



STATE OF NEW JERSEY

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

In the Matter of Philip Morris, Jr.
Burlington County Jail

CSC DKT. NO. 2018-3143
OAL DKT. NO. CSV 07237-18

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ISSUED: SEPTEMBER 25, 2019 BW

The appeal of Philip Morris, Jr., County Correction Sergeant, Burlington County Jail, 90 working day suspension and demotion to County Correction Officer effective May 1, 2018, on charges, was heard by Administrative Law Judge Catherine A. Tuohy, who rendered her initial decision on August 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 September 20, 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 and demoting the appellant was justified. The Commission therefore affirms those actions and dismisses the appeal of Philip Morris, Jr.

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 25TH DAY OF SEPTEMBER, 2019

Deirdre' L. Webster Cobb

Deirdré 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 07237-18

AGENCY DKT. NO. 2018-3143

**IN THE MATTER OF
PHILIP P. MORRIS JR.,
BURLINGTON COUNTY JAIL.**

Mark W. Catanzaro, Esq., for appellant

**Christopher St. John, Esq., for respondent (Malamut and Associates, LLC,
attorneys)**

Record Closed: July 10, 2019

Decided: August 26, 2019

BEFORE CATHERINE A. TUOHY, ALJ:

STATEMENT OF THE CASE

Appellant, Philip P. Morris Jr., a Corrections Sergeant at the Burlington County Jail, appeals a ninety-day working suspension and demotion to County Corrections Officer pursuant to a Final Notice of Disciplinary Action (31-B) dated May 1, 2018 arising from a February 22, 2018 incident involving a claim of excessive force against an inmate. Charges presented include N.J.A.C. 4A:2-2.3(a)1 Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)6 Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)7 Neglect of Duty; and N.J.A.C. Other sufficient cause: Sections 1021, 1023,

1036, 1038, 1043, 1044, 1064, 1065, 1150 and 1170. Appellant denies the use of excessive force and stated he administered a sternum rub on inmate N.B. because he was unresponsive.

PROCEDURAL HISTORY

On March 14, 2018 respondent issued a Preliminary Notice of Disciplinary Action (J-1) setting forth the charges and specifications made against the appellant. Appellant requested a departmental hearing which was held on April 23, 2018. The respondent issued a Final Notice of Disciplinary Action (J-2) on May 1, 2018, sustaining the charges listed in the Preliminary Notice and suspending appellant ninety working days beginning May 2, 2018 and ending November 2, 2018 and demoted appellant to the position of Correction Officer. Appellant appealed on May 3, 2018 and the matter was transmitted by the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law (OAL) where it was filed on May 18, 2018 as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The hearing was held on May 1, 2019. The record remained open to allow the parties to submit post-hearing submissions and the record closed on July 10, 2019.

FACTUAL DISCUSSIONS AND FINDINGS

Teechey Blango testified on behalf of the respondent. He has been employed by the Burlington County Department of Corrections for twenty years and is currently an Administrative Captain. He serves as the management representative and is the liaison between the legal department and the jail. In February 2018 he was the Administrative Lieutenant and was responsible for handling internal investigations which included conducting interviews, taking statements from witnesses and reviewing video surveillance.

Captain Blango conducted an investigation regarding an incident that occurred in the medical unit on February 22, 2018 following his receipt of incident reports from medical personnel Mary Knight and Michael Teasdale alleging abuse by Sergeant

Morris (J-4 and J-5). They both reported that they had walked into the clinic and observed Sergeant Morris yelling at and striking an inmate, N.B. Sergeant Morris was cursing at the inmate and asked him if he was done faking and was he "f – ing' with him. Ms. Knight and Mr. Teasdale are both civilian employees of CFG Health Services, the medical vendor to the jail. Mr. Teasdale is the Health Service Administrator and is in charge of all of the medical personnel in the facility. Ms. Knight was the Regional Director. Captain Blango reviewed the video and obtained additional reports. He interviewed inmate N.B. who had said he had a pseudo-seizure and as he was coming out of it, he was awakened by being smacked by Sergeant Morris four times in the face with an open hand. Captain Blango identified a photograph of the clinic area which depicted Nurse Diane Figueroa in a black jacket with red hair to the right, Officer Valerie Henry to her left and Nurse Marina Yanni in front of her (J-28).

A videotape recording was played and Captain Blango identified medical personnel Consolata 'Connie' Mulli and Officer Zoll walking in and entering cell 116 with two of the nurses, Nurse Yanni and Nurse Diane Figueroa. Then Sergeant Morris is seen coming in. Then Mike Teasdale and Mary Knight enter the unit. Connie is seen going in and out of the cell quickly and then Nurse Yanni exited the cell followed by Nurse Figueroa. Officer David Griffin is seen walking by Sergeant Morris bringing inmate N.B. out of the cell and to a chair. There is no video surveillance in cell 116 and officers know that.

