



## STATE OF NEW JERSEY

In the Matter of Elvin Urrutia  
 Garden State Youth Correctional  
 Facility, Department of Corrections

**FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2018-3632  
 OAL DKT. NO. CSR 10128-18

**ISSUED: JANUARY 18, 2019 BW**

The appeal of Elvin Urrutia, Senior Correctional Police Officer, Garden State Youth Correctional Facility, Department of Corrections, removal effective May 31, 2018, on charges, was heard by Administrative Law Judge Mary Ann Bogan, who rendered her initial decision on December 4, 2018. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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 January 16, 2019, 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 Elvin Urrutia.

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 16<sup>th</sup> DAY OF JANUARY, 2019



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 10128-18

IN THE MATTER OF ELVIN URRUTIA,  
GARDEN STATE YOUTH  
CORRECTIONAL FACILITY.

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CSC DKT. #  
2018-3632

Arthur J. Murray, Esq., for appellant Elvin Urrutia (Alterman & Associates, LLC,  
attorneys)

Elizabeth A. Davies, Deputy Attorney General, appearing for respondent Garden  
State Youth Correctional Facility (Gurbir S. Grewal, Attorney General of  
New Jersey, attorney)

Record Closed: November 9, 2018

Decided: December 4, 2018

BEFORE MARY ANN BOGAN, ALJ:

**STATEMENT OF THE CASE**

Appellant Elvin Urrutia, a correction officer with respondent Garden State Youth Correctional Facility (Facility), appeals from disciplinary action removing him for N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause: violation of Human Resources Bulletin 84-17 sections C.11, conduct unbecoming an employee, and E.1, violation of a rule, regulation, policy, procedure, order or administrative decision. The allegation relating to these charges is

that appellant was involved in a series of incidents while off duty in Philadelphia, PA, that required a police response. The police report indicates that appellant drove while intoxicated on the wrong side of the road; struck a pedestrian; failed to follow verbal commands of a police officer; attempted to evade police by fleeing the scene in his motor vehicle; and after the vehicle came to a stop and he was approached by police officers, appellant resisted arrest, and assaulted three police officers. Appellant admits that the incident took place but contends that there is no record of an arrest, guilty plea, or judgment of conviction, and that removal is not the appropriate discipline because his over-use of alcohol was the result of his active duty in the military.

### **PROCEDURAL HISTORY**

On March 14, 2012, the respondent issued a Preliminary Notice of Disciplinary Action setting forth charges for an incident that allegedly occurred on March 12, 2012. Appellant requested a departmental hearing, which was held on May 2, 2018. On May 23, 2018, the respondent issued a Final Notice of Disciplinary Action (FNDA), sustaining the charges and removing the appellant effective May 31, 2018. His appeal was filed at the Office of Administrative Law (OAL) on June 26, 2018 (N.J.S.A. 40A:14-202(d)) and heard on October 19, 2018.

### **FACTUAL DISCUSSION**

**Christopher Binns** (Binns), a Philadelphia police officer for eleven years, testified that he was on duty on March 12, 2012, patrolling the intersection of a popular nightclub that had just let out people. Officer Binns observed appellant's motor vehicle near the intersection, traveling south in the northbound lane. The motor vehicle driven by the appellant struck a female pedestrian, who slid off the car after impact. A friend of the pedestrian struck by appellant's vehicle helped her walk to the sidewalk. Binns approached appellant's vehicle, observed that the appellant's eyes looked very red, and ordered the appellant to turn off the car. At that time Binns was leaning inside the car through the open passenger-side door, and his feet were outside of the vehicle. Appellant refused the order and stepped on the gas. Binns recalled that his rib cage was struck by the vehicle as he fell from the passenger side of the vehicle. The appellant traveled

