

not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 10 working day suspension to a two working day suspension. The Commission further orders that appellant be granted eight days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned by the appellant during this period. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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 18TH DAY OF DECEMBER, 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
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04620-19

AGENCY DKT. NO. 2019-2656

**IN THE MATTER OF MAURICE JACKSON,
ESSEX COUNTY DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS.**

Eric W. Feinberg, Esq., for appellant, Maurice Jackson (The Anthony Pope Law Firm, P.C., attorneys)

Jill Caffrey, Assistant Essex County Counsel, for respondent Essex County Department of Public Safety and Corrections (Courtney M. Gaccione, County Counsel, attorney)

Record Closed: October 18, 2019

Decided: November 25, 2019

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Correction Officer Maurice Jackson (Jackson) appeals a ten-day working suspension imposed by respondent Essex County Department of Safety and Corrections (County). The suspension is predicated on two specific incidences: one occurring on June 13, 2018, wherein Jackson allegedly contributed to the wrongful

release of an inmate and another occurring on June 22, 2018, wherein Jackson delayed in responding to the order of a superior officer.

PROCEDURAL HISTORY

On July 20, 2018, the County issued Jackson a Preliminary Notice of Disciplinary Action (PNDA), charging him with the following:

CHARGES:

N.J.A.C. 4A:2-2.3(a)(1): Incompetence, inefficiency, or failure 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)(12): Other Sufficient Cause;

Violation of Department Rules and Regulations: 3:1.1 Standard of Conduct; 3:1.2 Competence; 3:1.4 Cooperation; 3:1.9 Performance of Duty; 3:1.12 Insubordination; 3:1.13 Obedience to Laws and Regulations.

SPECIFICATIONS:

On June 20, 2018, an investigation was concluded by Lieutenant Barcliff, which revealed that Officer [sic] violated Departmental Rules and Regulations and 4A Statutes.

Specifically, on Wednesday June 13, 2018, Officer Jackson signed the "Body and Warrant Sheet" of an inmate, stating that there were no additional warrants. Officer Jackson then satisfied the detainers from the Municipality of Clifton and the State of Florida in the County Correction Information System (CCIS) prior to discharging the inmate. Officer Jackson mishandled the folder and contributed to the inmate being discharged from the Clifton Police Department without being extradited to Florida.

In addition, specifically on June 23, 2018, Sergeant Crawford reported that on Friday, June 22, 2018, at 12:11 P.M., he ordered Officer Jackson to report to Building Three, Level One, C-Pod (3C1) to relieve another officer for the day. Officer Jackson then chose to go to another area that he was not assigned to, without permission. He then reported to 3C1, arriving at 12:37 P.M., deliberately delaying his arrival to his assigned area. Officer Jackson demonstrated a lack of competence and cooperation and his failure to follow a lawful order was insubordinate. As a result of the above

violations set forth above, it is recommended that this employee receive a thirty (30) day suspension.

[Exhibit 1.]

On February 27, 2019, the County issued a Final Notice of Disciplinary Action (FNDA). The FNDA sustained all of the charges within the PNDA and suspended Jackson for ten days. (Exhibit R-1.) Jackson appealed his suspension with the Civil Service Commission and the within matter was transmitted to the Office of Administrative Law as a contested case on April 3, 2019.

A hearing was conducted on September 18, 2019, before the undersigned. Written summations were simultaneously submitted to the Court on October 18, 2019, at which point the record was closed.

SUMMARY OF THE TESTIMONY

Sgt. Shreekk Crawford

Sgt. Shreekk Crawford testified on behalf of the County in support of the charges relating to an incident that occurred on June 22, 2018. Sergeant Crawford stated that on this date he was the sergeant assigned to the Intake area and therefore the direct supervisor of Jackson. Sergeant Crawford explained that in an attempt to find relief for an officer with a medical emergency, he had Jackson paged twice and Jackson did not respond. Sergeant Crawford subsequently located Jackson in the Inmate Receiving Control booth (IRC). When Sergeant Crawford spoke to Jackson over the phone, Jackson indicated that he had returned from lunch and had been at the IRC booth for approximately fifteen minutes. Sergeant Crawford then ordered Jackson to relieve the officer with the medical emergency.

