

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF JANUARY, 2020

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 02763-17

AGENCY DKT. NO. N/A

**IN THE MATTER OF DANIEL SKRABONJA,
BAYSIDE STATE PRISON.**

Kevin P. McCann, Esq., for appellant, Daniel Skrabonja (Chance & McCann, L.L.C., attorneys)

Jana R. DiCosmo, Deputy Attorney General, for respondent, Bayside State Prison (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: October 28, 2019

Decided: December 6, 2019

BEFORE JEFFREY R. WILSON, ALJ:

STATEMENT OF THE CASE

Appellant, Daniel Skrabonja, a Senior Corrections Officer, (SCO), appeals his removal, effective February 14, 2017, for conduct unbecoming a public employee. The respondent, Bayside State Prison (BSP), alleges that on June 18, 2016, appellant collected, accepted and consumed commissary items from inmates. It is further alleged that the appellant had a personal lock on the cabinets containing contraband and that the appellant failed to make proper log book entries, to make any security checks and had inmates prepare drinks for him. Finally, it is alleged that during his interview with the

Special Investigation Division (SID), the appellant falsified a story about the inmates' commissary items.

PROCEDURAL HISTORY

The appellant filed a timely appeal of the removal and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL, where it was filed/perfected on February 24, 2017, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. On February 27, 2017, Victoria L. Kuhn, Esq., Director of New Jersey Department of Corrections' Office of Employee Relations, issued a letter to the appellant's attorney and confirmed that the appellant was to be returned to pay status pending a final decision by the OAL/Civil Service Commission (CSC).

The fair hearing commenced on August 14, 2017, and was continued on August 17, 2017. The respondent filed a motion for summary decision on September 14, 2017. Due to errors in the transcripts in support of the motion for summary decision, revised transcripts had to be ordered. Ultimately, the motion was denied on July 9, 2018. The respondent filed for interlocutory review of the denial of its motion on July 16, 2018. The CSC declined to review the request for interlocutory review on July 31, 2018.

The hearing concluded on February 6, 2019, and the record closed after the parties submitted written closing briefs.

FACTUAL DISCUSSION AND FINDINGS

Based upon the testimony of the witnesses and examination of the documentary evidence, I **FIND** the following **FACTS** are undisputed:

1. The appellant was employed as a SCO at BSP during all relevant times.
2. On June 18, 2016, the appellant was assigned to the Alpha Unit along with SCO Tyler DeShields (DeShields) and SCO Matthew Corson (Corson).

3. On June 25, 2016, the BSP Administrative Office received a NJDOC Inmate Inquiry Form (R-6), and forwarded the same to the SID. The Inmate Inquiry Form, (The Form) authored by an anonymous inmate, alleged that on June 18, 2016, Deshields was "extorting" inmates by having them place inmate commissary items inside a brown paper bag that was placed on a chair in the Alpha Unit pantry. The Form stated that DeShields ordered the inmates to place commissary items into the bag in order for the inmates to be permitted to use the phones, showers, kiosks and have recreation. The anonymous inmate alleged that all incidents complained of should be saved on the BSP surveillance video system. He further alleged that he was a gang member and that the officers' actions would be met with violence if BSP did not take corrective action.

4. On August 10, 2016, the appellant was issued a Preliminary Notice of Disciplinary Action (R-1). The appellant was issued an Amended Preliminary Notice of Disciplinary Action on October 14, 2016 (R-2) and a Departmental hearing was held on October 27, 2016, and November 30, 2016. A Final Notice of Disciplinary Action was issued on February 14, 2017, (R-3), that resulted in the appellant being charged with the following violations:
 - N.J.A.C 4A:2-2.3(a)(6) – Conduct unbecoming a public employee;
 - N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause;
 - HRB 84-17 (as amended) (B-1) – Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons and property;
 - HRB 84-17 (as amended) (C-8) – Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report investigation or other proceeding;
 - HRB 84-17 (as amended) (C-11) – Conduct unbecoming an employee;
 - HRB 84-17 (as amended) (C-17) – Possession of contraband on State property or in State vehicles;
 - HRB 84-17 (as amended) (D-7) – Violation of administrative procedures and/or regulations involving safety and security;

- HRB 84-17 (as amended) (E-1) – Violation of a rule, regulation, policy, procedure, administrative order; and
- HRB 84-17 (as amended) (E-2) –Intentional abuse or, misuse of authority or position.

