



STATE OF NEW JERSEY

In the Matter of Ramogi Goding,
Hudson County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2019-3622

Request for Reconsideration

ISSUED: JANUARY 17, 2020 (JET)

The County of Hudson, represented by John J. Collins, Esq., requests reconsideration of the attached decision, *In the Matter of Ramogi Goding, Hudson County, Department of Corrections* (CSC, decided April 24, 2019), which reversed Goding’s removal from employment.

By way of background, Goding was served with a September 14, 2018 Preliminary Notice of Disciplinary Action, removing him on charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause. Specifically, the appointing authority indicated that a random drug test conducted on August 16, 2018 confirmed that Goding allegedly tested positive for marijuana. A departmental hearing was held on October 12, 2018, and a Final Notice of Disciplinary Action sustaining the charges was issued on November 8, 2018. Goding appealed and requested a hearing, and the matter was transferred by this agency for a hearing at the Office of Administrative Law (OAL). The OAL hearing was conducted on March 5, 2019. Upon reviewing the evidence and credibility of the witnesses, the ALJ determined that there was no witness testimony from the New Jersey State Toxicology laboratory (State Lab) which analyzed Goding’s urine sample. The ALJ noted that Hudson County’s attorney stated that the State Lab would not provide a witness to testify. As such, the Administrative Law Judge (ALJ) concluded that since no witness testimony from the State Lab was available to discern the process used to analyze Goding’s sample, or to confirm that the sample tested positive for marijuana or any other drug, there was no admissible evidence indicating that Goding tested positive for marijuana or any other drug. Therefore, the ALJ concluded that the administrative charges were not sustained and, as such, recommended reversing the removal and reinstating Goding to his

permanent position. Upon its *de novo* review, the Civil Service Commission (Commission) adopted the ALJ's recommendations and found that Goding's removal was not justified, and accordingly, reinstated him to his position with back pay, benefits and seniority from September 12, 2018 to the actual date of his reinstatement.¹

In its request for reconsideration, the appointing authority explains that, due to an administrative reorganization in late 2018 implemented by the Governor, various policies and procedures were enacted that prevented the appointing authority from obtaining pertinent information and evidence at the time of the March 5, 2019 hearing. In this regard, the appointing authority explains that such information that it wanted to obtain from the State Lab was protected by new confidentiality restrictions, and as such, the information was not immediately provided to the appointing authority. The appointing authority explains that it was unable to obtain such information at the time because it was required to request such information via a Discovery Confidentiality Order pursuant to new rules as noted above. However, as of the March 5, 2019 hearing, it was unaware of the new procedures.² The appointing authority adds that, as a result, it was unable to have any discussions with representatives from the Attorney General's Office (OAG) with respect to the issue. The appointing authority now submits documents and a lab sample from the State Lab, arguing that such information constitutes new evidence that was not previously considered in the prior matter which will affect the outcome of the case. In support, the appointing authority provides certifications from Francis X. Baker, Deputy Attorney General, and from John J. Collins, Assistant County Counsel, Hudson County. Additionally, the appointing authority argues that this agency has previously granted reconsideration of prior matters when new evidence and additional information becomes readily available. *See, e.g., In the Matter of Steven Garzio* (CSC, decided July 17, 2017) and *In the Matter of Nancy Stein* (CSC, decided April 16, 2015). Finally, it contends that pursuant to *In the Matter of Corey Corbo*, 238 N.J. 246 (2019), the New Jersey Supreme Court found that the preferred remedy to rectify procedural errors at the administrative level is a remand.

In response, Goding, represented by Frank C. Cioffi, Esq., maintains that the request for reconsideration in this matter should be denied. Goding asserts that, in its exceptions in the prior matter, the appointing authority requested the Commission to remand the matter back to OAL so that additional testimony could be obtained. In support, it submitted correspondence to show that the State Lab was reluctant to cooperate at the time of the hearing. Goding explains that the appointing authority did not provide any further evidence to show that it attempted to contact the State Lab with respect to obtaining the information. Goding contends

¹ Official personnel records do not indicate that Goding has been reinstated to his position at the time of the issuance of this decision.

