



STATE OF NEW JERSEY

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

In the Matter of Maurice Jackson
Mercer County Corrections Center

CSC DKT. NO. 2018-2491
OAL DKT. NO. CSV 03296-18

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ISSUED: JULY 31, 2019 BW

The appeal of Maurice Jackson, County Correction Officer, Mercer County Corrections Center, 50 working day suspension, on charges, was heard by Administrative Law Judge David M. Fritch, who rendered his initial decision on June 26, 2019. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

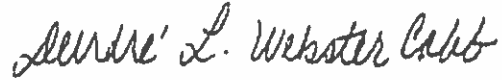
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on July 31, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Maurice Jackson.

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 31ST DAY OF JULY, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 03296-18

AGENCY DKT. NO. 2018-2491

**IN THE MATTER OF
MAURICE JACKSON, MERCER
COUNTY CORRECTIONS CENTER.**

Stuart Alterman, Esq., for appellant (Alterman & Associates, LLC, attorneys)

**Stephanie Ruggieri D'Amico, Assistant County Counsel, for respondent (Paul
R. Adezio, Mercer County Counsel)**

Record Closed: May 15, 2019

Decided: June 26, 2019

BEFORE DAVID M. FRITCH, ALJ:

STATEMENT OF THE CASE

Corrections Officer Maurice Jackson (appellant) appeals the decision of his employer, the Mercer County Corrections Center (MCCC) (respondent), to impose a fifty-day working suspension for charges of conduct unbecoming a public employee, neglect of duty, and other sufficient cause—specifically Mercer County Public Safety Table of Offenses, Correction Officer (MCPSTOCO) No. B-3, sleeping while on duty. The appellant denies the allegations that form the factual basis for these charges.

PROCEDURAL HISTORY

MCCC issued a Preliminary Notice of Disciplinary Action (PNDA) dated November 4, 2018, notifying Jackson of the charges against him. (R-1.) After a departmental hearing held on January 25, 2018, MCCC sustained the following charges which were incorporated into a Final Notice of Disciplinary Action (FNDA) dated February 16, 2018, with a proposed penalty of a fifty-day working suspension: 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, for violation of MCPSTOCO No. B-3, sleeping while on duty. (Id.)

The appellant timely requested a hearing and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on March 5, 2018 to be heard as a contested case. N.J.S.A. 52-14B-1 to 15 and 14F-1 to 13. The matter was heard on February 13, 2019. The record remained open for the parties to provide post-hearing submissions and, following the granting of the parties' request for an extension of time, the record closed on May 15, 2019, upon the receipt of these submissions.

TESTIMONY AND FACTUAL DISCUSSION

Michael Kownacki, is a captain at MCCC and has worked at MCCC since 2000. On October 24, 2017, he was a lieutenant at MCCC, and was serving as the shift commander for the 11:00 p.m. to 7:00 a.m. shift. Sometime around 3:00 a.m., he heard an MCCC officer, Sergeant Fitzpatrick, calling over the radio to "CR2" to open the A35 door. The A35 door is the first door to gain entry to "APC" which is MCCC's maximum security unit. That unit is the top tier of the A Pod at MCCC and houses the facility's protective custody inmates. (Tr. at 7:13-17.) The A35 door is controlled by the officer on duty in Control Room 2 (CR2). After hearing the second call on the radio, Kownacki adjusted the monitor in master control so he could view the camera in CR2 to check on the officer on-duty there to determine why the door wasn't being opened in response to Fitzpatrick's call.

Jackson was the officer assigned to CR2 on that shift. As the CR2 officer, Jackson was responsible for watching over A and B Pods, passing out equipment to officers in those units, and communicating with MCCC master control as needed. The CR2 officer also controls the internal doors in those areas.¹ The Standards and Operating Procedures for CR2 offers the following description of the post:

Control Room 2 oversees operations on A and B Blocks, and acts as a communications link for those Blocks to the rest of the institution. Control Room 2 also controls traffic to and from the units, and acts as a base of operations for the issuing of equipment, keys, and paperwork for A and B Blocks and other areas in the institution.

[R-8.]

Upon checking the video feed, Kownacki observed Jackson sitting in a chair, not moving, with his back to the camera. Every officer on duty is issued a radio and they can call to have doors opened throughout the facility as needed. Kownacki's experience at MCCC is that internal doors are usually opened after a single call, however, it took multiple calls before the A35 door was opened in this instance. Normally, officers call the control room on the radio to request for doors to be opened, but sometimes officers trying to pass through the doors right outside the control room may "knock on the window to get the [CR2 officer's] attention and [the CR2 officer] would pop the gate." (Tr. at 30:23-31:4.) Because Jackson did not respond to Fitzpatrick's radio call and open the A35 door, Kownacki relieved Jackson from his post at CR2 that evening. Kownacki also wrote up a report of the incident. (R-2.)