several blocks, running several red lights. Officer Lewis picked Binns up in the patrol wagon and they pursued the appellant's vehicle, activating the patrol lights and siren. For a few moments they lost sight of the appellant's vehicle. Once appellant's vehicle stopped, Officer Binns and Officer Lewis ran to appellant's vehicle. Again, the appellant refused their orders to exit the vehicle. Officer Lewis pulled the appellant from the vehicle. Appellant began to kick, scream, and punch, and yelled out that he was in the military. Appellant appeared extremely intoxicated and was able to use "extreme force" during the struggle. Officer Binns injured his nose, and Officer Lewis injured his left knee. Officer Binns called for backup assistance. Appellant was subdued with the help of two additional officers who arrived at the scene, handcuffed and arrested. It took about five minutes to subdue and restrain appellant. Officer Binns prepared a Complaint or Incident Report (R-2) and a Vehicle or Pedestrian Investigation Report (R-3), a typical report prepared when an incident involves a pedestrian and issued a Traffic Citation to the appellant (R-4). Officer Binns also completed the Philadelphia Police Department Use of Force Report, a form completed when force is used by or against a police officer during an incident (R-5).

Officer Binns understands that by the nature of his work he is typically engaging with a person who is experiencing the worst day of their life. This incident in particular stood out to Binns, even though he has had many citizen interactions as a police officer, because he was struck by a vehicle and injured, and he remembered that the appellant mentioned that he had been in the military.

**Philip Lewis (Lewis)**, a Philadelphia police officer for twenty-five years, with more than ten years with this police department, remembered his encounter with the appellant on March 12, 2012. Officer Lewis was working District 25 along with Officer Binns outside of a nightclub, exiting patrons, handling typical problems like fights in the crowd. Then he observed appellant's vehicle traveling south in the northbound lane of the road and striking a female pedestrian, knocking her to the ground. He observed Binns approach the vehicle, and while Binns reached inside the vehicle from the passenger side, appellant pressed on the gas, fleeing the scene. As a result, Binns was hit by the passenger-side door and rolled out of the vehicle. Lewis retrieved the patrol wagon and picked up Binns. They pursued the appellant, who was still traveling south in the northbound lane, through multiple red lights, until they lost sight of him. Eventually appellant's vehicle came to a

stop, and the officers approached the vehicle. Lewis issued a verbal command for appellant to exit the vehicle. Appellant refused. Lewis then opened the driver-side door and issued the command again. After appellant refused the command a second time, Lewis forced the appellant out of the vehicle. Appellant was kicking, screaming, and cursing. The appellant continued to resist both officers' attempts to subdue him, then appellant punched the officers and shouted out that he was in the military. Appellant attempted to reach for Lewis's collapsible baton after Lewis pulled it out. The incident continued, and the officers called for backup assistance to help restrain and arrest the appellant. Lewis also recalled that it took five minutes to subdue and restrain the appellant.

Since the incident, Lewis has encountered the appellant. He had been invited to a friend's wedding. The friend mentioned that a cousin was involved in an incident with the police department. Lewis thought the incident sounded familiar, so he asked his friend for the cousin's name. He spoke to the appellant on the phone; the appellant admitted to what happened and apologized. The conversation was brief. Lewis did not attend the wedding.

Lewis did not know the appellant before the incident and he did not know that the appellant did serve in the military.

Lewis prepared a Complaint or Incident Report (R-6) and a Traffic Citation (R-7). He reviewed the Police Crash Reporting Form, which he found to be accurate (R-8).

**Davin A. Borg** (Borg) is the administrative major at New Jersey State Prison. He has been employed by the New Jersey Department of Corrections (DOC) since 1999. His current duties include responsibility for disciplinary matters, policies, and daily operations. Correction officers are held to a higher standard of conduct both on and off duty. This standard is imposed in order to maintain public trust. All employees are provided with the Law Enforcement Personnel Rules and Regulations manual, which governs all law-enforcement personnel who work as correction officers and sets forth the expectation of conduct. Appellant received a copy of the manual when he entered the

Academy. Borg concluded that Appellant violated policies and procedures pertaining to the rules of conduct.

Article 1, General Provisions, of the Department of Corrections Law Enforcement Personnel Rules and Regulations sets forth:

Section 1

No officer shall violate the laws, statutes or ordinances of the United States, . . . or of any state of the United States . . .

. . . .

Section 2

No officer shall knowingly act in any way that might reasonably be expected to create an impression of suspicion among the public that an officer may be engaged in conduct violative of the public trust as an officer.