After approximately fifteen minutes, Sergeant Crawford noticed that Jackson had still not arrived at the location to which he was ordered to report. When Jackson arrived at the post, approximately twenty minutes after Sergeant Crawford's order to do so, he was confronted by Sergeant Crawford as to the delay. Jackson indicated to Sergeant

Crawford that instead of reporting directly to his assigned post, he escorted an inmate to Building 2, Level 3 D-pod at the request of another officer. Sergeant Crawford testified that Jackson should have immediately followed his order as he is a superior officer and should not have taken upon himself to escort an inmate at the behest of another officer. Crawford testified that he immediately notified the shift commander of the incident and informed the shift commander that he would be submitting a formal report charging Jackson with insubordination, which he did.

Lt. Todd Barcliff

Lt. Todd Barcliff testified on behalf of the County regarding the wrongful release of an inmate on June 13, 2018. Lieutenant Barcliff investigated the incident and prepared a report (Exhibit R-5). Lieutenant Barcliff stated that on the date in question Jackson was assigned to the pre-booking area, where he was the officer assigned to release inmates to other jurisdictions. Jackson was under Lieutenant Barcliff's command on the date in question. On the date in question, Jackson Received a "Body and Warrant Receipt" for the release of an inmate. (Exhibit R-6.) Lieutenant Barcliff noted that the Body and Warrant Receipt was signed by a member of the Clifton Police Department (as the receiving agency) and by the County Corrections Record Room Sergeant on duty who approved the Body and Warrant Receipt before it was passed along to Jackson.

Lieutenant Barcliff testified that the Body and Warrant Receipt indicated that the inmate had no outstanding warrants, notwithstanding the fact that the inmate actually had an open warrant from Florida (Exhibit R-11) and Clifton, NJ. Lieutenant Barcliff testified that the open Florida Warrant was contained in the inmate's folder to which the Body and Warrant Receipt was attached. Jackson could have easily reviewed the contents of the folder and realized that the information on the Body and Warrant Receipt was incorrect. Lieutenant Barcliff testified that Jackson cleared the Florida warrant in the County Correction Information System (CCIS) and satisfied the detainers from the Municipality of Clifton and the State of Florida in CCIS prior to discharging the inmate. (Exhibits R-7, R-8, R-9). Lieutenant Barcliff testified that Jackson should not have released the inmate with incorrect information of the Body and Warrant Receipt and

should have ensured that the open Florida warrant was received by Clifton. Lieutenant Barcliff explained that it is important for the receiving jurisdiction, here Clifton, to receive the actual warrant. Lieutenant Barcliff testified that Jackson released the inmate to Clifton with a Body and Warrant Sheet with the wrong information, and thus, according to Lieutenant Barcliff, Jackson contributed to the inmate being wrongfully released from Clifton without being extradited to Florida.

Lieutenant Barcliff then elaborated as to the nature of the CCIS, noting that is an internal system only accessed by the Essex County Department of Corrections and he testified that it does not interface with the National Crime Information Center (NCIC) database. It is only for county jail management purposes.

Lieutenant Barcliff then testified that as a supervisor of the intake area, he is familiar with the policies governing that area of the jail. He then testified regarding Exhibit R-12, which is a document entitled "Intake and Release of Inmates/ICE Detainees." Lieutenant Barcliff testified that this was the specific written policy that officers assigned to the intake area, such as Jackson, are to follow. He then referred to the specific duties of officer Jackson regarding inmate release as listed in the policy. Lieutenant Barcliff confirmed that Jackson successfully fulfilled all the listed duties on upon releasing the inmate on the date in question.

On cross-examination, Lieutenant Barcliff affirmed that Jackson performed all of his post duties specifically stated in the County's Release Policy, PS.CLS.006 (Exhibit R-12). However, Lieutenant Barcliff testified that Jackson still had a broader duty as a law enforcement officer to prevent wrongful releases.

Sgt. Michael Radice

Sgt. Michael Radice testified on behalf of the County with regard to Jackson's discipline history, which included a written reprimand for neglect of duty and violation of policy PS.CLS.006. (Exhibit R-14.)

