal, the Appellate Division split over whether the Merit System Board (then the name of the current Civil Service Commission) had properly chosen to suspend, and not remove, Warren from his position as a correction officer. As that court explained, there was some uncertainty as to the exact charges against Warren, for the Board had expressed concern as to whether the case was limited to neglect of duty or also involved

falsification. In upholding the Appellate Division's majority opinion affirming the suspension, as opposed to the dissent, which argued that removal should have been imposed, the Supreme Court stated that in the context of the case, the penalty imposed by the Board was not arbitrary, capricious, or unreasonable. However,

[i]n the clearer context of a corrections officer's trial for intentional falsification of a report, there can be no doubt that the Board must consider this as an offense striking at the heart of discipline within the corrections system. Failure to accord due consideration to that factor in the prison setting would violate implied legislative policies regarding prison security.

[Warren, 117 N.J. at 299.]

The Merit System Board had an opportunity to apply those rulings when it ruled in In re Castillo, CSV 4472-05, Initial Decision (October 11, 2007), modified, MSB (January 18, 2008), <http://njlaw.rutgers.edu/collections/oal/>. Castillo had been charged with neglect of duty and falsification, resulting in his termination. On de novo review, the ALJ determined that he had performed the required security tours, although not at the times that he had entered in the logbook. While the ALJ dismissed the neglect charge, the Board concluded that Castillo had neglected his duty when he failed to perform these tours at the required times, and concurred that he had falsified the records. The ALJ had reduced the removal to a thirty-day suspension. However, the Board imposed a six-month suspension, the maximum suspension allowable. As the Board noted,

[i]n determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. George v. North Princeton Developmental Center, 96 N.J.A.R. 2d 463, 465 (CSV) 1996. Although the Board applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. Henry v. Rahway, 81 N.J. 571, 580 (1980). It is settled that the theory of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that

some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Carter v. Bordentown, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Board emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also In re Phillips, 117 N.J. 567 (1990). In the instant matter, the Board emphasizes that the appellant is employed in a paramilitary setting and is charged with maintaining security, discipline and order in a correctional facility. The precise requirements of such a position are not mere technicalities but are established and must be adhered to in order to ensure the utmost security of the facility. The appellant's admitted failure to perform his duties in a timely manner and his falsification of official records are, indeed, egregious infractions, whether or not it has been established that grave consequences resulted.

In determining the appropriate penalty for an offense, each case must be assessed on its own facts. As the cited cases show, there is no fixed, immutable penalty for the offenses charged here. Unlike Mercer County in Cox, here Burlington imposed the maximum penalty of removal on Batie. Unlike in Castillo, where the officer performed at least some of his mandated tours but did not do so at required times, and then falsified the record, here Batie did not even conduct the tours. Further, the falsification of records is especially "egregious," Castillo, CSV 4472-05, Initial Decision (October 11, 2007), modified, MSB (January 18, 2008), <http://njlaw.rutgers.edu/collections/oal/>, and "strik[es] at the heart of discipline within the corrections system." Warren, 117 N.J. at 299. While Cox may suggest some doubt as to how the Commission may view the seriousness of these charges, that decision provides no reliable guide for the current case. In Cox, the appointing authority chose, for reasons that the record does not reveal, to suspend a neglectful and untruthful correction officer for forty-five days. While acknowledging the seriousness of Cox's violations, the Board chose to not upgrade the penalty. Given that the original penalty was a suspension, the Board could not have removed Cox on the de novo appeal. Had

Mercer County removed Cox, or imposed a stiffer suspension, it seems clear enough that the Commission would have affirmed that sanction.

In his request for a sanction lesser than termination, Batie contends that he has been the victim of disparate treatment. He makes no allegation that he was charged as a result of some invidious discrimination due to race, sex, age, or other such classification. "Disparate treatment," which involves enforcement of the law "applied and administered by public authority with an evil eye and an unequal hand," State of N.J., Twp. of Pennsauken v. Schad, 160 N.J. 156, 183 (1999) (quoting Cox v. Louisiana, 379 U.S. 536, 538–41 (1965)), raises concerns of a "constitutional" nature. However, both the United States Supreme Court and the New Jersey Supreme Court have limited claims of "disparate treatment" to situations involving differing treatment arising due to such distinctions. Oyler v. Boles, 368 U.S. 448 (1962); Schad, 160 N.J. at 183 ("The conscious exercise of some selectivity in enforcement is not a constitutional violation unless the decision to prosecute is based upon an unjustifiable standard such as race, religion, or other arbitrary classification.").