[R-12.]

Here, appellant violated several laws, including driving while intoxicated, leaving the scene of an accident resulting in injury to an officer, failing to follow police orders, resisting arrest, and engaging in a physical altercation with the officers who were arresting him, causing injury to the arresting officers.

Article III, Professional Conduct, states:

Section 2

No officer shall

- a. Engage in threatening or assaultive conduct,
- b. Use insulting language, or behave in a disrespectful manner while in the performance of their duty.
- c. Behave in an insubordinate manner toward any competent authority.

### Section 3

No officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the Department. Officers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty.

[R-12.]

This section addressed the higher standard of conduct both on duty and off duty. Appellant violated the standard of conduct when he conducted himself in a manner that was unbecoming an employee when he was off duty.

Borg explained that correction officers are law-enforcement officers and hold police powers. Administrative Order 010.001, Standards of Professional Conduct, provides at Section III, Policy:

Employees of the Department of Corrections hold a special position of trust as public employees. Because the Department of Corrections is a law enforcement agency, employees must meet an enhanced standard of personal conduct and ethical behavior which shall hold the respect and confidence of the citizens of the state. Whether on or off duty, the individual conduct of Department employees reflects upon the employee and, in some circumstances, upon the Department of Corrections and the State of New Jersey.

[R-13.]

The importance of an employee's conduct, both on and off duty, was reiterated to all officers in an interoffice communication issued by the Facility. The memo reminds officers that they hold a "special position of trust as a public employee," and "[b]ecause the Department of Corrections is a law enforcement agency, employees must meet an enhanced standard of personal conduct that reflects positively on our operations and all employees who contribute each day to the successful achievement of the mission and important functions entrusted to our organization for the public good." (R-14.)



Borg explained that the DOC Disciplinary Action Policy, Human Resources Bulletin 84-17, Table of Offenses, provides a penalty range for the charges of conduct unbecoming an employee and violation of a rule, regulation, policy, procedure, order or administrative decision, from an official written reprimand up to removal. (R-1.) This wide variation of penalties is dependent upon the conduct of the individual. Borg indicated that being late, for example, would be a minor infraction, whereas, as in this case, harming others, including a police officer, and fleeing the scene, is serious conduct. All employees are familiar with these policies and the penalties associated with any violation. Appellant has no disciplinary history, and this was taken into consideration when determining the appropriate penalty.

Borg emphasized the Facility's strong position on conduct outside of the workplace even when an officer is not wearing a uniform, because it reflects upon the integrity of the Department, and the ability to keep people safe. Once that's violated, it's "hard to get that back."

**Elvin Urrutia**, appellant, started working for the Facility after graduating from the New Jersey Department of Corrections Police Academy in April 2005. His responsibilities included ensuring safety of inmates and civilians, and the orderly operation of the institution. Before this time, appellant had never been issued a major discipline. Appellant has not worked in the capacity of a correction officer since the incident on March 12, 2012. Appellant concedes that he has no memory of the incident because he was intoxicated, and he does not dispute the Department's testimony or the content of its reports.

Appellant acknowledges that his first attempt at participating in Veteran's Court as a result of his actions on March 12, 2012, was rejected. He then pled guilty to the criminal charges. He was thereafter approved for Veteran's Court when the judge overseeing his case felt strongly that he deserved a second chance. Appellant withdrew his guilty pleas after being accepted into Veteran's Court and entered pleas of no contest on the condition that he successfully complete Veteran's Court. After his successful completion of Veteran's Court, appellant withdrew his pleas of no contest and all charges, and his record was expunged.

Appellant points to his military service from January 2002 until his honorable discharge in 2010 as the impetus of his conduct on March 12, 2012. While in the military, appellant served in active combat for six months in Kuwait and Iraq. He was caught in active firefight, and lost members of his battalion, and saw civilians, including children, die. Appellant learned, after successfully completing Veteran's Court, that his military service had impacted his family and work life, which led to his use of alcohol as a coping mechanism. He also mentioned that he has experienced much loss, including his divorce, loss of custody of his children, and his house being foreclosed on, as incidents that occurred as a result of the effects of combat duty and his excessive use of alcohol.