The CR2 officer has both a radio and a telephone at their station which can be used to communicate with other areas and officers. Kownacki did not call Jackson on the radio or telephone during the incident. While he could not see Jackson's face on the camera when he viewed the video feed, he could see Jackson seated motionless in his chair with his back to the camera. While he was observing Jackson, it appeared to Kownacki that someone called the telephone at Jackson's station because Jackson

¹ The Standards and Operating Procedures (SOP) for CR2 requires the CR2 officer to "maintain absolute security of all doors under control of Control Room 2." (R-8.)

could be seen at one point in the video turning to his left and moving his hands towards the control panel and the telephone that was next to the panel. Based on his review of the video surveillance, Kownacki believed it looked like Jackson had hit the speaker phone button on the telephone to answer the phone. Kownacki did not know who called Jackson on the phone but, after this motion, Jackson opened the A35 door utilizing the control panel.

Following the incident, Kownacki instructed Jackson to complete a report on why he failed to open the A35 door as requested by Sergeant Fitzpatrick and ordered Jackson to report to the search area of the facility for the remainder of his shift. The hand-written report (R-3) that Jackson submitted to Kownacki contained the following explanation of the incident:

When the radio transmission of A35 came across the radio. I didn't clearly hear the transmission due to the fact my radio wasn't at a[n] appropriate listening level. I was previously talking on the phone through the speaker phone, and forgot to set the volume back up to a[n] appropriate listening level. I solely hold myself responsible for not opening any doors called in my area in a timely manner, and will assure this action does not happen again.

[R-3.]

There are some telephones throughout the facility that can be used for communications. The normal method of communications within MCCC is by use of the radios that each officer is issued, but the telephones are sometimes used for back-up communication. At the beginning of each shift, each officer conducts a radio check to ensure that the radio that is issued to them is working properly and has a functioning battery. Volume on the radio is controlled by the radio's operator.

At capacity, A and B Pod hold up to seventy-eight inmates each, but Kownacki did not remember how many inmates were being held in the pods on the morning of

October 24, 2017.² Sgt Fitzpatrick was trying to enter the pods when he called for the A35 door to be opened, but Kownacki was unsure if Sergeant Fitzpatrick was on a regular safety check or why, specifically, he was trying to enter the APC at that time.

Kenneth Fitzpatrick, is a sergeant at MCCC, has been employed at MCCC for nineteen years, and been a sergeant for the last eight years. On October 24, 2017, he was on duty as the “new jail sergeant” and was working the 12:00 a.m. to 7:00 a.m. shift. Part of his duties was to do rounds in the “new jail,” which consists of A and B Pods, APC, and the medical unit. He had to go to each unit to check on the inmates and officers, and make sure “everything is fine.”

While on shift on October 24, 2017, he was making his rounds and approached the A35 door and called on the radio to have the door open. He called twice, and there was no answer—the door did not “pop.” The A35 door leads to the APC area and he was going there to check on the officer on duty there and the inmates. There is no telephone in that area of the facility to communicate with the control room officers, and he utilized his portable radio to call CR2. Another MCCC officer on duty that evening, Officer Mooney, also called over the radio to have the door opened. After Mooney’s radio call, the door was finally opened. Fitzpatrick wrote a report of this incident. (R-4.)

Phyllis Oliver is the retired Deputy Warden of MCCC. Prior to her retirement, Oliver was employed at MCCC for over thirty-three years. She was Deputy Warden for two years. As Deputy Warden, Oliver was responsible for internal affairs and disciplinary actions for MCCC staff members and she held this position on October 24, 2017. Oliver drafted the charges against Jackson. (R-1.) The charge of “sleeping on duty” is listed on the MCPSTOCO as an offense. (R-10.) In drafting these charges, Oliver reviewed the incident reports and, based on the reports from Fitzpatrick and Kownacki, she went back to review the MCCC surveillance video in CR2 from the time of the incident. (R-6.)

² Jackson’s entry in the log book maintained at MCCC indicates that, at the start of his shift on October 24, 2017, there were a total of 111 inmates at MCCC that morning. (See P-1 (noting fifty-seven inmates in A Pod and fifty-four inmates in B Pod).)