5. The FNDA described the incident giving rise to the charges and the date on which they occurred as follows:

Per the SID report dated 7/18/16. While assigned to A Unit on 6/18/16 you, along with SCO Corson & SCO DeShields collected, accepted and consumed canteen items from the inmates assigned to that unit. You had a personal lock on the unit cabinets containing contraband. You failed to make proper log book entries, to make any security checks, had inmates prepare drinks for yourself, SCO Corson & SCO DeShields, failed to follow BSP IMP's, Departmental and State rules and regulations. During your interview with SID you falsified a story about the inmate canteen items. You also violated the Ethics code by utilizing your official position and authority over the inmates for personal gain. Your actions not only constitute conduct unbecoming a State employee, but law enforcement professional, as well.
(R-3).

Testimony

John Gardner (Gardner) testified on behalf of the respondent. (R1T: 20-90, R1T: 154-291; R2T: 7-75¹). He is a Senior Investigator at the BSP for the NJDOC. He received The Form (R-6) from BSP Administration and was assigned to conduct an administrative criminal investigation. On June 30, 2016, he reviewed video surveillance of Alpha Unit from June 18, 2016, starting at 1:27 p.m. through 10:25 p.m. (R-8, R-9, R-10, R-11, R-12, R-13).

At 2:51 p.m., the video showed a staff member place a brown paper bag on a chair at which time inmates began placing commissary items in the bag throughout the afternoon into the evening. The video also showed Corson writing on the bag, placing

¹ R1T references the August 14, 2017, "Revised" Transcript of Recorded Proceedings. R2T references the August 17, 2017, "Revised" Transcript of Recorded Proceedings. 3T references the February 6, 2019, Transcript of Recorded Proceedings

the bag on a chair in front of the pantry. Furthermore, the video showed Corson retrieve inmate commissary items from the bag and consuming them at the officers station.

Video surveillance showed the appellant look inside the bag, fold the bag closed and place the bag on the floor behind the officers desk. Deshields also looked in the bag during the evening and is shown carrying the bag through the dayroom, up the stairs to the officers room.

At 6:27 p.m., the surveillance video showed the appellant seated at the officers desk, kicked back, with his feet up and his hands behind his head. Throughout the video, inmates are viewed freely walking in and out of the officers area.

On June 30, 2016, SID investigative staff entered the Alpha Unit and searched the area. Contraband was found in several locations through areas accessible to officers only (R-17 at DOC 058 to DOC073 and DOC 078 to 084), including the upstairs officers personal locker. (R-17 at DOC 074 to DOC 077). Contraband located in the upstairs officers personal locker included a brown paper bag, bags of potato chips, candy bars, sodas, peanut butter, mayonnaise and packs of oatmeal. This locker was secured with a personal lock to which the appellant had a key that he kept on his personal keyring.

On July 15, 2016, SID investigative staff interviewed the appellant, DeShields and Corson. All three were not truthful in recounting the events of June 18, 2016. Ultimately, Corson admitted that he wrote the phrase "Sharing is Caring" on the brown paper bag with the intention of inmates placing commissary items into the bag for the corrections staff's consumption. Corson and Deshields admitted that they did consume some of the commissary items. The appellant ultimately admitted that the commissary items were taken for use by corrections staff, but he denied ever consuming any of the commissary.

On July 18, 2016, Gardner authored a report that detailed the findings of the SID administrative investigation. (R-24).

Scott Infante (Infante) testified on behalf of the respondent. (R2T: 77-104). He is the Security Major at BSP. He is familiar with the policies and procedures that govern

corrections staff at BSP. He is also familiar with the investigation involving the appellant's actions on June 18, 2016.

According to the investigation, the appellant is alleged to have consumed commissary received from inmates and been untruthful during his interview with SID staff. The appellant is also alleged to have been inattentive during his shift, putting his feet up on the officers desk. Furthermore, Infante was aware that the appellant was alleged to have placed a personal lock on BSP property and made improper entries in BSP logbooks or failed to make entries in the logbooks. All of these actions, if true, would constitute a violation of BSP policies and procedures and a violation of the high standard of conduct to which all corrections staff are held.