The initial incident report from Nurse Yanni indicated that the inmate was evaluated, treated and cleared to return to his cell (J-10). A further statement was obtained because more information was requested as far as what happened in the cell and what medical treatment was done. The second report from Nurse Yanni reported that the inmate was alert and awake and she requested custody staff members to bring him out to the chair. She exited the cell to get a cup of Gatorade (J-11). In the second report Nurse Yanni indicated that the inmate was awake. Captain Blango also conducted a taped interview of Nurse Yanni which reflected what she said in her statements. She did confirm that the inmate was awake and alert when custody staff entered the cell (J-19). Nurse Yanni made her statement voluntarily and she was not threatened. Nurse Yanni

did not observe the sternum rub. She indicated in her taped statement that medical staff should perform a sternum rub and not custody staff (J-19, pages 11-12).

An initial report was also received from Nurse Figueroa who indicated that the inmate was responsive to verbal and tactile stimuli but he resisted sitting upright (J-8). That was why custody staff was called to assist in getting the inmate upright. He was refusing to sit in the chair to be assessed. The additional statement she provided indicated that the inmate was awake and alert and when custody staff members went in to deal with him, he raised his arm or flailed or something to that effect that she became afraid for her safety and exited the cell (J-9). Captain Blango also conducted a taped interview of Nurse Figueroa wherein she indicated she did not know if the inmate was going to resist or start fighting and she was scared so she wanted to get out of there as soon as possible (J-17). Captain Blango also spoke to Connie Mulli who basically said she did not see or hear anything that was happening inside the cell as she was tending to a patient. She did go in the cell but N.B. was not in distress, he was fine and she exited the cell.

Officer Henry was the clinic officer who was responsible for opening and closing the door in the video. She basically reported that she called a code and supervisors came and went to the cell, brought the inmate out to be checked and placed him back in the cell. Consolata Mulli had another inmate sitting in the chair so Officer Henry was monitoring them.

The nurses in the medical unit are civilians who rely on the corrections staff for protection.

Sergeant Zoll indicated that a medical code was called in the clinic by Officer Henry. He and Sergeant Morris responded. The inmate was non-responsive, so Sergeant Morris gave him a sternum rub and he awakened, and they brought him out to the chair to be evaluated. Sergeant Zoll did not state in his report that the inmate was resisting or raised his hand to assault anyone (J-7). Captain Blango indicated that Sergeant Zoll's report was inconsistent with the medical professionals' reports. When

medical personnel are present and an inmate is unresponsive the medical personnel do not leave the cell and let custody staff care for an unresponsive inmate.

Captain Blango stated that they received in service Narcan training approximately a month before this incident. The training involved how to administer it and what to do if an inmate was unresponsive and could be overdosing. They did not receive training on how to conduct a sternum rub. He did not see during the training that day that officers were instructed how to do a sternum rub. In his opinion, corrections officers should never perform a sternum rub when medical personnel are present.

During the course of his investigation, Sergeant Morris also provided a written statement a couple of hours after this incident occurred (J-6). Corrections officers are only required to prepare a use of force report if they use mechanical or chemical restraints. Sergeant Morris' statement indicated that basically he responded to a medical code in the clinic and the inmate was unresponsive. He administered a sternum rub and the inmate awoke, and they took him out of his cell and into the clinic into a chair. It was the same statement as Sergeant Zoll.

Following his investigation, Captain Blango recommended that charges be filed against Sergeant Morris which were memorialized in the Preliminary and Final Notices of Discipline (J-1 and J-2). The charges included incompetency, inefficiency and failure to perform duties. Based on the reports filed, Sergeant Morris struck an inmate and then he tried to cover it up by saying he applied a sternum rub when only he and Sergeant Zoll observed the sternum rub. No other medical personnel observed it. The conduct unbecoming charge is because Sergeant Morris is a supervisor and should not have struck an inmate and his conduct was detrimental to the safety and the security of the facility. The basis for the neglect of duty charge was that he neglected to allow medical personnel to perform their duties and he failed to report his use of force and falsified his documents. Inmates are required to be treated with dignity and respect. Captain Blango was not aware of any prior incidents between Sergeant Morris or Sergeant Zoll and inmate N.B.

Sergeant Morris received and signed for the policies, procedures and rules and regulations of the County jail (J-24).

On cross-examination, Captain Blango admitted that Sergeant Morris was removed from the facility on February 22, 2018 before the investigation had been completed because they believed they had enough evidence based on the incident reports. He was removed around noon that day before Captain Blango interviewed N.B. Captain Blango admitted that although he usually tries to follow the Attorney General Guidelines in conducting the investigation, he did not do so in this case because Sergeant Morris was removed prior to the completion of the investigation and he had reached a conclusion before the investigation was complete. Mary Knight and Michael Teasdale each wrote one report. Nurse Figueroa and Nurse Yanni were both directed to write a second report by Knight and Teasdale at the request of Captain Leith. Nurse Yanni and Figueroa indicated that they were told by Mary Knight in the presence of Michael Teasdale if they did not write a report they would be removed. Captain Blango also took taped statements from Nurse Yanni and Figueroa but not from Knight and Teasdale. The Attorney General guidelines indicate that whenever possible all witnesses to the matter under investigation should be personally interviewed and formal statements taken.