Oliver explained that the CR2 officer acts as the second set of eyes for the officers on A and B Pods, which are the two "max" units in the facility. If an officer is not awake, they cannot be performing their duty as that second set of eyes on the units. During the day, there are usually two officers assigned to each of the A and B units. On the overnight shift, however, there is only one officer assigned to each pod which makes it more important for the officer in the control room to act as the "second eyes" on the unit. The video surveillance footage from CR2 that morning (R-6) shows two monitors mounted on the wall to the left of where the appellant is seated. The officer on duty can stream the cameras from the units they are supervising onto these monitors. There are multiple cameras that are controlled from CR2, and the control room officer can display the video from any of those cameras on these monitors.

There are also windows on both sides of in the room that look out onto the living areas of the units as well. Two of those windows which are visible in the surveillance footage (R-6) are positioned along the wall directly across from the camera. The window on the right-hand side of that wall opens onto the "sally port" entering B Pod. The sally port is the area between the securing doors at the entry of the pod. There is no telephone in the sally port to allow communications with the control room. The other window along that wall opens onto the law library which is located in the pod. Generally, officers communicate with the control room officers via radio to open and close doors as needed although, sometimes, they can just tap on the control room window to get the control room officer's attention to open a door.

If the officer on duty wants to see who is asking to enter the pod, they can check the cameras to see who is outside the outer door. Once the person passes through the first door, the officer can see them through the window looking into the sally port area before they pass through the second door to enter the pod. The control panel in CR2 also enables the control room officer to monitor and control the doors inside A and B Pods as well.

While playing the MCCC surveillance video from CR2 (R-6), Oliver detailed that, at 3:26:42 a.m., the video shows what appears to be a person coming up to the window

that opens onto B Pod. (R-6.) Oliver identified this individual as Officer Mooney, who was the officer on duty in B Pod that evening. While there is no sound on the surveillance video, Oliver opined that Mooney likely tapped on the window to get Jackson's attention. At 3:26:51 a.m., Jackson can be seen turning in his chair and reaching his hands towards the control panel on the table. (Id.) Oliver also wrote a report of her investigation into the incident. (R-5.) In her report, Oliver summarized her review of the surveillance video footage from CR2 that morning as follows:

I reviewed the surveillance camera in CR2 at 3:05am and observed Officer Jackson with his head rested on the back of the chair moving once. At 3:12 Officer Jackson moved his head in the upright position. At 3:13 Officer Jackson[']s head nodded to the left and he remained in this position for approximately thirteen minutes (3:26am). Prior to this at no time did Officer Jackson stand up or walk around to prevent himself from falling asleep.

[R-5.]

Maurice Jackson has worked at MCCC for the past eleven years. He was working the "A Shift" or the 11:00 p.m. to 7:00 a.m. shift on October 24, 2017, and he was assigned to be the control room officer in CR2. His duties in CR2 included providing oversight for the officers assigned to work in the units. He acted as a second set of eyes for the officers in the units and made sure that "everything in my sight is running normal." (Tr. at 82:7-12.)

Looking at the surveillance video (R-6), Jackson identified himself in the footage and explained that the control panel to his left controls the cell doors in A and B Pod. The monitors mounted on the wall to his left display video from the cameras in A and B Pod. CR2 was positioned between A and B Pod. The windows looking into B Pod are directly across from where the surveillance camera is pointed. The windows looking into A Pod are not visible on the footage. They are located on the opposite side of the room from the windows looking into B Pod. During the footage in the video where he can be seen seated in his chair, Jackson says that he was "probably on the phone" during this time. (Tr. at 86:1.) He says that he was on the phone "basically mostly that

night" with different officers but can't recall talking to anyone in particular. (Id. at 86:4-11.) He denies that he was sleeping on-duty that morning. (Id. at 86:12-17.)

Throughout his shift, Jackson maintained a log book. (P-1.) On October 24, 2017, he made log entries throughout his shift, documenting when he arrived, the headcount of the inmates on each unit, and visual security checks that he logs throughout the shift. (Id.) He is supposed to make a log entry every half hour on his shift. The entry for 3:30 a.m. says "Ofc. Crum on post-area appears secure." (Id.) Jackson explained that this entry was likely from Officer Crum after Jackson was relieved of his post that morning. He did not recall anyone coming into the control room that evening, and he would have recorded it in the log book if anyone entered the room during his shift.³ (Tr. at 91:18-24.)