Appellant's Testimony

Jackson testified with regard to the incident on June 22, 2018 (delayed response time). Jackson indicated that he had shortened his lunch to relieve an officer in the IRC booth prior to Sergeant Crawford asking to him to relieve a different officer in 3C1. He testified that on his way to 3C1 he was asked by another officer to transport an inmate to a housing unit near 3C1. Since the housing unit was on his way, and the requesting officer was a superior to Jackson, he obliged the request. Jackson did not feel that he took unreasonably long to report to 3C1 and he stands by his decision to escort the inmate to the special housing unit at the request of a senior officer. Jackson admitted that Sergeant Crawford's order to relieve an officer was superior to that of the other officer's request to escort an inmate over to housing.

As to the June 13, 2018, incident, Jackson testified that he followed procedure with regard to the release of the inmate to Clifton and that it was not part of his duties to review the documents contained in the folder. He testified that any documentation contained in the folder is checked by the Record Room Sergeant on duty, who then signs the Body and Warrant Sheet before passing it along to Jackson. Once Jackson receives the Body and Warrant Sheet, his duty is to ensure the sheet in front of him pertains to the particular prisoner being released. He then testified that he has to clear all holds and detainers in the internal CCIS prior to release as a matter of protocol. He noted this act in no way clears any warrant from the NCIS, which is accessed by outside law enforcement agencies. Jackson reiterated his responsibility was to release the proper inmate to the designated receiving jurisdiction as stated on the Body and Warrant Sheet as approved by the sergeant.

FINDINGS OF FACT

Having had an opportunity to consider all the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

Officer Maurice Jackson was hired by the Essex County Department of Corrections on February 5, 2007, as a correction officer.

On June 13, 2018, Officer Jackson signed the "Body and Warrant Sheet" of an inmate. That sheet was prepared in the Record Room and signed off on by the Record Room Sergeant. This Body and Warrant Sheet stated that there were no additional warrants. Relying solely on the information contained on the sheet, officer Jackson satisfied the detainers from the Municipality of Clifton and the State of Florida in the County Correction Information System (CCIS) prior to discharging the inmate. It is undisputed that this act of clearing any warrants or detainers out of the internal CCIS has no effect on the NCIS or any other law enforcement agency's system and I FIND this was done as part of the normal operating procedure required whenever an inmate is released to another law enforcement agency. I further FIND that Jackson properly performed all his duties regarding the release of an inmate to another law enforcement agency as described in Policy Statement PS.CLS.006 of the Handbook (Exhibit R-12). The inmate was then released into the custody of the Clifton Police Department and subsequently discharged from the Clifton Police Department without being extradited to Florida.

In a separate instance on June 22, 2018, at 12:11 p.m., Sergeant Crawford ordered Officer Jackson to report to Building Three, Level One, C-Pod (3C1) to relieve another officer for the day. Officer Jackson was subsequently asked to escort a prisoner to a housing unit on the way over to the area where Crawford ordered Jackson to report. Jackson did so. This act of escorting the prisoner caused an approximate ten-minute delay in Jackson's response time, reporting to 3C1, at 12:37 p.m.

LEGAL ANALYSIS

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A: 1-2, 11A: 2-6, 11A: 2-20; N.J.A.C. 4A: 2-2.

The Appointing Authority shoulders 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). Stated differently, 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).

CONCLUSION

With regard to the charge that a violation of Civil Service Rule N.J.A.C. 4A:2-2.3(a)(1) occurred, the County has failed to demonstrate how Jackson exhibited any sort of incompetency, inefficiency, or failure to perform his duties in either instance. The Civil Service Commission has defined incompetence as a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Steinel v. City of Jersey City, 7 N.J.A.R. 91 (1983), Clark v. New Jersey Dep't of Ag., 1 N.J.A.R. 315 (1980.)

With regard to the June 13, 2018, "wrongful release" incident respondent's own witness, Lieutenant Barcliff, indicated during direct examination that Jackson followed all applicable regulations as outlined in the Policy Statement found in the County Corrections Handbook (Exhibit R-12) when releasing the inmate to Clifton Police. Further, it is undisputed that the Body and Warrant Sheet was prepared and signed off on by the Record Room Sergeant before ever reaching Jackson. Thus, respondent fails to cite a specific act on the part of Jackson that shows a failure to perform duties. It appears Jackson is only guilty of passing along inaccurate information from the Record Room to the Clifton Police Department. Respondent fails to cite any rule that requires Jackson to double-check the Record Room's information as entered in on the Body and Warrant Sheet and respondent fails to provide any regulation or testimony showing that Jackson has a duty to open the inmate's file and cross-reference the information

contained therein with the prepared Body and Warrant Sheet. I **CONCLUDE** that Jackson's actions on June 13, 2018, do not constitute a violation of N.J.A.C. 4A:2-2.3(a)(1).