Albert Ferrari (Ferrari) testified on behalf of the respondent. (R2T: 105-248). He was the Administrative Lieutenant at BSP during the time of the within incident. In that role, he oversaw compliance with DOC and BSP policies and procedures. He was assigned to Corson's investigation and reviewed all video surveillance and video recordings of all three officers' interviews. He drafted the sustained charges included in the appellant's PNDA (R-1), amended PNDA (R-2) and FNDA. (R-3).

Ferrari justified the charges sustained against the appellant based upon his review of the NJDOC Rules and Regulations for Law Enforcement Personnel (R-25); the NJDOC Handbook of Information and Rules (R-26); the NJDOC Policy on Standards of Professional Conduct (R-27); the BSP Internal Management Procedure on Housing Officer A, B, C, D, E, F (R-28); the BSP Internal Management Procedure on General Operational Procedure (R-29); the BSP Internal Management Procedure on Seizure, Storage and Disposal of Contraband (R-30); and N.J.A.C. 4A:2-2.3 (R-31). The appellant acknowledged receipt of all the aforementioned policies and procedures during his new hire orientation on October 19, 2012. (R-32). The appellant also acknowledged receipt of the annual Ethics Briefing on July 26, 2016. (R-33).

Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In-re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.
[5 N.J. at 522.]

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, 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).

Having considered the testimonial and documentary evidence presented, I accept the testimony offered by Gardner, Infante and Ferrari to be very credible.

Gardner was assigned to conduct the investigation. He did so and authored a report that detailed the findings of the SID administrative investigation.

Infante was familiar with the investigation involving the appellants actions on June 18, 2016, and considered them violative of BSP policies and procedures.

Ferrari oversaw compliance with DOC and BSP policies and procedures. He was involved in the investigation and reviewed all video surveillance and video recordings of all three officers' interviews. He drafted the sustained charges included in the appellant's PNDA (R-1), amended PNDA (R-2) and FNDA. (R-3). Ferrari justified the charges sustained against the appellant based upon his review of all relevant policies and procedures.

Neither Gardner, Infante or Ferrari exhibited any ulterior motive aside from relaying information known to them. None of these three had anything to gain from testifying.

Tyler DeShields testified on behalf of the appellant. (R1T: 91-153). He was an SCO at the time of the June 18, 2016, incident. He no longer works for the NJDOC. He was subpoenaed to appear for the hearing and did not recall much when questioned. He was aware that on June 18, 2016, Corson wrote something on a bag and later saw inmates putting items in the bag. At one point he looked in the bag and saw food items. He further testified that the appellant had the only key to the lock on the officers personal locker in which the confiscated commissary items were found.

Having considered the testimonial evidence presented by DeShields, his testimony offered no persuasiveness or credibility. He was evasive on direct and cross examination.

Daniel Skrabonja testified on his own behalf. (3T: 9-185). During his testimony, he admitted to all charges against him. He also read a prepared statement (P-1) into the record in which he accepted responsibility for his actions. He apologized for the danger he exposed everyone to and expressed his deep remorse for the same. He asked to be given second chance and to be permitted to return to his employment as an SCO.

Based upon the foregoing, I **FIND as FACT** that on June 18, 2016, the appellant sat in the officers area in Unit A, kicked back, with his feet on the desk and his hands behind his head and inattentive to the inmates in his care.

I **FIND as FACT** that while being interviewed by SID staff on July 15, 2016, the appellant did intentionally provide false information as to the events of June 18, 2016.

I **FIND as FACT** that the appellant made false entries in the BSP logbooks and also failed to make proper entries in the same.

I **FIND as FACT** that on June 18, 2016, the appellant was aware that fellow officers were forcing inmates to turn over their commissary items for the officers' personal consumption and that these commissary items were stored in the officers' personal locker. This locker was secured with a personal lock to which the appellant had a key that he kept on his personal keyring.

I **FIND** as **FACT** that the appellant's actions were violative of the NJDOC Rules and Regulations for Law Enforcement Personnel (R-25); the NJDOC Handbook of Information and Rules (R-26); the NJDOC Policy on Standards of Professional Conduct (R-27); the BSP Internal Management Procedure on Housing Officer A, B, C, D, E, F (R-28); the BSP Internal Management Procedure on General Operational Procedure (R-29); the BSP Internal Management Procedure on Seizure, Storage and Disposal of Contraband (R-30); and N.J.A.C. 4A:2-2.3 (R-31). Furthermore, I **FIND** as **FACT** that the appellant acknowledged receipt of all the aforementioned policies and procedures during his new hire orientation on October 19, 2012. (R-32). The appellant also acknowledged receipt of the annual Ethics Briefing on July 26, 2016. (R-33).