He did not know why he was able to hear Mooney's radio call but couldn't hear the radio calls from Fitzpatrick. After reviewing the video (R-6), he "thinks" that he heard the phone ring, and he reached over to answer the phone by hitting the speaker phone and, at that same time, he heard Mooney's radio transmission to open the A35 door. (Tr. at 88:7-17.) He does not know how long Fitzpatrick was waiting for the A35 door to open but does not believe it could have been long—maybe "a minute or two." (Id. at 96:11-18.) He said there was nothing going on in the pod at that time. His written report of the incident, states that "my radio wasn't at a[n] appropriate listening level" and he didn't hear Fitzpatrick's call. (R-3.) This report explains that he "was previously talking on the phone through the speaker phone and forgot to set the volume back to the appropriate listening level." (Id.)

In his testimony, the appellant stated that he was on the phone "off and on throughout the night" and was utilizing the speaker phone. (Tr. at 87:19-21.) While the video surveillance footage (R-6) did not show Jackson reaching towards the phone during the period he is seen seated motionless in his chair, he explained that when a

³ The video footage from that morning (R-6) shows another officer whom the appellant identified, in his testimony, as Officer Gibson entering CR2 while the appellant was on duty. The log maintained by the appellant does not have an entry for Officer Gibson, or anyone else entering CR2, until the entry at 3:30 a.m. when Officer Crum came on post to relieve the appellant.

call ends and he has the phone on speaker phone, he does not need to reach for the phone to end the call. If the other party hangs up, the call ends without the need for him to hang up on his end. (Id. at 102:8-20.) The appellant also testified that, when working the overnight shift, he turns his radio down because the sound of the radio may carry out into the pods and wake the inmates up. (Id. at 97:7-11.)

MCCC CR2 Security Camera Video Recording. The security camera at MCCC inside CR2 recorded the incident. (R-6.) The video footage was submitted by the respondent and played during the hearing. Based upon a viewing of the submitted video footage, the video showed the following details:

- According to the time stamp on the video, the recorded video footage begins at about 3:05 a.m. on October 24, 2017. The presented footage ends at about 3:35 a.m.
- There is no sound to accompany the video, and the footage shows a continuous recording of CR2 at MCCC.
- The footage shows the appellant seated in a chair at his station inside CR2. His back is facing the camera, and the back of his chair is high enough that all you can see is the back of his head over the top of the chair back. His left arm is resting on the arm rest of the chair.
- Jackson is seated next to a table which extends along his left side as he is positioned in the recorded footage.
 - Jackson's testimony identified the items seen on this table. The control panel which controls the doors and cameras is the main object on that table. There is also a phone to the right-hand side of the control panel. The appellant's radio is also on the table to the right of the phone and positioned in front of the appellant as he is seated.
- Higher up on the wall to Jackson's left side are two monitors. One is placed behind his field of view as he is positioned in the chair, and the other monitor would be in his apparent field of view if he looked upwards from where he is

seated as he is seated facing that monitor. Jackson testified that these monitors display the video feeds monitoring A and B Pods.

- For the first, approximately, six minutes of this footage, the appellant is not visibly moving at all. Around 3:11 a.m., Jackson's head appears to start nodding down to his left, towards his shoulder, but his body does not move.
- At about 3:12 a.m., the Jackson's head jerks up suddenly, and his body shifts in the chair.
- At about 3:12 a.m., Jackson's head visibly shakes from side to side four or five times, but his body remains motionless in the chair. By about 3:15, Jackson's head is again noticeably leaning towards, if not resting upon, his left shoulder. It remains in this position, and the appellant remains otherwise motionless, until approximately 3:26 a.m.
- At approximately 3:26:42 a.m., the outline of another person can be seen standing in the window that separates B Pod and CR2. Oliver identified this individual in her testimony as Mooney.
- Seconds later, at 3:26:51 a.m., Jackson's body moves, and he turns towards his left, moving both of his hands towards the control panel and he appears to be operating something on the control panel. He can be seen looking up at the monitor mounted on the wall to his left-hand side.
 - Kownacki testified that he believed that Jackson was reaching for the telephone that was located next to the control panel and answering the phone by pressing the speaker phone button. Oliver testified that she did not believe this footage showed Jackson answering a phone call. A review of the footage is inconclusive as to whether Jackson's hands are reaching for the telephone or the control panel in this motion.
- At 3:27:19 a.m., the appellant answers the telephone located next to the control panel. He can be seen picking up the telephone's receiver and placing it next to his ear. The appellant can be seen answering the phone again at 3:28:08 a.m. in the same manner.