² The appointing authority notes that it indicated to the ALJ on numerous occasions that it was unable to obtain witnesses to appear from the State Lab and obtain the additional information.

that the appointing authority was unprepared at the time of the OAL hearing and it did not request an extension of time to produce witnesses from the State Lab to testify regarding the authenticity of the lab specimen. As such, Goding maintains that the Commission should reject the appointing authority's request in this matter.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the present matter, the appointing authority has not met the standard for reconsideration. Upon a review of the appointing authority's submissions, it has neither shown that a material error has occurred nor has it provided any new information that would change the outcome of the case. In this matter, the appointing authority does not provide a viable explanation for its lack of obtaining witnesses and additional information. Although the appointing authority argues that it was unaware that it was required to obtain additional information and witnesses from the State Lab via a Discovery Confidentiality Order as new rules were promulgated, the appointing authority's admitted procedural errors at the time of the OAL hearing does not overcome the ALJ's findings in the prior matter, nor does it warrant granting reconsideration in this matter. Moreover, the Commission is not persuaded by the appointing authority's arguments that it was not abreast of the new rules due to the timeframe that the hearing occurred. It was the appointing authority's burden to provide witnesses at the time of the OAL hearing, and its failure to do so does not now warrant reconsideration of the prior matter. Moreover, the evidence submitted by the appointing authority in this matter does not constitute new evidence that would change the outcome of the case, but rather, it should have been properly submitted at the time of the OAL hearing for the ALJ's consideration. Additionally, the Commission did not find persuasive the appointing authority's exceptions in the prior matter requesting to remand the case to OAL to obtain additional evidence. As the ALJ clearly indicated, the appointing authority provided no witnesses at the time of the hearing, and as such, the Commission properly adopted the ALJ's findings.

With respect to the arguments pertaining to *Garzio, supra*, and *Stein, supra*, those matters are factually distinguishable from this matter. In *Garzio*, actual new evidence was presented upon reconsideration which established that he was permanent in the title of Police Officer at the time of his layoff. In *Stein*, actual new evidence was presented upon reconsideration to show that her personnel records were incorrect, and as a result, the Commission determined her qualified for a promotional examination. Neither of those matters dealt with procedural errors with respect to requesting witnesses at an OAL hearing. Moreover, the Commission

finds that *Corbo, supra*, does not require that this matter be remanded. That matter is also factually distinguishable from the present matter. In *Corbo*, the issue was whether the ALJ properly allowed evidence to be entered into the record. The Court found that the employer in *Corbo* should have been given the opportunity to support hearsay testimony that the ALJ originally *improperly admitted* into evidence. Such is not the case in this matter. In this case, the crux of the matter is not procedural, but rather, whether the appointing authority originally made its case by presenting competent evidence. The ALJ in this case gave the appointing authority every opportunity to support its hearsay evidence. However, as it did not explore every possibility available to ensure that its hearsay evidence was corroborated by witness testimony, the Commission finds no reason in this case to give it a “second bite at the apple.” In this regard, the Commission is not preventing the appointing authority from making its case as was found in *Corbo*. Rather, the Commission finds that the appointing authority had ample opportunity in the original proceeding to present its case and failed to do so. Accordingly, the request for reconsideration is denied.

ORDER

Therefore, it is ordered that this request for reconsideration be denied. Further, if it has not already done so, the appointing authority is ordered to immediately reinstate Ramogi Goding and provide all the remedies as ordered in the Commission’s prior decision.

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 15th DAY OF JANUARY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Ramogi Goding
Frank C. Cioffi, Esq.
John J. Collins, Esq.
Elinor M. Gibney
Records Center



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ramogi Goding
Hudson County, Department of
Corrections

CSC DKT. NO. 2019-1438
OAL DKT. NO. CSR 00159-19

ISSUED: APRIL 24, 2019 BW

The appeal of Ramogi Goding, County Correction Officer, Hudson County, Department of Corrections, removal effective September 12, 2018, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on March 7, 2019 reversing the removal. Exceptions and a reply to exceptions were filed on behalf of the appellant and exceptions were 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, including a thorough review of the exceptions filed by both parties and reply filed by the appellant, the Civil Service Commission (Commission), at its meeting on April 24, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Ramogi Goding. The Commission further orders that appellant be granted back pay, benefits, and seniority from September 12, 2018 to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF APRIL, 2019

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
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P. O. Box 312
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT.NO. CSR 00159-19

