

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF NOVEMBER, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Allison Chris Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 03832-19

AGENCY DKT. NO. 2019-99

**IN THE MATTER OF DANIEL M. IBRAHIM,
MERCER COUNTY CORRECTION CENTER.**

Michael P. DeRose, Esq., for Daniel M. Ibrahim, appellant (Crivelli & Barbati, LLC, attorneys)

Suzette Price, Esq., Assistant County Counsel, for respondent Mercer County Correction Center (Paul R. Adezio, County Counsel, attorney)

Record Closed: July 26, 2021

Decided: October 18, 2021

BEFORE **SUSAN L. OLGATI, ALJ**:

STATEMENT OF THE CASE

Appellant, Daniel Ibrahim (appellant or Ibrahim), a Mercer County Correction Officer, appeals the determination of the respondent, Mercer County Correction Center (Respondent or MCCC) seeking to impose a ten (10)-working day suspension relating to an April 2017 incident that occurred while appellant was assigned as an escort officer to the nurse distributing inmate medication. Appellant denies any wrongdoing.

PROCEDURAL HISTORY

On May 1, 2017, the appellant was served with a Preliminary Notice of Disciplinary Action. A departmental hearing was held and on June 28, 2018, appellant was served with a Final Notice of Disciplinary Action charging him with:

Incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a) (1);

Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a) (6);

Neglect of Duty, N.J.A.C. 4A:2-23(a) (7); and

Other Sufficient Cause, N.J.A.C. 4A:2-2.3(a) (12):

B.2. Neglect of duty, loafing idleness or willful failure to devote attention to tasks which could result in causing danger to persons or property Step 3;

D-6 violation of administrative procedures and/or regulations those involving safety and security;

SOP 238 Post-Orders Correction Officers (general); and

SOP 240A Living Unit Post Orders West-Wing

Appellant filed a timely appeal, and on April 19, 2019, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13.

Several hearing dates scheduled in 2020 were adjourned at the request and consent of the parties. The matter was eventually heard on April 6 and 8, 2021, via ZOOM (remote video platform) due to on-going restrictions relating to the COVID-19 pandemic. The record closed on July 26, 2021, following receipt of the hearing transcript and written summations.¹

¹ The record remained open for an extended period due to delays in receipt of the transcript.

FACTUAL DISCUSSION AND FINDINGS

Undisputed Facts

The following facts are not in dispute; thus I FIND:

1. Appellant is a Correction Officer employed by the MCCC.
2. On April 29, 2017, appellant was assigned to work as the escort officer to the MCCC nurse conducting the "medication pass." (The process of distributing medication to the inmates.)
3. On the date of the incident, Nurse Chizoba Anabaronye was assigned to conduct the medication pass in the West Wing of the MCCC.
4. On the date of the incident, Correction Officer Nicholas Mauro, was assigned to work as the living unit officer on the West Wing of the MCCC.
5. As a part of the medication pass process, inmates are advised by the living unit officer to line up for the distribution of medication. The nurse is responsible for ensuring that all inmates are properly identified.
6. On the date of the incident, Nurse Anabaronye asked inmate J.R.² for her identification. J.R. did not have her identification and was told by Anabaronye to retrieve it.
7. J.R. cursed at Nurse Anabaronye.
8. After completing the medication pass, Anabaronye returned to the medical unit. Sergeant Darlene Jiovany was in the medical unit and asked Anabaronye what had happened. After being advised of the incident, Jiovany instructed Anabaronye to write a report.

² Initials are used in place of the inmate's full name.

9. Sergeant Jiovany also spoke with appellant and instructed him to write a report regarding the incident.
10. On April 29, 2017, appellant wrote an incident report stating only: "On the above date and time, I was ordered to write a report by Sgt. Jiovany stating that J.R. cursed at the nurse."

Testimony

The following is intended to be a summary of the relevant and material testimony given at hearing:

For respondent

Chizoba Anabaronye testified that she worked as a registered nurse at MCCC for over three years. She no longer works at the facility. Her medication pass duties included inspecting the inmates' wristbands/identification before dispensing medication. If an inmate did not have his/her identification, Anabaronye would instruct the inmate to retrieve it. If an inmate could not locate his/her wristband, he/she could ask the living unit officer for a picture card to present to the nurse.