- At approximately 3:28 a.m., the door to CR2 opens and a female corrections officer enters CR2. She leaves the room at about 3:31 a.m. At about 3:29 a.m., a third corrections officer enters CR2. In his testimony, Jackson identified these officers as Corrections Officers Gibson and Crum.

FACTUAL FINDINGS

To evaluate the appellant's account of the events on the morning of October 24, 2017, and his explanation of what is seen on the surveillance footage, requires a determination of credibility. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

At issue is the account of the appellant's conduct covering approximately a half an hour between 3:00 a.m. and 3:30 a.m. on the morning of October 24, 2017. Having viewed the video footage from CR2, where the appellant was on-duty that morning, it appears that the appellant was seated in his chair, with his back towards the surveillance camera, not moving, with his head tilted and possibly resting on his left shoulder for a significant portion of this time. During this time, the appellant had his back towards one of the two monitors showing the video feeds from the pods which he was supposed to be monitoring and his head was visibly positioned facing away from this monitor. The appellant also did not respond to radio calls from another officer to open the door to enter one of the pods, despite his job function requiring him to monitor and control the entry and exit from the two pods under his supervision.

Jackson explains this by saying that he was on speaker phone throughout this period, and he had his radio turned down too low to hear Fitzpatrick's call to open the A35 door. He testified that he was on the phone on and off with various persons

throughout his shift and that is why he appears motionless in his chair during this time. To accept this explanation of events, however, requires the assumption that the appellant was able to initiate or answer calls using the telephone positioned on the table next to him without the need for him to move and touch the phone to either answer or hang up calls. While the appellant testified that, when using the speaker phone, he does not need to touch the phone to hang it up, his testimony offers no explanation for how he would answer an incoming call or initiate a call using the telephone without being seen to move in the chair or touch the telephone. This is in contrast with Jackson's testimony that he heard Mooney's radio call when he can be seen on the surveillance footage moving in his chair and reaching for the phone which he said was done to answer an incoming phone call—indicating that, if he was receiving telephone calls during this period, some motion and contact with the telephone would be observed. However, it is clear from the surveillance footage (R-6) that he did not move to touch the telephone or anything else on the table positioned next to him at all during the time period at issue despite his testimony that he was on the phone “basically mostly that night” talking to “different officers” during this time. (Tr. at 86:6-10.)

This account of events further runs contrary to Jackson's testimony that, when working the “A Shift” or overnight shift, noise can travel from the control room and into the living units of MCCC. Jackson explained that he turns the volume on his radio down so the sound of his radio does not carry out into the pods where it can awaken the inmates who should be asleep during this time. This desire to minimize noise to not disturb the inmates in the pods during these late hours is certainly understandable and reasonable. In light of this practical motivation to minimize unnecessary noise when working in the control room during an overnight shift, it would further seem to reason, however, that if the appellant needed to make or receive phone calls during this shift, he would avoid using the speaker phone since that would presumably generate the same type of conversational noise he was trying to avoid by keeping his radio at a low level.⁴ I FIND that these noted inconsistencies in the appellant's recitation of events render his

⁴ Later in the surveillance video, Jackson receives a phone call at 3:27:19 a.m. (R-6.) Jackson can be seen answering that call by picking up the receiver of the telephone and putting the receiver up to his left ear. (Id.)

account that he was not sleeping, but rather utilizing the speaker phone and talking to various unidentified officers during this period to be not consistent or credible.

Having had the opportunity to observe the appearance and demeanor of the witnesses, and having reviewed the surveillance video of CR2 from the morning of October 24, 2017 (R-6), I **FIND** that the appellant was asleep in his chair on duty at MCCC on October 24, 2017, from approximately 3:15 a.m. until approximately 3:26 a.m. During this period, the appellant can be observed in the surveillance video from CR2 (R-6) sitting in his chair, not moving with his head noticeably tilting towards, and possibly resting on, his left shoulder. The appellant does not change his position during this time to give himself a field of view of the monitor that is positioned behind his left shoulder and, despite the appellant's testimony that he could see the monitor from where he was seated, the monitor and its contents were outside his field of vision from where he was seated as his head can be observed to be facing away from the monitor during this time.