Captain Blango tries not to misrepresent facts to witnesses when he is taking their statements. He did indicate to Nurse Figueroa that inmate N.B. said she was present when he was hit although N.B. did not say that and said he was certain Nurse Yanni was present (J-17, page 13).

It is not unusual for corrections officer to use abusive language towards inmates as sometimes it is the only thing they respond to.

Cell 116 had one temporary bed in it referred to as a 'boat'. It is a plastic container about six feet long by three feet wide, that is concave, and you can put a mattress in it. At the time of the incident, the inmate, Sergeant Morris, Zoll and Nurse Figueroa are all in the cell and Nurse Figueroa is trying to leave the cell when Teasdale and Knight say they saw Sergeant Morris striking the inmate. Captain Blango found inmate N.B. to be

credible when he interviewed him. Inmate Brown told Captain Blango that he was coming out of a seizure when Sergeant Morris was striking him. Someone would not be awake, alert and oriented if they were in a seizure. That was not consistent with what the nurses told him.

Mary Knight indicated that N.B. was struck once in the head and twice to the chest area. She only saw one strike but heard the sound of the contacts from the other two. Teasdale and Knight's story was consistent. N.B. said he was struck in the head and face area which was not consistent. Although N.B. had some bruises when he arrived at the jail the day before, there were no new bruises noted as a result of this incident. Nurse Figueroa said she did not see anything wrong with security giving an individual a sternum rub if she was present.

Captain Blango's wife is a nurse and said a sternum rub is used to determine a level of consciousness by inflicting pain. Captain Blango did not see Michael Teasdale giving a demonstration of a sternum rub during the in-service training. His back was to Captain Blango who was standing behind him. Mr. Teasdale was speaking to the crowd in front of him.

On re-direct, Sergeant Morris was the individual on video who removed N.B. from the cell and put him in the chair. Nurse Figueroa stated she did not see Sergeant Morris perform a sternum rub, but whatever she saw made her so uncomfortable she left the cell.

On recross-examination, Nurse Figueroa's statement indicated that the inmate's arm flew back, Sergeant Morris' voice was raised, and she thought something was going to happen and feared for her safety (J-9).

Michael Teasdale testified on behalf of the respondent. He has been employed by the Center for Family Guidance (CFG) on and off for the last nine years. He had started back with them in April 2017 until the present. His current title is the Health Services Administrator for the Burlington County Jail. He manages the Medical Social

Services Mental Health and Dental Services Departments and makes sure that all of the services that CFG is contracted to provide are provided for the resident inmates. In addition to medical care, CCFG provides for behavioral health and social services. He is a registered nurse and a certified correctional health care provider through the NCCHC. He was educated at Thomas Jefferson University as well as University Hospital of Pennsylvania. His degree is from Jefferson and he did his nursing externship at HUP.

He was working on February 22, 2018 around 8:39 a.m. at the Burlington County Correctional Facility. He worked at the jail every day Monday through Friday. He responded to the medical unit because there was a medical code 2 called over the loud speaker. He and his supervisor, Mary Knight, the Regional Director, were in a morning meeting with the Warden and Custody and were coming from the Administration side of the building back to the secure side of the building. Upon hearing the code, they went to the medical unit to see if they could be of any help. Upon entering the medical unit, he observed an emergency going on in one of the cells in the medical department. There were two sergeants in the cell with the inmate along with one of the nurses and at that time he witnessed Sergeant Morris assault the inmate in the cell. He identified Sergeant Morris in the hearing room. He saw Sergeant Morris hit the inmate three times while yelling at him. One time was to the ear area and then twice to the torso area. He believed he used his right hand and does not recall if it was an open or closed hand or fist. He heard Sergeant Morris saying something to the effect of "are you done f- -ing with me" and "are you done faking".

Mr. Teasdale is familiar with a sternum rub. The proper name is a 'sternal' rub. There is no doubt that what Sergeant Morris did was not a sternal rub on inmate N.B. He saw Sergeant Morris strike N.B. multiple times. Mr. Teasdale had no problems observing Sergeant Morris inside the cell at the time. Following his observation, the inmate was taken out of the cell and placed into a chair next to the nursing desk to be evaluated. He instructed the nurse to evaluate the inmate and then he went to his office with Mary Knight to write up the Custody Incident Report because he had witnessed an assault on an inmate. He submitted the report to Captain Leith who was in charge that day. He and Ms. Knight wrote their reports separately. He was instructed by Captain Leith to have all

the nurses write an incident report, which he did. He did not threaten to discipline any of the nurses if they failed to write a report. He spoke with nurses Marina Yanni and Diana Figueroa. No disciplinary action was taken against either of them. When an inmate is in the presence of Custody and Medical you would expect medical procedures to be conducted by medical personnel. The role of Custody would be safety and security. Mr. Teasdale has never given instruction on sternum rubs. The topic came up during a supervisors' instruction on the use of Narcan in the facility. He was asked what a sternum rub was, and he described what it was. He believed he described a sternum rub as when you take the knuckles of your hand and rub it vigorously on someone's sternum as a noxious stimuli to see if they are awake and coherent. You would not do this on someone who is awake, oriented and alert.