During the April 2017 incident, inmate J.R. "went off" and started cursing when Anabaronye instructed her to get her wristband. T16:20. The inmate started using different kinds of "F words, and bitches and idiots, like she went on and on and on." T17:3-4 At that time, there were other inmates in the medication pass line, but Anabaronye did not recall how many.

Appellant was the escort officer for the medication pass. He did and said nothing during the entire incident, which lasted approximately fifteen minutes. Appellant was next to Anabaronye. She was not afraid during the incident because there was a gate between her and the inmates.

On cross-examination, Anabaronye testified that she could not remember how many times she had conducted the medication pass. Nor could she recall how long she had been on the West Wing conducting the medication pass on the date of incident. She did recall that inmate J.R. verbally abused her from the time she asked for her wristband until the time Anabaryone left the unit. T28:1-4. The inmate was frustrated because Anabaronye asked for her identification. Anabaronye did not say anything to the inmate other than ask for her wristband. It was uncommon for the inmates not to have their wristbands. She did not recall any prior interactions with inmate J.R.

Anabaronye did not caution J.R. not to speak to her in that manner. She had heard the inmates curse at each other before, but the medication pass typically occurred without incident. She was directed to file a report by her supervisor. She would not have filed a report unless directed to do so.

She explained that the duration of the medical pass varies based on the number of medications that have to be given and whether the inmates have questions. J.R. was not the first inmate in the medication pass line. At some point J.R. got out of the line and continued cursing at Anabaronye.

J.R. was looking directly at Anabaronye when she was cursing/using abusive names. T50:4-7. She did not deserve to be called names or abused. She only asked J.R. for her wristband which is normal protocol. T55:14-18

Lieutenant Darlene Jiovany has worked at the MCCC for fourteen years. At the time of the April 2017 incident, she was a sergeant. Prior to that, she was a correction officer and occasionally served as an escort officer.

On the date of the incident, the medical officer informed her that Nurse Anabaronye had just returned from the West Wing and was crying and very upset. Jiovany asked what happened and the nurse advised that an inmate had cursed at her the "whole time" she was conducting the medication pass. Jiovany asked the nurse what the escort officer had done, and the nurse said, he did nothing.

Thereafter, Jiovany interviewed appellant. She asked appellant what had happened, and he replied, "what happened with what." She asked if an inmate had cursed at the nurse for over fifteen minutes and appellant said, "yeah, so what." Appellant said he did not intervene because it's not his job to do so unless something becomes physical. T68:17-24.

Jiovany testified that appellant's interpretation of his job duties is incorrect. Consistent with the Standard Operating Procedures (SOPs), the escort officer's duty to maintain a safe environment pertains to verbal, as well as physical abuse. Verbal abuse can easily escalate to physical abuse. The escort officer's job is to take the nurse to the unit to dispense medicine and to make sure the nurse is safe and secure from any physical or verbal attack. The April 2017 medicine pass was not safe and orderly as set forth in SOP 830. Appellant allowed the inmate to continue cursing at the nurse. While there were bars between the nurse and inmates, the bars are open and an inmate could spit or throw something, such as urine, at the nurse.

Appellant would have been aware of the rules and regulations he is accused of violating through the training he received at the time he was hired. Additionally, officers are responsible for keeping current with the SOPs.

The living unit officer factors into the safe and orderly distribution of medication. However, that officer has other responsibilities in unit, different from that of the escort officer. The escort officer is responsible for the nurse. Jiovany did not speak to the living unit officer about the incident.

On cross-examination, Jiovany did not agree that it is also the living unit officer's responsibility to ensure that the medication pass goes smoothly. The escort officer stands next to the nurse and ensures her safety and ensures that orderly procedures are followed. The living unit officer has other duties like logging in the books, making telephone calls, and performing counts. However, if the living unit officer is nearby an occurring incident, he could jump in and assist.