With regard to the June 22, 2018, incident, which alleges a violation of conduct unbecoming a public employee under N.J.A.C.4A:2-2.3(a)(6), I **CONCLUDE** that respondent fails to demonstrate how Jackson exhibited such unbecoming conduct. The term unbecoming conduct has been applied in case law to cover a broad range of conduct, including "misconduct." For example, the court in Pfitzinger v. Board of Trustees, PERS, 62 N.J. Super. 589 (Law Div. 1960), in attempting to define conduct unbecoming stated, "[T]here is no specified definition for what conduct falls into these categories. Each case must be decided on its own merits in the light of the public position held by the individual involved." Id. at 602.

In the case at bar, with regard to the June 13, 2018, incident, respondent's own witness confirmed that Jackson followed the procedures outlined in the Handbook (Exhibit R-12). Further, it must be duly noted and considered that Jackson released the inmate to another law enforcement agency, Clifton Police. It was, thus, Clifton Police who ultimately released the individual from custody without extraditing him to Florida. It is unclear, then, how Jackson's acts as described here can constitute any misconduct whatsoever and I **CONCLUDE** that respondent fails to demonstrate how Jackson's behavior on June 13, 2018, violated N.J.A.C. 4A:2-2.3(a)(12).

With regard to the June 22, 2018, incident, Sergeant Crawford, testified that Jackson should have immediately followed his order as he is a superior officer and should not have taken it upon himself to escort an inmate at the bequest of an inferior officer. He further stated that Jackson's failure to follow his order immediately caused a delay in relieving a fellow officer. While I found that escorting prisoners to various parts of the jail was one of his Jackson's routine duties, it was a poor decision on his part to escort an inmate when he should have been reporting directly to the ordered post. I **CONCLUDE** that Jackson's behavior on June 22, 2018, is a technical violation of N.J.A.C. 4A:2-2.3(a)(12) for failure to promptly respond to the direct order of a superior.

The final charge against Jackson as listed above alleges a violation of N.J.A.C. 4A:2-2.3(a)(12). With regard to the June 13, 2018, incident, respondent's own witness affirmed that Jackson followed all regulations and procedures regarding releasing an inmate to another law enforcement agency as outlined in the Handbook (Exhibit R-12). The undisputed fact is that it was the Clifton Police Department, not Officer Jackson, that ultimately released the individual from custody without extraditing him to Florida. Based on the facts and testimony, I **CONCLUDE** that respondent fails to demonstrate how Jackson's behavior on June 13, 2018, violated N.J.A.C. 4A:2-2.3(a)(12).

With regard to the June 22, 2018, "delay in response time" incident, the facts are undisputed that Officer Jackson was delayed approximately ten minutes in responding to Sergeant Crawford's order to report to a given area. I **CONCLUDE** that an approximate ten-minute delay in responding to Crawford's order, is a minor violation and warrants no more than two-day suspension.

ORDER

Based on the forgoing, it is **ORDERED** that the ten-working-day suspension assessed against Officer Maurice Jackson is hereby converted to a two-working-day suspension.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

November 25, 2019

DATE

Date Received at Agency:

Date Mailed to Parties:



JUDE-ANTHONY TISCORNIA, ALJ

November 25, 2019

November 26, 2019

id

APPENDIX

LIST OF WITNESSES

For Appellant:

Maurice Jackson

For Respondent:

Sgt. Shreekk Crawford

Lt. Todd Barcliff

Sgt. Michael Radice

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

None

For Respondent:

- R-1 PNDA with Specifications
- R-2 FNDA with Specifications
- R-3 Crawford memo, June 23, 2018
- R-4 Jackson memo, June 22, 2018
- R-5 Lieutenant Barcliff report, June 20, 2018
- R-6 Body and Warrant Receipt
- R-7 Detainer Information, June 21, 2018, 2pgs
- R-8 Inmate Discharge, June 21, 2018
- R-9 Inmate Summary Report, June 21, 2018
- R-10 Jackson memo, June 20, 2018
- R-11 Florida Warrant package
- R-12 PS.CLS.006
- R-13 Rules and Regulations Manual
- R-14 Official Written Reprimand; Neglect of Duty