AGENCY DKT. NO. N/A

**IN THE MATTER OF RAMOGI GODING,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS.**

Frank Cioffi, Esq., on behalf of appellant (Sciarra & Catrambone, LLC)

**John Collins, Esq., appearing on behalf of respondent (Hudson County Law
Department)**

BEFORE KIMBERLY A. MOSS, ALJ:

Record Closed: March 5, 2019

Decided: March 7, 2019

STATEMENT OF THE CASE

Appellant, Ramogi Goding (Goding or appellant), appeals his removal by respondent, Hudson County Department of Corrections (Hudson), on charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause. The charges result from a random drug test of August 16, 2018, in which respondent alleges appellant tested positive. At issue is whether Goding engaged in the conduct, and, if

so, whether it constitutes conduct unbecoming a public employee, neglect of duty and other sufficient cause that warrants removal.

PROCEDURAL HISTORY

On September 14, 2018, Hudson served Goding with a Preliminary Notice of Disciplinary Action. A departmental hearing was held on October 12, 2018. Hudson served Goding with a Final Notice of Disciplinary Action on November 8, 2018, sustaining charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause. Goding requested a hearing and forwarded simultaneous appeals to the Civil Service Commission and the Office of Administrative Law (OAL). The appeal was filed with the OAL on December 20, 2018. The hearing was held on March 5, 2019. During the hearing respondent wanted to place in evidence a toxicology report from the New Jersey State Toxicology laboratory (State Lab). Since respondent had no witnesses from the State lab to testify about the report, I did not allow the report into evidence. The record closed on March 5, 2019.

FACTUAL DISCUSSION

Having reviewed the testimony and evidence and credibility of the witnesses, I make the following **FINDINGS of FACTS**.

Hudson must do one random drug test of its employees annually. It has a drug free work place policy that was distributed to its employees. The Attorney General has a Law Enforcement drug testing policy. Erika Patterson (Patterson) is a lieutenant in the Hudson County Prosecutor's Office, who is on loan to Hudson working in its internal affairs office. On August 18, 2018, Ronald Edwards (Edwards), Director of Hudson, called for random drug tests of ten percent of the officers which equaled thirty-three officers. Patterson, Gabriel Diaz (Diaz) and Keith McMillion (McMillion) went to the juvenile center to set up the testing procedures. Four tables with chairs were set up in the juvenile center. Each chair had a medical sheet/ drug advisory form, envelope for the medical sheet and two sample bottles.

An excel spread sheet with the name of the officers was printed out. The names were cut and put into a plastic bag. The names were chosen by Diaz and McMillion from the bag for the random drug test. Hudson's drugfree workplace alcohol and drug testing policy states that for random testing an individual shall be selected by a computer based random number generator with neutral criteria. Hudson did not follow this policy. Patterson stated that Hudson did not have a computer based random number generator with neutral criteria software.

The administration of the testing began at 5:00 a.m. Diaz explained the random drug testing policy to the officers who were chosen to give a random urine sample. They were advised how to fill out the medical sheet to include prescription and over the counter medications. The medical sheet was then put into an envelope and the officer put his social security number on the envelope. The officers were told that they had to fill one specimen bottle. They could fill both specimen bottles. They were told the only way to dispute a positive test would be to fill both urine bottles prior to the testing. The Hudson Drug Free Workplace Alcohol and Drug testing guidelines states that donors have the option of providing a second sample. If the donor chooses not to submit a second sample, the donor shall sign a waiver of this option. Goding did not fill the second sample bottle. Goding did not sign a waiver forgoing the second sample. He was not given a waiver to sign.

Diaz, McMillion and Patterson gave the instructions. Diaz gave the instructions to Goding. Goding was on vacation and had to return from vacation to give the sample. Goding was escorted by an officer to the restroom to give the urine sample. Diaz was the monitor who oversaw Goding giving the sample, however, he was not present when Goding gave the urine sample. Patterson filled out a Law Enforcement Drug Testing chain of custody form for the State Lab. The urine sample had Goding's social security number on it.

Goding's urine specimen was placed in a locked refrigerator on August 16, 2018 at 3:05p.m. The refrigerator is in an office that requires a pass key to enter. Patterson, Diaz and McMillion are the only persons with the pass key.