Captain Michael Kownacki testified that he has worked at MCCC for nearly twenty years. He has been a captain since 2018. As a captain, he is responsible for handling disciplinary matters. He did not draft the charges in this matter, nor did he witness the incident. However, he is familiar with the charges against appellant.

Kownacki explained that the escort officer is primarily assigned to the medication pass. The escort officer is responsible for the safety and security of the nurse and the medicine cart. The living unit officer is responsible for overseeing anything else occurring in the unit and would assist the escort officer as needed. T116:6-16.

If an escort officer encounters a situation while escorting the nurse, he should try to intervene and de-escalate the situation. If an inmate is yelling obscenities at the nurse, the escort officer should give clear instructions to the inmate to stop and that the conduct will not be tolerated. If an inmate continued to curse, the escort officer could call for assistance and remove the nurse. Kownacki explained that verbal assaults are dangerous because they can escalate.

Appellant actions violated policy and procedures because he failed to react. He failed to remove the nurse. His duty was to provide for the safety and security of the nurse and the medication.

On cross-examination, Kownacki agreed that pursuant to SOP 830 both the escort officer and the living unit officer are responsible for ensuring that the distribution is completed in an orderly and respectful fashion. However, he explained the roles of the escort officer and the living unit officer are different. Two officers are not needed to escort the nurse. The duties of the living officer require the officer to conduct security checks and make rounds of the entire living area. Therefore, it is possible that the living unit officer might not have heard something occurring in the front of the west wing.

For appellant

Appellant, Daniel Ibrahim, testified that he has worked at the MCCC for twelve years. He had served in the escort officer position on many occasions. As the escort

officer, his role is to oversee the distribution of medication to the inmates and make sure the process was streamlined and went smoothly. The living unit officer is responsible for managing and controlling the function of the unit as it pertains to the inmates and their behaviors. Living unit officers are supposed to be present for the medication pass, but some are not.

On the date of the incident, appellant and Nurse Anabaryone arrived on the unit shortly after 6 A.M. The nurse was relatively new and came to the unit unprepared. T175: 17-19. She was taking a long time to distribute the medication and the inmates were frustrated. She made numerous mistakes in dispensing the medication. She was arguing with the inmates and was offended when they told her they did not receive the proper medication. T176: 9-20. She was saying things like, "I'm the nurse. Don't tell me my job." He noticed her doing this throughout the escort and it created a lot of tension. She took much longer than the other nurses to conduct the medication pass. T177: 9-20.

When the nurse reached inmate J.R., she asked for her wristband. The inmate asked why she needed it and did not seem to want to get it. To speed things up, appellant asked the inmate to do him a favor and get her wristband. She complied. T178: 4-18. The nurse continued to give the wrong medication and inmate J.R. had an issue with receiving improper medication. T178: 21-25. The incident did not rise to the level of the inmate being unruly. The nurse was agitating the inmates and giving them attitude. T180: 6-11. There was a back-and-forth argument with the nurse and inmate J.R. It was not about the wristband. The problem started when the inmate was not given her proper medication. T180: 15-24. The nurse escalated the situation because she kept saying "don't tell me what to do." The inmate was walking away when he heard one or two insults to the nurse. The inmate called the nurse a "stupid bitch" and maybe something like "learn to do your job." T182: 15-24. That was the extent of the situation. He has no idea where the "whole 15 minute thing" came from. T182: 23-25. What he saw "didn't even last 15 seconds." T183:1-2. They were only on the unit for a total of approximately ten to twelve minutes.

He did not perceive the language used by the inmate as she was leaving the medication pass area to be a threat. The nurse said nothing to him during the incident and did not ask him to intervene. The nurse's account was "wildly inconsistent" with what he "vividly remembered." T186: 1-4. There was nothing for him to do. No one's safety was in danger.

The appellant had his own interest in "speeding things up" because he was not able to take his break until he was "done with the nurse." It was in his interest to "get it done quicker" so he could take his break. T189: 22-25, T190:1

What he saw on the date of the incident was fairly routine. It did not require action to be taken because there was no perceivable threat. If he had felt the nurse was in danger, he would have immediately removed her from the unit and taken her back to medical.