The record remains unclear with respect to what, if anything, spurred the appellant to act and eventually open the A35 door at approximately 3:26 a.m. The appellant testified that he thinks he received a phone call and when he moved to answer the phone, he heard Officer Mooney's radio call to open the A35 door. The appellant, however, was unsure and could not recall who the phone call was from. Kownacki also testified that, based on his review of the surveillance video (R-6), it appeared that the appellant moved in his chair to answer the telephone at approximately 3:26 a.m. before opening the A35 door. The surveillance footage (R-6), however, is inconclusive on whether the appellant's hands are utilizing the control panel or the telephone next to the panel when he turns towards the table on his left-hand side at around 3:26 a.m. Oliver, after reviewing the same video footage as Kownacki, concluded that she had "no reason to believe anybody called" Jackson on the telephone at that time. (Tr. at 58:24.)

Also, an individual who Oliver identified as Mooney can be seen at the window opening into B Pod at 3:26:42 a.m. While there is no sound on the surveillance video,

both Kownacki and Oliver testified credibly that officers at MCCC often tap on the window to the control room to get the control room officer's attention to open doors for them. (See Tr. at 69:5-8; Id. at 30:23-31:4.) The timing of Mooney's appearance at the window looking into CR2 seconds before Jackson turns in his chair and accesses the control panel to open the A35 door is difficult to overlook as merely coincidental timing. (See Tr. at 58:9-15 (Oliver's testimony that she believed, based on reviewing this footage, that Mooney "probably tapped on the window").)

Based upon the testimony and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses and review the submitted video surveillance footage (R-6), I **FIND** the following **FACTS**:

1. On October 24, 2017, Jackson was a corrections officer with MCCC and assigned to work the A-Shift from 11:00 p.m. to 7:00 a.m. Jackson was assigned to be the control room officer in CR2.
2. As the control room officer stationed in CR2, Jackson had a duty to oversee the operations of A and B blocks at MCCC and to act as a communications link for those blocks to the rest of the institution. Jackson was equipped with a portable radio as well as a telephone at his station which enabled him to communicate with officers throughout the facility.
3. As the officer assigned to CR2, Jackson also had a duty to control access to and within A and B blocks and to serve as an additional set of eyes for the officers assigned to those blocks by monitoring activities through the use of video cameras and windows looking out into the units under his supervision.
4. At approximately 3:15 a.m., during his shift as the control room officer stationed in CR2, Jackson began to sleep in his chair while seated at the control panel in the control room.
 - a. From 3:15 a.m. until approximately 3:26 a.m. the appellant was motionless in his chair, with his head tilted towards his left shoulder.

He was not moving in the chair and did not look up at the video monitors positioned above him on the wall to his left-hand side. At least one of these monitors was positioned on the wall behind where he was facing and was outside his field of vision during this time.

5. Fitzpatrick, a sergeant at MCCC, was also on duty at MCCC on October 24, 2017, working the 11:00 p.m. to 5:00 a.m. shift.
6. As part of his duties, Fitzpatrick was making the rounds at MCCC and approached the A-35 door to enter the APC unit at MCCC. He sought to enter this unit to check on the inmates and officers on duty.
 - a. Fitzpatrick placed a call over his portable radio to the officer on duty in CR2 to open the A35 door. When the door did not open, he placed a second radio call to have the door opened.
 - b. Following Fitzpatrick's call, Mooney, who was also on duty at MCCC at that time, also placed a radio call to the officer on duty in CR2 to open the A35 door.
7. Kownacki was a lieutenant with MCCC at the time and was on duty on as the shift commander for the 11:00 p.m. to 5:00 a.m. shift on October 24, 2017.
 - a. Sometime around 3:00 a.m., Kownacki heard Fitzpatrick call the CR2 officer over the radio asking for the A35 door to be opened.
 - b. After hearing a second call from Fitzpatrick to the CR2 officer over the radio asking for the A35 door to be opened, Kownacki viewed the video surveillance in the CR2 room to see why the door was not being opened. On that video surveillance, Kownacki observed the appellant seated in a chair, with his back to the camera, not moving. While he was still observing the appellant over the video surveillance, he observed the appellant move in his chair and utilize

the control panel in the room to open the A35 door. The surveillance video from CR2 that morning (R-6) confirms that this took place at approximately 3:26 a.m.

8. In the seconds before the appellant moved to open the A35 door, Mooney, who was also on duty at MCCI, appeared at the window in CR2 that opens onto B Pod.
9. Jackson did not respond to the radio calls from Fitzpatrick asking to open the A35 door. Jackson responded to Mooney's radio call to open the A35 door by opening the A35 door at approximately 3:26 a.m. utilizing the control panel in CR2.
10. Due to the delay in the time between when Fitzgerald first called to have the A35 door opened and the time that the Jackson opened the A35 door, Kownacki had the appellant relieved of his duties as the control room officer for the remainder of the shift.