Appellant successfully participated in the Philadelphia Veterans Court, which included his successful completion of the Veterans Affairs Medical Center Addiction Recovery Unit and Resource Human Development Healing AJAX Vet-Trem program, a program that focuses on trauma and the various associated issues and behavior. Appellant graduated from the Philadelphia Veterans Court on November 9, 2017. (P-1; P-2; P-3; P-4.)

The appellant agrees with the facts set forth by the respondent and does not dispute that a penalty should be issued for his actions on March 12, 2012 but argues that removal is not warranted. Since he began his employment in 2005, he has not been issued any other major discipline, and the current disciplinary action stems from conduct that took place "one time on one night" because of his overuse of alcohol, which was an effect of his six and a half years of military service. Appellant argues that if he is returned to work, the Facility has the ability to conduct a psychological test and impose a last-chance agreement. He urges that consideration should be given to his clean record since the March 12, 2012, incident, and his ability to no longer use alcohol as a coping mechanism.

## LEGAL ANALYSIS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. Mastrobattista v. Essex Cty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory, and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In appeals concerning major disciplinary actions, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The preponderance may be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

As a correction officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). Correction 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).

The respondent has sustained the charges of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violation of Human Resources Bulletin 84-17, as amended, C.11—conduct unbecoming an employee and E.1—violation of a rule, regulation, policy, procedure, order or administrative decision.

The appellant does not challenge the charge of conduct unbecoming sustained in the FNDA. The allegation relating to these charges is that appellant was involved in a series of incidents while off duty in Philadelphia. The police report indicates that appellant drove while intoxicated, struck a pedestrian, attempted to evade police, resisted arrest, and assaulted three police officers.

Conduct unbecoming a public employee has been interpreted broadly as conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect for governmental employees and confidence 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, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not “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, appellant admits to driving while intoxicated, striking a pedestrian, then injuring the responding police officer when evading police and speeding off. Appellant further admits that after being chased by police, he resisted arrest when he assaulted police officers and backup officers who were attempting to restrain him. These actions are egregious, and do not meet the standard of conduct expected of correction officers.

Accordingly, I **CONCLUDE** that the respondent has met its burden of proof on the charge of conduct unbecoming a public employee.

Appellant has also been charged with “other sufficient cause,” in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violations of Human Resources Bulletin 84-17, section C.11, conduct unbecoming an employee, and section E.1, violation of a rule, regulation, policy, procedure, order or administrative decision. Appellant conducted himself in a manner that violated standards of good behavior, and the higher level of conduct that is expected of him as a law-enforcement officer both on and off duty. As such, I **CONCLUDE** that the respondent has met its burden of proof on this charge.

### **PENALTY**

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980); In re Herrmann, 192 N.J. 19, 33–34 (2007). Progressive discipline is not a “fixed and immutable rule to be followed without question.” Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid. (Appellant also cites In re Stallworth, 208 N.J. 182, 195–96 (2011), and Feldman v. Irvington Fire Department, 162 N.J. Super. 177 (App. Div. 1978), to support progressive discipline, particularly consideration of the mitigating factors.)

The Facility seeks to impose major discipline, namely, removal, on the appellant for violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violation of Human Resources Bulletin 84-17, as amended, sections C.11, conduct unbecoming an employee, and E.1, violation of a rule, regulation, policy, procedure, order or administrative decision.

The Facility relies principally on the egregiousness of appellant's conduct and the policies and procedures that appellant failed to adhere to in asserting that progressive discipline is not warranted, and that termination is appropriate for this first-time discipline, particularly because the Facility is operated as a paramilitary organization, and, as such, rules and regulations are to be strictly followed. 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 are not to be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The charges are particularly egregious, in that a law-enforcement officer is held to a higher standard of conduct than other employees, and is expected to act in a responsible manner, honestly, and with integrity, fidelity, and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. E. Jersey State Prison, 97 N.J.A.R.2d (CSV) 166. It is well settled that suspension or removal may be justified where the misconduct occurred off duty; were it otherwise, "the desired goal of upholding the morale and discipline of the force, as well as maintaining public respect for its officers, would be undermined." In re Emmons, 63 N.J. Super. 140.