A pseudo seizure is a mental health condition in someone that has had a real seizure in the past and mimics the symptoms of a seizure for a period of time. A person having a pseudo seizure would not be unconscious. He was not familiar with inmate, N.B. aside from knowing he was a code the day before while he was in the intake area waiting to be seen by medical staff and he had a seizure like episode. Mr. Teasdale did not see him have a seizure but responded and saw N.B. down and unresponsive. He was breathing and had a pulse. He gave him a dose of Narcan because a lot of time when people come into the facility, they still have drugs in their system. Mr. Teasdale was worried about a potential overdose and gave him a dose of Narcan to which he responded.

On cross-examination, Mr. Teasdale admitted a sternum rub is more of a noxious stimuli than a 'medical procedure'. He is the supervisor of the nurses that work at the jail and has the ability to discipline them. Firing someone would have to be approved by someone above him. He was not aware that Nurse Figueroa said he threatened to fire her if she did not write a report and that it was not true. If Nurse Yanni said he threatened to fire her if she did not write a report that would be a lie. Nurse Figueroa in her statement said that pursuant to Mary Knight, if they did not rewrite their report they were going to be walked out and that they could not leave his office until they were done (J-17, pages 15-16). No one ever told Mr. Teasdale that they had said that.

Emergency personnel came in when Mr. Teasdale was administering Narcan to N.B. He did not recall emergency personnel mocking him for administering Narcan to someone having a seizure because it does not work on someone having a seizure. Mr. Teasdale does not recall Sergeant Morris being there laughing because they were mocking Mr. Teasdale for doing so.

On February 22, 2018 Mr. Teasdale reported to the medical unit and cell 116 and saw Sergeant Morris striking N.B. At the time Nurse Figueroa was trying to exit the cell. He does not recall if the door was open or closed as she was trying to exit because the door was opening and closing several times during the incident. The event only took a matter of seconds. Sergeant Morris struck N.B in the side of the head above his ear. He believed he struck him in the upper portion of the chest – above the stomach and below the shoulder. He could not say if he struck him in the sternum area. Mr. Teasdale did not observe any outward signs of injury to the inmate, but he did not examine him. He instructed the nurse on duty to examine him.

On redirect examination, Mr. Teasdale did not tell the nurses what to write when they were requested to write another report and did not review the reports before submitting them.

Mr. Teasdale was not aware of being mocked the day before by Sergeant Morris and other personnel for administering the Narcan to N.B. who was having a seizure. A corrections facility can be a tough place to work and the perception is that being a nurse is primarily a female's job. Mr. Teasdale has had to have tough skin by making that career choice and is not easily offended. He absolutely did not make up what he saw because he was upset with Sergeant Morris. In addition to what he observed and what he heard Sergeant Morris say, Mr. Teasdale also heard the impact of the inmate getting struck and it was not consistent with the sounds of someone being administered a sternum rub. At the time of the incident the inmate was laying down on the boat inside the cell on the left-hand side and Sergeant Morris was in the middle of the cell closer to the entrance of the cell and Sergeant Zoll was behind him towards the right side of the cell. Mr. Teasdale observed that Nurse Figueroa looked scared as she exited the cell. At no time did he

observe the inmate attempt to resist Sergeant Morris or Sergeant Zoll. He also did not hear the inmate say anything to Sergeant Morris during the assault.

Mr. Teasdale does not recall if the day before when he administered the Narcan to N.B if Sergeant Morris was present.

The January 31, 2019 hearing transcript of the prior testimony of **Mary Knight** was stipulated into evidence (J-29). Ms. Knight is employed by the CFG Health System as the Operations Director for Corrections. She is responsible for the operations of the facilities that they manage in New Jersey and New York. One of those facilities is the Burlington County Detention Center. She was present at the Burlington County Jail on February 22, 2018 for a site visit. She recalled the incident that occurred in the medical clinic on February 22, 2018. She and Michael Teasdale had just come from a morning meeting and they heard a medical code and went to see how the staff responded. They walked in and stood right behind the nurses' desk and they saw Sergeant Zoll and Sergeant Morris in the room where the code was occurring. She saw nurse Diana in the room looking around and trying to get out. She saw Sergeant Morris reach up three times while yelling at the inmate and reached up and hit the inmate three times. She did not recall if it was an open hand or closed fist strike. Her and Mr. Teasdale immediately went to Mr. Teasdale's office and wrote a report and gave it to Matthew Leith (J-4). She was able to see into the cell because the door to the room had a window in it. Initially the door was closed but opened when Nurse Diana went out. The nurses were asked to submit additional more detailed reports because the first reports submitted lacked detail. She did not tell the nurses what to write in their reports and no one was threatened if they did not do so.