Finally, I **FIND** as **FACT** that that the petitioner's actions constitute intentional abuse and misuse of his authority and position as a SCO.

LEGAL ANALYSIS AND CONCLUSIONS

Here, the appellant is charged with conduct unbecoming a public employee pursuant to 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 Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins v. City of Atl. City, 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)).

As a corrections officer, the appellant is held to a higher standard of conduct. The public respects officers for discovering, reporting, and championing the truth in

circumstances of wrongdoing and while they are satisfying their duties. Appellant's actions affected the morale or efficiency of a governmental unit and would tend to destroy public respect in the delivery of governmental services. Appellant's actions were violative of his obligations in a position of public trust. It offended publicly accepted standards of respect and decency. No circumstances existed to warrant or justify appellant's conduct. The appellant clearly abused his authority and position as a SCO.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). I **CONCLUDE** that respondent has met its burden of proof on this issue.

The 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. As detailed above, the appellant's conduct was such that he violated this standard of good behavior. I **CONCLUDE** that appellant's actions violated N.J.A.C. 4A:2-2.3(a)(12). As such, I **CONCLUDE** that the respondent has met its burden of proof on this issue.

Finally, based upon the **FACTS** established, I **CONCLUDE** that appellant's actions violated HRB 84-17 (as amended) (B-1) – Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in danger to persons and property; HRB 84-17 (as amended) (C-8) – Falsification: Intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report investigation or other proceeding; HRB 84-17 (as amended) (C-11) – Conduct unbecoming an employee; HRB 84-17 (as amended) (C-17) – Possession of contraband on State property or in State vehicles; HRB 84-17 (as amended) (D-7) – Violation of administrative procedures and/or regulations involving safety and security; HRB 84-17 (as amended) (E-1) – Violation of a rule, regulation, policy, procedure, administrative order; and HRB 84-17 (as amended) (E-2) – Intentional abuse or, misuse of authority or position. I **CONCLUDE** that respondent has met its burden of proof on all of these charges.

PENALTY

“The New Jersey Department of Corrections, Human Resources Bulletin 84-17, As Amended, Disciplinary Action Policy” provides that a range of penalty, from three days suspension to removal, may be issued for the sustained charges of conduct unbecoming a public employee. The respondent in this manner has determined that the appropriate penalty is removal. The appellant was been employed by the BSP for over three years. He contends that during his employment he has had an exemplary disciplinary record and he argues that a lesser penalty is appropriate under the circumstances and with taking into consideration the principal of progressive discipline.

However, the principle of incremental, or progressive, discipline does not need to be applied in every disciplinary setting, particularly when the misconduct “is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.” In re Hermann, 192 N.J. 19, 33 (2007). New Jersey courts have repeatedly concluded that, even in the absence of a prior disciplinary record, removal may be imposed if the charges are serious enough in nature. Ibid.; Henry v. Rahway State Prison, 81 N.J. 571 (1980). While one error, even a serious one, does not necessarily require the ultimate penalty of removal, in cases involving correctional facilities, the evaluation of the seriousness of the offenses and the degree to which such offenses subvert discipline are matters peculiarly within the expertise of the corrections facilities. Bryant v. Cumberland County Welfare Agency, 94 N.J.A.R.2d (CSV) 369.

The appellant argues that consideration should be given to the fact that he was new to the Alpha Unit on June 18, 2016. This argument is without merit. His conduct would be considered egregious anywhere within the walls of the BSP.

The appellant further argues that consideration should be given to his “learning disability.” In support of this argument, he provides an Accommodation Request for extended time to take his Entry Level Law Enforcement Examination, dated November 2, 2010, (J-1), and an Individual Educational Program (IEP) from his senior year of high school, dated May 7, 2009, (J-2). A review of the IEP shows that he has a Full Scale

Intelligence Quotient (FSIQ) of 95², established in 2007, and the residual of a previous diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), established in 2008, affecting organization and procrastination. Very little weight is given to this argument. The appellant testified that that he never requested an accommodation at the BSP because he did not require one. There was no competent evidence presented that his prior diagnosis of ADHD affected his ability to know right from wrong.

Considering the arguments of the parties in light of the seriousness of the violations, I **CONCLUDE** that the appropriate penalty is removal.