Appellant seeks a reduction of the penalty from termination to suspension, based on the mitigating circumstances, urging that his conduct that gave rise to the charges was caused by the effect his honorable military service had on his life once he returned home, which caused him to overuse alcohol. He points to his rehabilitation, and his successful completion of and graduation from Veteran's Court as evidence that he should be returned to work. Appellant is willing to undergo a psychological examination to determine his fitness for duty prior to his reinstatement and to execute a last-chance agreement. Appellant cites numerous cases in support of progressive discipline and cases about civilian civil-service employees who avoided removal.<sup>1</sup>

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<sup>1</sup> The nature of the conduct for which discipline was imposed in these cases, however does not compare to the nature and gravity of the appellant's serious and egregious conduct, which consisted of multiple offenses. Appellant also cites other cases where the removal of the employee was warranted when the conduct was egregious.

Even though appellant did not present substantial evidence or expert testimony to demonstrate a correlation between his military service and his overuse of alcohol, strong consideration was given to appellant's honorable service in the military, and the effect he said his service had on his civilian life once he returned home, for purposes of progressive discipline. Previous agency cases have considered this issue also. In Bogart v. Board of Trustees, Police & Firemen's Retirement System, No. A-2167-14T4, 2016 N.J. Super. Unpub. LEXIS 1540 (App. Div. July 1, 2016)<sup>2</sup>, a civil-service employee's post-traumatic stress disorder (PTSD) was considered a mitigating factor and resulted in a partial forfeiture instead of a total forfeiture of the police officer's service and salary because the nine counts of shoplifting were demonstrated to be a direct result of his PTSD, caused by his service.

The eleven-point balancing test used to determine whether a retired public employee's pension should be forfeited, either partially or totally, can be useful in considering whether or not a penalty should be reduced based on mitigating circumstances. The distinguishing facts are important, however. In Bogart, the retired employee demonstrated a direct cause between his military service and his conduct, and because the employee was retired, there was no need to consider the effect the conduct would have on the workplace. Here, appellant did not show a correlation between his military service and his off-duty conduct. Also, mitigation would have a detrimental effect on the appellant's workplace, because the duties appellant is expected to perform as a correction officer would be undermined, especially because he would be held to a lesser standard of conduct than the other officers and the juvenile offenders the appellant is expected to supervise, which would send the wrong message, especially to the juveniles. Mitigation also creates an inherent safety risk for the Facility because correction officers are expected to maintain safety and order there.

In In re Valentine, Department of Human Services, Ann Klein Forensic Center, CSV 16199-15, Initial Decision (July 27, 2017), adopted, CSC (September 7, 2017), <http://njlaw.rutgers.edu/collections/oal/>, a civil-service employee's military service was

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<sup>2</sup> In accordance with R. 1:36-3, no contrary unpublished opinions were found.

considered when PTSD was demonstrated to be a contributing factor to the employee's conduct, but ultimately removal was upheld. The employee's PTSD did not justify his physical abuse of a patient. In In re Lopez, Brick Township, CSV 08205-08, Initial Decision (December 28, 2009), rejected, CSC (March 16, 2010), the Commission upheld the removal of a police officer, who had served in the military and had once been prescribed Xanax for PTSD, who was found to be in possession of two Xanax pills not prescribed to him. In In re Harris, Department of Corrections, Central Reception Assignment Facility, CSV 6806-05, Initial Decision (October 26, 2007), rejected, MSB (December 21, 2007), <http://njlaw.rutgers.edu/collections/oal/>, the Merit System Board upheld removal for possession of cocaine even though the police officer's three years of service in the military and trauma that he experienced overseas resulted in a diagnosis of PTSD when he returned home.

Appellant's rehabilitation efforts were also considered, however there are no departmental policies supporting a fitness-for-duty evaluation or a last-chance agreement for an officer's conduct resulting from alcohol use while off duty. In addition, appellant did not provide any evidence of continued rehabilitation after graduating from Veteran's Court.