Batie does raise other facts, however, as a basis for his claim of disparate treatment. They include the fact that other officers stationed on other wings may have escaped detection for their infractions, as Burlington chose not to review their conduct on videos of their wings. While it might be argued that a more complete review of other officers' conduct may have been appropriate in the management of the facility, that does not justify ignoring the inappropriate conduct of appellant.

More germane to the determination of the appropriate penalty, however, is the conduct by Burlington not to impose discipline on higher ranking officers for conduct similar to that of Batie. As noted earlier, Burlington chose not to impose discipline on a sergeant and a lieutenant identified through the videos as not performing their security checks. The issue is not so much a disparate-treatment argument as an issue of a fair and proportionate penalty for the offense charged. While it is concerning that officers of a higher rank were not disciplined for similar conduct, there is not enough in the record to determine the reasoning used by Burlington in its decisions to forgo discipline in their cases. The record does not show whether the two superior officers also falsified their

records, nor does it show that they were aware of the failure of those they supervised to conduct their security checks. Without more, it is not possible to determine if the penalty imposed on Batie was so disproportionate as to call for a lesser penalty than termination.

While differing penalties have been meted out for offenses similar to those of Batie, his offenses were serious. They involved a failure to perform his required duties necessary for the safety of the inmates and the facility. He compounded that failure by his falsification of records. As such, the penalty of termination was warranted.

It is hereby **ORDERED** that the appeal filed by Officer Karshawn J. Batie is **DENIED**, and that Batie be **REMOVED** from his position as a correction officer. Officer Batie's removal is effective as of November 13, 2017.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, 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.

April 16, 2018

DATE

*Patricia M. Kerins*  
PATRICIA M. KERINS, ALJ

Date Received at Agency:

April 16, 2018 (mailed)

Date Mailed to Parties:

April 16, 2018 (mailed)

/mel

**WITNESSES**

**For Appellant:**

None

**For Respondent:**

Matthew Leith

**EXHIBITS**

**Joint:**

- J-1 Preliminary Notice of Disciplinary Action (Incident Dates: June 30 and July 1) (31-A) to Karshawn Batie
- J-1a Preliminary Notice of Disciplinary Action (Incident Dates: June 27 and June 28) (31-A) to Karshawn Batie
- J-2 Final Notice of Disciplinary Action (Incident Dates: June 30 and July 1) (31-C) to Karshawn Batie
- J-2a Final Notice of Disciplinary Action (Incident Dates: June 27 and June 28) (31-C) to Karshawn Batie
- J-3 July 6, 2017, Memo/Incident Report by Cpt. McDonnell to Warden M. Scholtz
- J-3a July 21, 2017, Memo/Incident Report by Cpt. McDonnell to Warden M. Scholtz
- J-4 Burlington County Jail I-Wing Post Log Book (Incident Dates: June 30 and July 1)
- J-4a Burlington County Jail I-Wing Post Log Book (Incident Dates: June 27 and June 28)
- J-5 June 30, 2017, Burlington County Officer Assignment List
- J-5a June 27, 2017, Burlington County Officer Assignment List



- J-6 Incident Report
- J-7 Burlington County Detention Center Policies and Procedures Section 1007
- J-8 BCDC Policies and Procedures Sections 1012–1074
- J-9 BCDC Policies and Procedures Section 1172
- J-10 BCDC Policies and Procedures Section 1190
- J-11 BCDC Policies and Procedures Section 1250
- J-12 BCDC Standard Operating Policies and Procedures Acknowledgement by Karshawn Batie dated September 27, 2012
- J-13 Certified Mail Receipts

**For Appellant:**

- A-1 Redacted Preliminary Notice of Disciplinary Action to Officer "A.C."
- A-2 Redacted Final Notice of Disciplinary Action to Officer "A.C."
- A-3 BCDC Policies and Procedures Section 1005
- A-4 BCDC Policies and Procedures Section 1006

**For Respondent:**

- R-1 Disciplinary History of Appellant