On cross-examination, Ms. Knight believes she saw Sergeant Morris use his left hand to strike the inmate. The whole incident occurred in a short amount of time, maybe a few seconds. Nurse Figueroa initially was in the room, but she believed she was leaving the room when the strikes occurred. She could see Sergeant Morris through the glass window in the door. Sergeant Morris was standing upright, and the inmate was lying down flat on his back. Sergeant Zoll was behind Sergeant Morris and to the right of him.

She does not recall Captain Leith stating that the nurses had to write second reports or that they would be walked out of the facility. She does not have the authority to walk someone out of the facility.

On re-direct Ms. Knight said no nurses were disciplined in regards to this incident. She wrote her report within minutes of the incident occurring

Phillip P. Morris Jr., appellant, testified on his own behalf. He has been employed by the Burlington County Department of Corrections for seventeen years. He started in September 2002 and was promoted to the rank of Sergeant in August 2009. He currently is a correction officer.

In February 2018 he was working as a Sergeant and was in a supervisors' training session regarding the use of Narcan presented by Mr. Teasdale, the Supervisor of the jail nursing staff. He said that in order to see if the inmate was in distress or not that they could administer a sternum rub. This involves taking the knuckles and pushing down hard and rubbing vigorously back and forth on the sternum in the middle of the chest to see if you get a reaction from the subject. Mr. Teasdale showed them what it was.

On February 21, 2018, the day before this incident, Sergeant Morris was in the clinic as was inmate N.B., Michael Teasdale and Lieutenant P. Blango. Nurse Teasdale ordered Nurse Yanni to give him Narcan so he could administer it to N.B. Mr. Teasdale administered the Narcan to N.B. twice. The inmate appeared to be unconscious when the Narcan was administered and after the second dose eventually regained consciousness after four or five minutes and was able to be moved to the chair. Outside medical professionals came to the jail to take the inmate to the emergency room. They were advised what took place and were laughing and mocking Mr. Teasdale because he administered Narcan for a fake seizure. Sergeant Morris was present, and he was laughing. Mr. Teasdale was present and appeared mad and upset with the comments being made. Lieutenant P. Blango was present and told Sergeant Morris to knock it off and make sure it does not happen again - mocking the civilian staff and making jokes.

On February 22, 2018 Sergeant Morris responded to a medical code in cell 116 in the medical clinic. When he arrived Sergeant Zoll, Nurse Yanni, Nurse Figueroa and inmate N.B. were all in the cell. N.B. was laying on the floor in the two-foot space between the boat bed and the regular bunk. Sergeant Zoll was closer to the door and the nurses were closer to N.B. The nurses asked for help to get him out of the room and into the chair. The nurses moved out of the way to allow Sergeant Morris to try and go pick him up and see if he could move N.B. When Sergeant Morris went to pick him up, he started shaking so he laid him down on the boat bed to try and assess him. When Sergeant Morris first saw N.B. on the floor, he was on his side with his back to Sergeant Morris. Sergeant Morris lifted N.B by his arms by himself and got N.B. onto the boat. N.B. was lying on his back on the boat and was still shaking. Sergeant Morris gave N.B. loud verbal commands to see if he would respond to him. He yelled his name a couple of times and yelled stop, what are you doing. N.B. did not respond so he proceeded to give him a sternum rub which was pushing down on his chest and rubbing up and down. Sergeant Morris continued to yell his name and told him to come on stop playing around and then N.B. opened his eyes and Sergeant Morris stopped doing the sternum rub. N.B. did not say anything to Sergeant Morris but had a confused look on his face. He then picked N.B. up and took him out of the cell to the chair where the nurses could check him out. At no time did Sergeant Morris strike N.B. about the head or chest.

Sergeant Morris submitted a report of this incident to his shift commander, Lieutenant P. Blango (J-6). He prepared his report on a computer in the main control booth where they do their paperwork. Sergeant Zoll was also in the room on a different computer preparing his report (J-7). They did not talk about what they should put in their reports.

On cross-examination, Sergeant Morris testified that he had no medical training. On February 21, 2018, the day before this incident, Sergeant Morris responding to the medical unit when inmate N.B. was given Narcan by Mr. Teasdale and heard one of the medical professional comment that he could not believe Narcan was used for a fake seizure. Sergeant Morris knew that N.B. suffered from fake seizures based on what he had heard the day before. When he responded the next day and found N.B. lying on the

floor between the boat and the bunk and picked him up, N.B. was responsive. The nurses would not ask Sergeant Morris to move the inmate if he was not responsive. Sergeant Morris could not see if N.B. was responsive when he entered the room because he could not see him. N.B.'s face was facing away from Sergeant Morris. Sergeant Morris put his hands-on N.B. to pick him up and that is when N.B. started shaking. He put him on the bed to assess him and see what he was doing because his whole body was just shaking around. Nurse Yanni had left as soon as Sergeant Morris had entered the cell and he did not know if Nurse Figueroa was in or out of the cell at that time. N.B. was shaking and unresponsive, yet Sergeant Morris did not think to contact the nurses and advise them. He did not render medical aid because a sternum rub is not medical aid it is an assessment. He has administered sternum rubs in the past but could not recall if he ever did when he was in the medical unit. Sergeant Morris knew N.B. had a history of fake seizures that is why he probably said to N.B. are you done faking. Sergeant Morris said he was not angry or frustrated with N.B. that is the nature of the job dealing with inmates faking all the time. It is possible he also said to N.B. was he done f-ing with him. It would not have been the first time he ever cursed at an inmate. Sergeant Morris went from yelling N.B.'s name to administering the sternum rub and did not think to do anything in between like touching him, shaking him or shaking his shoulders.