ORDER

It is hereby **ORDERED** that the appellant's removal is hereby **AFFIRMED**. The appellant's appeal is hereby **DISMISSED**.

It is further **ORDERED** that the appellant shall repay all monies paid to the appellant since being returned to pay status on February 27, 2017.

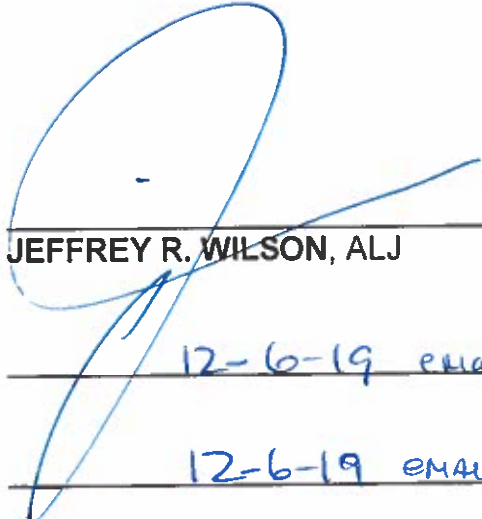
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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

² FSIQs between 90 and 110 are considered within the "average range."

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.

December 6, 2019
DATE



JEFFREY R. WILSON, ALJ

12-6-19 emailed

12-6-19 emailed

Date Received at Agency:

Date Mailed to Parties:

JRW/tat

WITNESSES

For Appellant:

Daniel Skrabonja
Tyler DeShields

For Respondent:

Investigator John Gardner
Major Scott Infante
Lieutenant Albert Ferrari

EXHIBITS

Joint Exhibits

- J-1 ADA accommodation for appellant's Law Enforcement Exam, dated November 4, 2010
- J-2 Appellant's Individual Education Program (IEP), dated May 7, 2009

For Appellant:

- P-1 Written statement of appellant, dated November 6, 2017
- P-2 Appellant's rendering of Alpha Unit floor plan

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action, dated August 10, 2016
- R-2 Amended Notice of Disciplinary Action, dated October 14, 2016
- R-3 Final Notice of Disciplinary Action, dated February 14, 2017
- R-4 Notification of Major Disciplinary Action – Specification Attachment, dated October 24, 2016

- R-5 HRB 84-17 As Amended – Table of Offenses and Penalties
- R-6 NJDOC Inmate Inquiry Form, dated June 25, 2016
- R-7 Daily Schedule for Status, dated June 18, 2016
- R-8 Surveillance Video - Disc #1 of 9
- R-9 Surveillance Video - Disc #3 of 9
- R-10 Surveillance Video - Disc #5 of 9
- R-11 Surveillance Video – Disc #7 of 9
- R-12 Surveillance Video – Disc #8 of 9
- R-13 Camera View Log Disc #1 through Disc #8, dated June 18, 2016 and SID
Camera Interview Logs on Disc #9
- R-14 Bayside Commissary Log (Sample Form)
- R-15 Seizure of Contraband Report, dated June 30, 2016
- R-16 Special Custody Report, dated June 30, 2016
- R-17 Color Photographs (DOC-058 through DOC-084)
- R-18 Medium Housing Officer's Tour Report
- R-19 Common Area Searches Report, dated June 18, 2016
- R-20 Withdrawn
- R-21 Log Entries, dated June 18, 2016
- R-22 SID Camera Interviews – Disc #9 of 9
- R-23 Weingarten Administrative Rights Form
- R-24 SID Administrative Investigation Report
- R-25 Law Enforcement Personnel Rules and Regulations
- R-26 Handbook of Information and Rules for Employees of New Jersey
Department of Corrections
- R-27 DOC Policy Statement – No. ADM.010.001
- R-28 Bayside State Prison Internal Management Procedure Statement - No.
BSP.CUS.001.000.100
- R-29 Bayside State Prison Internal Management Procedure Statement - No.
BSP.CUS.001.000.400
- R-30 Bayside State Prison Internal Management Procedure Statement - No.
BSP.CUS.001.000.478
- R-31 N.J.A.C. 4A:2-2.3

- R-32 DOC Office of Human Resources / New-Hire Orientation Checklist, dated October 19, 2012
- R-33 Annual Ethics Briefing Receipt Form, dated July 26, 2015

From ALJ

- C-1 Correspondence returning appellant to pay status pending Final Decision, dated February 27, 2017