On August 20, 2018, at 9:30a.m. Goding's urine sample was removed from the locked refrigerator and taken to the State Lab by Diaz. Between August 16, 2018 and August 20, 2018, Goding's urine sample was in the locked refrigerator. Hudson does not test urine samples. It contracts with the State Lab to test the urine samples. Goding was suspended on September 12, 2018, for allegedly testing positive for marijuana. There was no testimony from any witness from the State Lab where Goding's urine sample was analyzed. There was no testimony from anyone who analyzed Goding's urine sample. The attorney for Hudson stated that the State Lab would not provide any witness to testify.

LEGAL ANALYSIS AND CONCLUSION

Based on the foregoing facts and applicable law, I **CONCLUDE** that the charges of unbecoming a public employee, neglect of duty and other sufficient cause are not sustained.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

“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, 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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term “neglect” connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” signifies conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term “neglect of duty” is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep’t of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep’t of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

In this matter there was no testimony from the State Lab that analyzed Goding’s urine sample or what process was used to analyze Goding’s urine sample. There was

no testimony from anyone who analyzed Goding's urine sample that it came back positive for marijuana or any other illegal drug.

I **CONCLUDE** that there was no admissible evidence that Goding tested positive for marijuana or any illegal drug.

Prevailing employees in a civil-service appeal are entitled to an award of back pay, benefits, seniority and reasonable attorney fees "as provided by rule." N.J.S.A. 11A:2-22. Pursuant to its broad authority to adopt rules for effective implementation of a comprehensive personnel-management system, the Civil Service Commission has discretionary power to deduct mitigation from a back-pay award. N.J.S.A. 11A:2-6(d); cf. Mason v. Civil Serv. Comm'n, 51 N.J. 115 (1968) (interpreting predecessor legislation as authorizing the Civil Service Commission to require mitigation of back pay upon restoration to employment).

Goding was suspended on September 12, 2018, and I **CONCLUDE** that Goding is entitled to back pay from that date.

ORDER

Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the determination of the Hudson County Department of Corrections that Ramogi Goding be **REMOVED** from employment is **REVERSED**.

It is further **ORDERED** that Ramogi Goding is entitled to back pay from September 12, 2018.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this

matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

March 7, 2019



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

March 7, 2019

Date Mailed to Parties:

March 7, 2019

ljb

WITNESSES

For Appellant

Ramogi Goding

For Respondent

Michael Conrad

Erika Patterson

Gabriel Diaz

EXHIBITS

For Appellant

- A-1 Preliminary Notice of Disciplinary Action Dated September 14, 2018**
 - A-2 Notice of Immediate Suspension Dated September 14, 2018**
 - A-3 Not in Evidence**
 - A-4 Memorandum of Erika Patterson to Director Edwards Dated August 20, 2018**
 - A-5 Memorandum of Erika Patterson to Director Edwards Dated September 12, 2018**
 - A-6 Not in Evidence**
 - A-7 Attorney General's Law Enforcement Drug Testing Policy Revised April 2018**
 - A-8 Hudson County Department of Corrections and Rehabilitation Drug Free Workplace: Alcohol and Drug Testing Revised April 11, 2018**
 - A-9 Not in Evidence**
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For Respondent

- C-1(a) Preliminary Notice of Disciplinary Action Dated September 14, 2018**
- C-1(b) Notice of Immediate Suspension Dated September 14, 2018**
- C-2 Hudson County Department of Corrections Random Drug Screening Advisory Dated August 16, 2018**
- C-3 Not in Evidence**
- C-4 Hudson County Department of Corrections and Rehabilitation Drug Free Workplace: Alcohol and Drug Testing Revised April 11, 2018**
- C-5 Electronic Signatures of Ramogi Goding for Policy, Post Orders and Directives**
- C-6 Attorney General's Law Enforcement Drug Testing Policy Revised April 2018**
- C-7 Memorandum of Erika Patterson to Director Edwards Dated August 20, 2018**
- C-8 Urine Chain of Custody Log**
- C-9 Law Enforcement Drug Testing Chain of Custody**
- C-10 Memorandum of Erika Patterson to Director Edwards Dated September 12, 2018**
- C-11 Memorandum of Gabriel Diaz Dated September 26, 2018**
- C-12 Memo to Internal Affairs File from Erika Patterson Dated September 12, 2018**