Here the appellant disputes the penalty to be imposed, and not the conduct. The Department seeks removal of the appellant because of the underlying conduct that caused the charges to initially be filed, which resulted in appellant's subsequent admission into Veteran's Court. The fact that the charges were ultimately dismissed after he successfully completed Veteran's Court is not relevant. "Where the conduct of a public employee which forms the basis of disciplinary proceedings may also constitute a violation of the criminal law, . . . the absence of a conviction, whether by reason of nonprosecution or even acquittal, bars neither prosecution nor finding of guilt for misconduct in office in the disciplinary proceedings." Sabia v. Elizabeth, 132 N.J. Super. 6, 12 (App. Div. 1974).

Here the appellant has been employed as a correction officer since 2005. In mitigation, appellant served honorably in the military. While in the military, appellant



served in active combat for six months in Kuwait and Iraq. Appellant does not have any other disciplinary history.

The aggravating factors are significant: appellant drove while intoxicated on the wrong side of the road; struck a pedestrian; failed to follow verbal commands of a police officer; attempted to evade police by fleeing the scene in his motor vehicle; and after the vehicle came to a stop and he was approached by police officers, appellant resisted arrest, and assaulted three police officers. Appellant does not dispute the multiple incidents.

Having weighed the aggravating and mitigating factors and the proofs presented, I **CONCLUDE** that appellant's misconduct was so egregious as to warrant removal, and respondent's action of removing the appellant from his position is appropriate. Appellant failed to adhere to the code of conduct, which applies while on and off duty. Appellant violated these rules of conduct when he drove while intoxicated, struck a pedestrian, then injured the responding police officer when evading police and speeding off. After being chased by police, appellant resisted arrest when he assaulted police officers and backup officers who were attempting to restrain him. Appellant also failed to conduct himself in the manner required for the special position of trust he holds as a correction officer with police powers.

I **CONCLUDE** that the action of the appointing authority removing appellant for his actions should be affirmed.

### **ORDER**

I **ORDER** the charges against the appellant for violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, including appellant's violation of the Department Rules and Regulations Human Resources Bulletin 84-17 as amended, sections C.11, conduct unbecoming an employee, and E.1, violation of a rule, regulation, policy, procedure, order or administrative decision, are hereby sustained and that the action of the Garden State Youth Correctional Facility

in removing appellant from his position as a Correction Officer is **AFFIRMED**. The appeal is hereby **DISMISSED**.

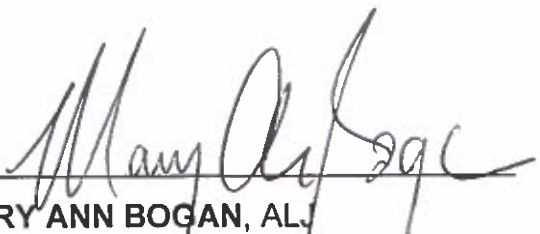
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

December 4, 2018

DATE

  
MARY ANN BOGAN, ALJ

Date Received at Agency:

December 4, 2018

Date Mailed to Parties:

December 4, 2018

MAB/cb

**APPENDIX**

**WITNESSES**

**For appellant:**

None

**For respondent**

Christopher Binns

Philip Lewis

Davin A. Borg

**EXHIBITS**

**Jointly submitted:**

J-1 Final Notice of Disciplinary Action

**For appellant:**

P-1 Addiction Recovery Unit Completion Certificate

P-2 Certificate of Graduation from Veterans Court

P-3 Certificate of Completion of AJAX Program

P-4 Letter of November 9, 2017 Concerning Completion of AJAX Program

**For respondent:**

R-1 DOC Human Resource Bulletin 84-17 As Amended

R-2 Complaint or Incident Report

R-3 Vehicle or Pedestrian Investigation Report

R-4 Traffic Citation

R-5 Police Department Use of Force Report

R-6 Complaint or Incident Reports

R-7 Traffic Citations

R-8 Police Crash Reporting Form (Multiple pages)

R-9 Police Department Use of Force Report

R-10 Not Admitted

R-11 Not Admitted

R-12 Law Enforcement Personnel Rules and Regulations

R-13 Administrative Order 010.001 – Standards of Professional Conduct

R-14 Personal Conduct on and off duty

R-15 Code of Ethics