Office Mauro was on the unit at the time of the incident. He was on his phone which is contrary to the policy. "[H]e should have been there with us but he wasn't." T193:14-19.

On cross-examination, appellant explained that during the incident, at least three or four inmates complained about not getting the proper medication.

The other nurses at the facility had a firmer understanding of how to perform their job duties. The matter stemmed from Nurse Anabaronye's improper handling of the medication pass.

Appellant was ordered by Sgt. Jiovany to write the incident report that the inmate cursed at the nurse, so he documented what he was told to report. The fifteen minutes was fabricated. He was confused why he was asked to write the report because there was nothing that occurred that day that was out of the ordinary or required a report. If he had written a report that said an inmate cursed at someone, it would have been thrown out. Nothing would have been done about it. No discipline would have resulted against the inmate.

CREDIBILITY

In evaluating evidence, it is necessary for me as the finder of fact to assess the credibility of the witnesses. This requires an overall assessment of the witness's story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A trier of fact may reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

As to the credibility of the witnesses, I accept the testimony of respondent's witnesses as credible.

While Nurse Anabaronye did not recall much of the details surrounding the April 2017 incident, an event that took place over four years ago, her testimony that she had been cursed at and called derogatory and/or insulting names by the inmate for an extended period was consistent with the report she authored shortly after the incident. Her testimony that she did not deserve to be spoken to in that manner was sincere. Her estimate that the verbal assault lasted approximately fifteen minutes, the duration of the incident, was reasonable and reliable. Finally, I accept her testimony to be without bias or motivation as she indicated that she did not want to file a report of the incident but was directed by her supervisor to do so. For these reasons, I accept the testimony of Anabaronye as credible.

I also accept the testimony of Lt. Jiovany as credible. Her testimony regarding her discussion with Anabaronye was consistent with that of Anabaronye's testimony and report. Additionally, her testimony of her discussion with the appellant shortly after the incident and his response thereto is largely consistent with appellant's testimony at hearing that he did not view the incident as warranting a response or requiring reporting, therefore, I accept her testimony as reliable. I similarly accept her explanation of the differences in the roles of the escort and living unit officers to be reasonable and rational. I further accept her testimony to be without bias or motivation.

Finally, I accept the testimony of Captain Kownacki as credible. While he played no direct role in the incident, based on his position and experience, his testimony regarding the differences in the roles of the escort and living unit officers and the appropriateness of discipline imposed was both reasonable and rational.

As to appellant, I do not accept his testimony as reasonable, reliable, or credible. Appellant admits that the inmate called the nurse two to three names like "stupid bitch" and told her to learn to do her job but disputes the duration of the incident, contending that it lasted only seconds. Yet, he also testified that the nurse took a long time to complete the medication pass and that she improperly handled same by giving several of the inmates, including J.R., the wrong medication. He further claims that the nurse escalated the situation by continuing to argue with the inmates. He testified that nothing out of the ordinary occurred during the incident and therefore there was nothing for him to report. The record is absent of any evidence or suggestion that appellant reported any of his allegations regarding the nurse's mishandling of the medication pass. Instead, appellant raised these allegations for the first time at hearing. Appellant further testified that contrary to policy, the living officer was on the phone and not with the nurse and him when the medication pass was conducted.

Appellant's testimony appears to be motivated by his desire to avoid discipline and to place blame on others. His testimony is both internally inconsistent and inconsistent with that of the other witnesses. His testimony simply does not hang together and wholly lacks credibility.

After having the opportunity to consider the testimony of the witnesses and to consider the documentary evidence, I **FIND** the following additional **FACTS**:

Pursuant to SOP 830, it is the responsibility of both the escort officer and living unit officer to make certain that the distribution procedures are followed, and the process is completed in an orderly and respectful fashion.

The escort officer is responsible for accompanying the nurse during the medication pass. It is the escort officer who has primary responsibility for the safety and security of the nurse and the medication cart.

The living unit officer is responsible for other duties in the unit including advising the inmates to line up for the medication pass, conducting the inmate count, and conducting security checks throughout the unit.