Sergeant Morris did not have any issues with inmate N.B. and N.B. did not at any time attempt to resist Sergeant Morris.

The January 31, 2019 hearing transcript of the prior testimony of **Lieutenant Pyaegbaye Blango** was stipulated into evidence and is summarized as follows (J-30). Lieutenant P. Blango had been employed by the Burlington County Department of Corrections since July 2000 and was promoted to the rank of lieutenant in October 2015. He was working in the jail on February 22, 2018 and was present when there was an incident with inmate N.B. Michael Teasdale, Nurse Yanni, Sergeant Morris and Officer Henry were present as well as the inmate. Inmate, N.B. had had a seizure and Mr. Teasdale had administered Narcan to him twice within three to four minutes back to back. When an inmate overdoses on a narcotic, the Narcan is pressed up into their nose. When Narcan is administered it is the policy that the inmate be transported to the emergency

room for further treatment. Paramedics arrived at the facility and were told that Mr. Teasdale had given N.B. Narcan and the EMT's were shocked that he had given Narcan for a seizure. Sergeant Morris was participating in the conversation with the paramedics. They were ridiculing Mr. Teasdale as he tried to explain himself. Mr. Teasdale appeared agitated. He was angry at everybody including Sergeant Morris. Lieutenant P. Blango told Sergeant Morris to knock it off and to not let it happen again.

Discussion

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958).

Sergeant Morris' testimony that he did not strike inmate N.B. but rather administered a sternum rub to him while N.B. was shaking, to check for his responsiveness is not credible. The nursing staff would not have called for assistance in getting inmate N.B. up and into the chair if he was not responsive. Sergeant Morris would not have been able to get N.B. off the floor and into the boat if he was not responsive. There is no need to administer a sternum rub to a responsive person. There was no need for Sergeant Morris to do an 'assessment' of inmate N.B. by administering a sternum rub when he was in the medical unit and medical personnel more qualified than Sergeant Morris should have been consulted. There were two eyewitnesses to the assault, Mary Knight and Michael Teasdale who testified that they observed Sergeant Morris strike inmate N.B. They also heard Sergeant Morris yelling and cursing at inmate N.B. and asking him if he was done faking.

Mr. Teasdale and Ms. Knight were independent witnesses employed by the contractor for health services at the jail. Mr. Teasdale made a credible witness and I do not believe that he made up the allegations against Sergeant Morris because he was mad

at him for laughing at him the previous day. Mr. Teasdale's supervisor, Ms. Knight, also witnessed the assault and corroborated Mr. Teasdale's testimony.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

On February 22, 2018, Sergeant Morris was employed as a corrections sergeant on duty at the Burlington County jail.

On February 21, 2018 Sergeant Morris was present in the medical unit when inmate N.B. was experiencing a 'pseudo' or 'fake' seizure.

On February 22, 2018 at 8:40 a.m. Sergeant Morris responded to a medical code at cell 116 in the medical clinic. The nurses needed assistance in getting inmate N.B. up off the floor and out of his cell and into the clinic chair for assessment.

Inmate, N.B. was awake, alert and responsive to verbal and tactile stimuli when Sergeant Morris responded to cell 116.

Sergeant Morris yelled and cursed at inmate N.B. saying words to the effect of 'are you done faking now' and 'are you done f---ing with me'.

Sergeant Morris struck inmate N.B. three times, once in the head and twice in the chest area.

Inmate N.B. was not threatening or resisting Sergeant Morris in any way during the incident.

Sergeant Morris submitted a false and misleading report of the incident, dated February 22, 2018, indicating he gave inmate N.B. loud verbal commands and N.B was unresponsive until he applied a sternum rub and inmate N.B opened his eyes. N.B. was

then escorted out of his cell by Sergeant Morris and Sergeant Zoll and seated in the clinic chair to be evaluated by the nursing staff (J-6).

LEGAL ANALYSIS AND CONCLUSIONS

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. 4A2-2.

The Appointing Authority bears the burden of establishing the truth of the allegations by a 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).

Appellant was charged with N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency or failure to perform duties. In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980). In this case, Sergeant Morris used excessive force against an inmate and submitted a false and misleading report by omitting facts in an attempt to conceal his misconduct. Sgt Morris stated he administered a sternum rub to inmate N.B. when in fact he struck inmate N.B. He failed to maintain self-control and professional standards by yelling and cursing at N.B. and striking him three times.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden

as it relates to violation N.J.A.C. 4A:2-2.3(a)(1).