These factual findings are supported by a residuum of legal and competent evidence in the record.

LEGAL ANALYSIS AND DISCUSSION

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a

wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). An appeal requires the OAL to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

CHARGES

The first charge against Jackson is conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale of efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic 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 conduct complained of and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 150 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 Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Service, 17 N.J. 419, 429 (1955)).

Jackson's status as a corrections officer subjects him to a higher standard of conduct than ordinary public employees since corrections officers, like police, are held to a high standard of professional conduct because when a corrections officer fails in their duties, they may imperil others. Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). Township of Moorestown v. Armstrong, 89 N.J.Super. 560, 566 (App.Div. 1965). 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. 317 (App. Div. 1967). Strict discipline of corrections officers is necessary for the safety and security of other corrections officers and the inmates in their charge. Henry, 81 N.J. at 578. As the Appellate Division explained, this higher standard of conduct and behavior is necessary because:

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become "tinderboxes."

[Bowden v. Bayside State Prison, 268 N.J.Super. 301, 306 (App.Div. 1993), certif. denied, 135 N.J. 469 (1994).]

In the present case, Jackson was working as the control room officer in CR2 at MCCC. This position gave him direct responsibility for overseeing the safety and security of 111 inmates housed in the 2 pods he was controlling (P-1), as well as the 2 corrections officers assigned to work in those pods during his shift that day. Jackson was supposed to act as an additional set of eyes to support the corrections officers on duty in the pods, be a conduit for communications with those officers and the rest of the facility, and control access into and out of the pods. To satisfactorily fulfill these duties, Jackson was required to be alert and aware and diligently supervise what was happening in the areas under his watch. When Jackson's fellow corrections officer, Fitzgerald, radioed to have the A35 door opened so he could gain access to the APC unit, Jackson was, quite literally, "asleep at the switch" when Fitzgerald's call came in and Jackson did not respond to Fitzgerald's calls.

While Fitzgerald was attempting to access the APC unit that morning to do a routine check on the officers and inmates in the unit, the consequences of even a few minutes delay in allowing access to a unit in a facility like MCCC are clear and significant. Fitzgerald's call that morning could have just as easily been a call to access the APC unit to render critical assistance to a fellow corrections officer in peril or deliver emergency medical assistance to an inmate or officer in the unit. Even a short delay in giving access to the unit due to the control room officer's unresponsiveness to such a call could foreseeably have serious, or even deadly consequences. I **CONCLUDE**, therefore, that Jackson's behavior on October 24, 2017, did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6) and the respondent has met its burden of proof to sustain this charge. See, e.g., In the Matter of Robert Cusick, Middlesex County Department of Adult Corrections, CSV-5461-10, Initial Decision (November 3, 2010) <http://lawlibrary.rutgers.edu/oal/search.html> (finding corrections officer sleeping on duty constitutes conduct unbecoming a public employee); In the Matter of Kenneth Bynum, Mercer County Department of Public Safety, CSV 12403-13, Initial Decision (September 2, 2014), adopted, Civil Service Commission (October 1, 2014), <http://lawlibrary.rutgers.edu/oal/search.html> (finding corrections officer sleeping on duty "violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct").

Jackson has also been charged with violating N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. While not specifically defined by the regulations, this generally means that a person is not performing his or her job. The person may have failed to perform an act that the job requires or may have been negligent in the discharge of a duty. See Angela O'Kafor v. Riverfront State Prison, CSV-6349-99, Initial Decision (November 19, 2001), adopted, Merit System Board (March 19, 2002) <http://lawlibrary.rutgers.edu/oal/search.html>. Jackson was supposed to provide a second set of eyes to the corrections officers working in the pods that he was overseeing during his shift and was responsible for controlling access to A and B Pods. (See R-8.) By falling asleep on-duty on the morning of October 24, 2017, I **CONCLUDE**

that Jackson was negligent in discharging the duties of his job and that the respondent has met its burden of proof to sustain this charge.

Jackson has further been charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause—specifically, a violation of MMCPSTOCO No. B-3, sleeping while on duty. Having found that Jackson was on-duty at MCCC on the morning of October 24, 2017, as the control room officer in CR2 and, while on-duty, Jackson was asleep in his chair at his duty station from approximately 3:15 a.m. until approximately 3:26 a.m., I **CONCLUDE** that Jackson's conduct was in violation of MCPSTOCO No. B-3 and the respondent has met its burden of proof to sustain this charge.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, the New Jersey Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Bock Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations, and the like on one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. at 523-24.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, Bock, 38 N.J. at 523, that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden, 268 N.J. Super. at 205. The respondent has proven by a preponderance of the credible evidence the following charges against Jackson: 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, for sleeping on duty in violation of MCPSTOCO No. B-3. A fifty-working-day suspension was imposed upon Jackson for his actions. The question to be resolved is whether the discipline imposed in this case is appropriate.