On the date of the incident, inmate J.R. cursed at Nurse Anabaronye and called her derogatory and/or insulting names including, "stupid bitch."

The cursing and name calling of Nurse Anabaronye by inmate J.R. lasted for approximately fifteen minutes.

On the date of the incident, appellant took no action and gave the inmate no instruction to discontinue her inappropriate conduct toward the nurse.

LEGAL ANALYSIS AND CONCLUSIONS

At issue here is whether the appellant committed the violations alleged and if so, whether the penalty imposed is appropriate.

Appellants right and duties are governed by the Civil Service Act and accompanying regulations. N.J.S.A. 11A:1-1 to 12-6. A public employee protected by the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to their

employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The appointing authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Here, appellant is charged with Incompetency, Inefficiency, or Failure to Perform Duties; Conduct Unbecoming a Public Employee; Neglect of Duty; and Other Sufficient Cause consisting of neglect of duty and violation of administration procedures and regulations involving safety and security, and post orders.

Incompetency, Inefficiency, or Failure to Perform Duties

Appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform his duties. In this type of breach, an employee performs his duties in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. Rivera v. Hudson Cty. Dep't of Corr., CSR 6456-16, Initial Decision (October 24, 2016), adopted, CSC (November 28, 2016), <http://njlaw.rutgers.edu/collections/oal/>.

Here, appellant failed to take action when an inmate was cursing at and calling the nurse derogatory and insulting names. Appellant contends that the incident was short in duration and did not result in any physical harm and therefore required no response. Appellant failed to recognize that such conduct could quickly escalate into something even more serious causing harm to persons and property. Appellant also failed to recognize that his responsibilities as an escort officer include responding to and/or attempting to de-escalate verbal assaults upon the nurse. The fact that the nurse did not complain to appellant, fear for her physical safety, or ask appellant to intervene does not excuse him of his responsibility to ensure that the medication distribution procedures are followed and that the medication pass is completed in an

orderly and respectful manner. Additionally, the fact the living unit officer also has certain responsibilities relating to the medication pass does not excuse appellant of his primary responsibility for the safety and security of the nurse.

Further, while I do not accept as credible, appellant's testimony that on the date of the incident, the nurse mishandled the medication pass and gave the inmates the wrong medication, the fact that appellant did not think that such alleged behavior, if true, would constitute an unusual incident that required reporting, further demonstrates his incompetency and fundamental misunderstanding of his duties as an escort officer.

Finally, appellant's incompetency, inefficiency, and failure to perform his duties on the date of the incident is demonstrated by his response by his supervisor's directive to write a report of the incident. Rather than documenting the name calling and derogatory comments that appellant admittedly witnessed and explaining the facts and circumstances regarding same, appellant simply parroted his supervisor's directive to write a report. Appellant's belief that his report would be futile and would not result in discipline against the inmate does not excuse his responsibility to properly and accurately document an incident.

Accordingly, for these reasons, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes incompetency, inefficiency, failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1) and that the charge is sustained.

Conduct Unbecoming

"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)).

Here, for the reasons set forth above, appellant’s response to the April 2017 incident is violative of the implicit standards of good behavior. Aside from failing to take proper action and having a fundamental misunderstanding of his duties as escort officer, by his own testimony, appellant’s actions on the date of the incident appear to have been primarily motivated by his interest in quickly completing the medication pass so that he could take his break. Finally, appellant’s lacking response to his supervisor’s directive to write a report further constitutes conduct unbecoming a public employee.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant’s conduct constitutes Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and that the charge is sustained.

Neglect of Duty

Neglect of duty is not defined under the New Jersey Administrative Code, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of his or her job title. Generally, the term “neglect” connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). It has been applied both to not fully carrying out duties and to acting incorrectly. See, e.g., In re Marucci, CSV 07241-09, Initial Decision (January 1, 2010), modified, CSC (March 6, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>, aff’d, A-3607-09T1 (App. Div. January 3, 2012), <http://njlaw.rutgers.edu/collections/courts/>

Here, for the reasons set forth above, appellant's failure to take any action in response to the name calling and derogatory comments directed at the medication pass nurse and his failure to properly document the incident when directed to do so constitutes neglect of duty.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes Neglect of Duty, in violation of N.J.A.C. 4A:2-2.3(a)(7), and that the charge is sustained.