Appellant was also charged with "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 or 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 complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't. of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Sergeant Morris was on duty as a sergeant of corrections on February 22, 2018 when he used excessive force on inmate, N.B. who was in cell 116 in the medical clinic in the jail. He struck inmate N.B. three times while yelling and cursing at him. Sergeant Morris submitted a report that was false and misleading in an attempt to conceal his misconduct by stating he performed a sternum rub on N.B. because he was unresponsive. He failed to maintain self-control and the professional standards required of a Sergeant of Corrections. His conduct was unbecoming of a law enforcement officer and threatened the safety and security of the facility.

Therefore, I **CONCLUDE** that the respondent has met its burden in proving the charge of conduct unbecoming a public employee by a preponderance of the credible evidence.

Appellant was also charged with neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7). There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to

perform, and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term 'negligent' connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. Of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). Sergeant Morris was on duty as a sergeant of corrections on February 22, 2018 when he used excessive force on inmate N.B. who was in cell 116 in the medical clinic in the jail. He struck inmate N.B. three times while yelling and cursing at him. Sergeant Morris submitted a report that was false and misleading in an attempt to conceal his misconduct.

I **CONCLUDE** that respondent has met its burden of proof in establishing that appellant's conduct constituted neglect of duty by a preponderance of the credible evidence.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that 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. The 'other sufficient cause' set forth in the preliminary and final notices of discipline are the violations of various policies and procedures of the Burlington County Detention Center including Policy Sections 1021, 1023, 1036, 1038, 1043, 1044, 1064, 1065, 1150 and 1170 (J-21, J-22 and J-23). Sergeant Morris acknowledged receipt of these policies on September 27, 2012 (J-24).

Section 1021 of the Rules of Conduct required Sergeant Morris to conduct himself in the utmost professional manner at all times in representation of the jail administration.

Section 1023 required Sergeant Morris to follow all rules and regulations of the facility and enforce the rules.

Section 1036 provides that all officers are required to be courteous, civil and respectful to all individuals they may have contact with. This rule of conduct required Sergeant Morris to promote professionalism at all times and be orderly, maintain decorum, control his temper, be patient and use discretion. Section 1036 prohibited Sergeant Morris from engaging in threatening or assaultive conduct at any time or directing language or conduct in an insulting or disrespectful manner.

Section 1038 prohibited Sergeant Morris from acting or behaving in a manner that would bring discredit upon himself or the department.

Section 1043 required Sergeant Morris to maintain a high degree of self-control at all times. Corporal punishment was prohibited, and no officer shall strike or lay hands on an inmate unless in self-defense, to prevent injury to other persons or property, prevent an escape, quell a disturbance or to enforce a valid order given by a supervisor. In such cases, only that force necessary to accomplish the mission was to be used.

Section 1044 required Sergeant Morris to respect and protect the rights of all individuals and to perform his duties with honesty, zeal, fidelity and sound judgment. Mistreatment of an inmate shall subject the officer to a disciplinary hearing and/or criminal prosecution.

Section 1064 required Sergeant Morris to promptly report in writing through the chain of command all crimes, misconduct, rule violations, or unusual incidents which come to his attention during the performance of duty. No information shall be withheld for any reason.

Section 1065 prohibited Sergeant Morris from making any false or misleading statements or written reports by intentional omission or misrepresentation of facts or information known to him.

Policy Section 1150 is regarding the use of force. Law enforcement personnel are prohibited from using excessive force on an inmate. Inmate N.B. was not resisting

Sergeant Morris and there was no reason to use force on N.B. When force is used, a use of force report must be completed which Sergeant Morris did not do. The policy prohibits use of force as a means of punishment or discipline. The policy prohibits an officer from intentionally striking an inmate in a non-life-threatening situation about the head, neck and face. Written reports shall be completed following the use of physical force (J-22).

Policy Section 1170 pertains to the reporting of incidents. Sergeant Morris was required to report any confrontations between inmates and staff, any use of force and any incident or unusual occurrence. Receipt of information that may threaten institutional security, violations of civil or constitutional rights of inmates and staff, and those incidents and situations that present itself as a hazard or substantial risk to the health, safety and welfare of the inmates and others must be reported (J-23).

Sergeant Morris was on duty as a sergeant of corrections on February 22, 2018 when he used excessive force on inmate N.B. who was in cell 116 in the medical clinic in the jail. He struck inmate N.B. three times while yelling and cursing at him. Sergeant Morris submitted a report that was false and misleading in an attempt to conceal his misconduct. He failed to maintain self-control and failed to follow the Burlington County Detention Center's Policies and Procedures and Rules of Conduct as set forth above.

Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause by a preponderance of the credible evidence.

PENALTY

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the

concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

Appellant's status as a corrections sergeant subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1980). They 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 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), 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 v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The question to be resolved is whether the discipline imposed in this case is appropriate.