The appellant argues that “neither Officer Jackson’s conduct nor his disciplinary history warrants the imposition of a fifty (50) day suspension.” (App. Closing Br. at 9.) The appellant’s prior disciplinary history (R-9) is as follows: a written reprimand for lateness on November 2, 2017, a forty-day suspension for conduct unbecoming a public employee and violation of administrative procedures on February 24, 2017, counseling for violating administrative procedures on February 24, 2016, and two prior written reprimands for being absent without proper notice on September 23, 2015, and September 2, 2011, respectively.

Although the imposition of a fifty-working-day suspension is not a significant escalation from what was imposed in prior disciplinary actions, appropriate focus must nonetheless be given to the nature and seriousness of Jackson’s current actions. Given the serious nature of these actions—even without a prior disciplinary history—imposition of major discipline would be warranted. (See, e.g., R-10 (MCPSTOCO noting penalties for neglect of duty which could cause danger to persons or property ranges from five days suspension to removal).) As a corrections officer, Jackson is subject to a higher standard of behavior than other civil service employees, meaning that infractions may lead to major discipline for corrections officers that may not warrant severe discipline for some other civil service positions. In the Matter of Teaira Clark, County of Hudson, OAL Dkt. No. CSV-11305-06, Initial Decision (November 8, 2007), adopted, Merit Systems Board (December 21, 2007), <http://lawlibrary.rutgers.edu/oal/search.html>. Because corrections officers, like police, are part of a “quasi-military organization,” they are “held to the highest standards.” Sharon Peterson v. East Jersey State Prison, CSV 03927-02 and CSV 5336-02, Initial Decision (December 11, 2003), adopted, Merit Systems Board (February 17, 2004) <http://njlaw.rutgers.edu/collections/oal/search.htm> (emphasis added). A corrections officer who fails in their professional duty by falling

asleep on-duty can put their fellow corrections officers and the inmates in their charge at great risk of harm. See Henry, 81 N.J. at 580. While corrections officers are held to a high standard, Jackson's actions on the morning of October 24, 2017, failed to live up to that high standard.

CONCLUSION

After having considered all of the proofs offered in this matter, the impact upon the institution regarding the behavior by the appellant herein, and in light of the seriousness of the offense and in consideration of the appellant's prior disciplinary record, I **CONCLUDE** that Jackson's conduct on October 24, 2017, warrants the imposition of a fifty-working-day suspension as imposed by the appointing authority, which, in part, is meant to impress upon him, as well as others, the seriousness of his infractions.

ORDER

The respondent has proven by a preponderance of the credible evidence the following charges against Jackson: 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, for sleeping on duty in violation of MCPSTOCO No. B-3. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**.

I **ORDER** that the penalty of a fifty-working-day suspension is hereby **AFFIRMED**. The appellant's appeal is **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. 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.

June 26, 2019 _____
DATE



DAVID M. FRITCH, ALJ

Date Received at Agency:

6/26/19

Date Mailed to Parties:

6/26/19

/dw

APPENDIX

LIST OF WITNESSES

For Appellant:

Maurice Jackson, Corrections Officer, MCCC

For Respondent:

Kenneth Fitzpatrick, Sergeant, MCCC

Michael Kownacki, Captain, MCCC

Phyllis Oliver, Deputy Warden (retired), MCCC

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

P-1 CR2 log entries, MCCC, October 24, 2017.

For Respondent:

R-1 FNDA, February 16, 2018

R-2 Incident Report of Captain Kownacki, October 24, 2017

R-3 Incident Report of Corrections Officer Jackson, October 24, 2017

R-4 Incident Report of Sergeant Fitzpatrick, October 24, 2017

R-5 Internal Affairs Investigation Report, November 24, 2017 and January 11, 2017

R-6 Video surveillance of CR2, October 24, 2017

R-8⁵ SOP 240: Living Unit Post Orders, Control Room 2

R-9 Disciplinary record of Maurice Jackson

R-10 Mercer County Public Safety Table of Offenses and Penalties

⁵ The respondent marked an exhibit as R-7 for identification, however, that exhibit was not moved into evidence during the hearing.