Other Sufficient Cause

In addition to being charged with violations of the civil service disciplinary regulations, appellant is also charged with violating the MCCC table of offenses and penalties including; B-2, neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in causing danger to persons or property Step 3; and D-6, violation of administrative procedure and regulations involving security; SOP 238 post-orders correction officers (general); and SOP 240A, living unit post orders west-wing.

Here, appellant's failure to act could have resulted in danger to the nurse, the inmates, or others on the unit. Having already concluded that appellant's actions constitute Neglect of Duty in violation of N.J.A.C. 4A:2-2.3(a)(7), I similarly conclude that appellant's actions constitute neglect of duty, idleness, or willful failure to devote attention to tasks which could result in causing danger to persons or property in violation of the MCCC table of offenses and penalties.

Additionally, SOP 238 concerns the general post orders for correction officers. This SOP makes clear that a correction officer's primary function is to manage all inmates under his charge to assure a secure and safe environment. This SOP also provides that correction officers are required to submit accurate and complete written reports as directed, and to immediately report, both orally and in writing, all incidents of an unusual nature. For the reasons, set forth above, appellant's action and inaction on the date of the incident violates SOP 238. Finally, SOP 240A concerns the living unit

post orders. As appellant was acting as the escort officer rather than the living unit officer, this procedure is not applicable here.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes Other Sufficient Cause, in violation of N.J.A.C. 4A:2-2.3 (a)(12), consisting of B-2, neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in causing danger to persons or property Step 3; and D-6, violation of administrative procedure and regulations involving security SOP 238 post-orders correction officers (general); and that such charge is sustained.³

PENALTY

The Civil Service Commission's review of 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.

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). Typically, numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record are considered. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007).

³ Respondent did not address or demonstrate appellant's violation of SOP 240A; however, I **CONCLUDE** that respondent has satisfied all other elements of the Other Sufficient Cause charge and therefore sustain the charge.

Here, the charges against appellant have been sustained. The seriousness of these charges, appellant's failure to appropriately comprehend the responsibilities of his position, and his response to his supervisor's directive to report the incident, alone warrant the imposition of the ten-day working suspension. The penalty is further warranted based upon appellant's disciplinary history which includes two prior sustained major disciplinary actions consisting of a July 2014, seventy (70)-working day suspension for Neglect of Duty and Other Sufficient Cause, and a March 22, 2014, ten (10)-working day suspension for neglect of duty and sleeping on duty. Appellant's disciplinary record also consists of several minor disciplinary offenses consisting of a May 2017 three-day suspension for failure to carry out orders; a January 2013, one-day suspension for absence without notification, and an October 2012 written reprimand for rule violation. Thus, considering the concept of progressive discipline and appellant's particular disciplinary history, the penalty is reasonable and appropriate, if not lenient.

Accordingly, I **CONCLUDE** that the penalty of a ten working day suspension is sustained.

ORDER

I hereby **ORDER** that all the charges brought against appellant, as set forth herein are **SUSTAINED**, and the penalty consisting of a ten working day suspension is hereby **AFFIRMED**.

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.



October 18, 2021

DATE

SUSAN L. OLGATI, ALJ

Date Received at Agency:

Mailed to Parties:

SLO/lam

APPENDIX

For respondent:

Nurse Chizoba Anabaronye

Lt. Darlene Jiovany

Captain Michael Kownacki

For appellant:

Daniel Ibrahim

LIST OF EXHIBITS

For respondent:

R-1 Preliminary Notice of Disciplinary Action

R-2 Nurse's Incident Report

R-3 4/26 Report of Lieutenant Darlene Jiovany

R-4 Officer Ibrahim's Report

R-5 SOP No. 238

R-6 SOP No. 830

R-7 Not admitted

R-8 Table of Offenses

R-9 Disciplinary History

R-10 Final Notice of Disciplinary Action

R-11 Officer Mauro Report