For his actions arising out of this incident, appellant has been found to have violated N.J.A.C. 4A:2-2-3(a)1 Incompetency, Inefficiency or Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; 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 violations of Sections 1021, 1023, 1036, 1038, 1043, 1044, 1064, 1065, 1150 and 1170 of the Burlington County Detention Center's Policies and Procedures and Rules of Conduct.

Appellant received a ninety-day working day suspension from May 2, 2018 through September 2, 2018 and was demoted from a Sergeant of Corrections to a Corrections Officer (J-27). Respondent provided appellants chronology of discipline (J-27). Sergeant Morris' previous disciplinary history consisted of a verbal reprimand on March 31, 2010; a five-day suspension for neglect of duty for an incident that occurred on January 16, 2010; counselling for neglect of duty for a February 4, 2012 incident; and a sixty-day suspension for neglect of duty for a July 12, 2015 incident (J-27).

Appellants use of excessive force against an inmate and filing a false and misleading report support the imposition of the ninety-day suspension and the demotion from Sergeant of Corrections to Corrections Officer. After having considered all of the proofs offered in this matter and the impact upon the Burlington County Department of Corrections regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violations are significant to warrant a penalty of a ninety working day suspension and a demotion from Sergeant of Corrections to Corrections Officer. Therefore, I **CONCLUDE** that the imposition of a ninety-day suspension and demotion to Corrections Officer was an appropriate penalty.

ORDER

Accordingly, I **ORDER** that the action of respondent in suspending the appellant for ninety working days and demoting him from a Sergeant of Corrections to a Corrections Officer is **AFFIRMED**. Appellants appeal is **DISMISSED**.

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

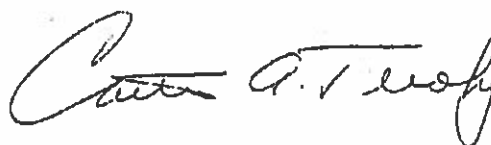
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision

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. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 26, 2019

DATE



CATHERINE A. TUOHY, ALJ

Date Received at Agency:

August 26, 2019 (emailed)

Date Mailed to Parties:

August 26, 2019 (emailed)

CAT/mel

APPENDIX

WITNESSES

For Appellant:

Phillip P. Morris Jr.

For Respondent:

Teechey Blango
Michael Teasdale

EXHIBITS

Joint

- J-1 Preliminary Notice of Discipline, dated March 14, 2018
- J-2 Final Notice of Discipline, May 1, 2018 dated
- J-3 February 28, 2018 Memo by Lieutenant T. Blango to Warden M. Schultz
- J-4 Incident Report of CFG Operations Director Mary C. Knight, dated February 22, 2018
- J-5 Incident Report of CFG R.N. Michael Teasdale dated February 22, 2018
- J-6 Memo/Incident Report of Sergeant Morris to Lieutenant P. Blango dated February 22, 2018
- J-7 Memo/Incident Report of Sergeant Zoll to Lieutenant P. Blango dated February 22, 2018
- J-8 Initial Incident Report by D. Figueroa, R.N., dated February 23, 2018
- J-9 Second Incident Report by D. Figueroa, R.N., dated February 23, 2018
- J-10 Initial Incident Report by M. Yani, L.P.N. dated February 22, 2018

- J-11 Second Incident Report by M. Yani, L.P.N., dated February 23, 2019
- J-12 Third Incident Report by M. Yani, L.P.N., dated February 23, 2019
- J-13 Incident Report of C. Mulli, A.P.N., dated February 22, 2018
- J-14 Incident Report of V. Henry, C.O., dated February 22, 2018
- J-15 Transcript of Interview of N.B. conducted February 22, 2018
- J-16 Transcript of Interview of C. Mulli, A.P.N., conducted February 27, 2018
- J-17 Transcript of Interview with D. Figueroa, R.N., conducted February 27, 2018
- J-18 Transcript of Interview with V. Henry, C.O. conducted March 2, 2018
- J-19 Transcript of Interview with M. Yani, L.P.N. conducted March 2, 2018
- J-20 Transcript of Interview with R. Zoll conducted on March 7, 2018
- J-21 Burlington County Detention Center Policies and Procedures Sections 1012 – 1074
- J-22 Burlington County Detention Center Policies and Procedures Section 1150
- J-23 Burlington County Detention Center Policies and Procedures Section 1170
- J-24 Burlington County Detention Center Standard Operating Policies and Procedures Acknowledgement by Philip P. Morris, Jr.
- J-25 Burlington County Detention Center Inmate Profile/ID File for N.B.
- J-26 Burlington County Detention Center Inmate Medical Chart/File for N.B.
- J-27 Employee Discipline History for Philip P. Morris Jr.
- J-28 Burlington County Detention Center Video Surveillance of Medical Clinic from February 22, 2018
- J-29 Transcript of January 31, 2019 Testimony of Mary Knight
- J-30 Transcript of January 31, 2019 Testimony of Pyaegbaye Blango

For Petitioner:

None

For Respondent:

None