



STATE OF NEW JERSEY

In the Matter of Tara Dramis
 Southern State Correctional Facility,
 Department of Corrections

DECISION OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2020-545
 OAL DKT. NO. CSR 13098-19

ISSUED: DECEMBER 15, 2021

The appeal of Tara Dramis, Senior Correctional Police Officer, Southern State Correctional Facility, Department of Corrections, removal effective August 6, 2019, on charges, was heard by Administrative Law Judge Elaine B. Frick, who rendered her initial decision on October 18, 2021. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's (ALJ) initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on December 15, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision. However, the Commission did not adopt the recommendation to modify the removal to a six-month suspension. Rather, the Commission imposed a 30 calendar day suspension.

DISCUSSION

The Commission has no issue with the ALJ's findings regarding the charges in this matter. Her dismissal of several of the charges was appropriate based on the credible evidence in the record. The Commission also agrees with the ALJ's finding that the appellant was guilty of other sufficient cause for violating the appointing authority's policies regarding contraband and safety and security.¹ However, the

¹ As the Commission only disagrees with the ALJ regarding the penalty, the appointing authority's exceptions, which challenged the ALJ's determinations on the merits, and which were reviewed and

Commission does not agree that the removal should be modified to a six-month suspension.

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In assessing the penalty in relation to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history. 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. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In this case, the appellant's actions are clearly serious, especially in a correctional setting. In this regard, even when a Senior Correctional Police Officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense occurring in the environment of a correctional facility may, nevertheless warrant the penalty of removal where it compromises the safety and security of the institution, or has the potential to subvert prison order and discipline. *See Henry, supra*, 81 N.J. at 579-80. In this regard, the Commission emphasizes that a Senior Correctional Police Officer is a law enforcement officer who, by the very nature of his job duties, is held to a higher standard of conduct than other public employees. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). While the appellant has been found guilty of infractions that touch on the safety and security of correctional facilities, the Commission finds that the circumstances warrant a penalty less than removal. With that said, the Commission is in no way minimizing the appellant's improper conduct. Certainly, any form of contraband in a correctional facility is cause for concern. Nevertheless, the Commission cannot ignore that most of the charges against the appellant have not been sustained. Moreover, and most importantly, the record indicates that the appellant has no prior discipline in her nearly 15-year career. Accordingly, the Commission finds that a 30 calendar day suspension is the proper penalty. This penalty should serve as a warning to the appellant that any future infractions could lead to a more severe disciplinary sanction, including removal from employment.

As the appellant's removal has been modified, she is entitled to mitigated

considered by the Commission, but ultimately found to be unpersuasive, will not be addressed in detail.

back pay, seniority and benefits 30 calendar days from her separation from employment until her actual reinstatement. See *N.J.A.C.* 4A:2-2.10. However, she is not entitled to counsel fees. *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

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*, unpublished, 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 are finally resolved. However, under no circumstances should the appellant's reinstatement be delayed due to any back pay dispute.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modified the removal to a 30 calendar day suspension. The appellant is entitled to backpay, benefits and seniority as provided for in *N.J.A.C.* 4A:2-2.10. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned, or could have been earned, by the appellant during this period. 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.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay 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 15TH DAY OF DECEMBER, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO.: CSR 13098-2019

AGENCY REF. NO.: N/A

2020-545

**IN THE MATTER OF TARA DRAMIS,
NEW JERSEY DEPARTMENT OF
CORRECTIONS, SOUTHERN STATE
CORRECTIONAL FACILITY.**

Oded M. Winestock, Esq., for appellant, Tara Dramis (Weinstock Levin, attorneys)

Alexis F. Fedorchak, Deputy Attorney General, for respondent (Andrew J. Bruck, Acting Attorney General of New Jersey, attorney)

Record Closed: April 22, 2020

Decided: October 18, 2021

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Appellant, Tara Dramis, (Dramis) was employed as a Senior Corrections Officer (SCO) by the New Jersey Department of Corrections (DOC) at Southern State Correctional Facility (Southern). She appeals respondent's imposed disciplinary action of removal from her employment, for alleged violations of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)12, other sufficient cause; and HRB 84-17 as amended, C8 falsification, intentional misstatement of material fact; C11 conduct unbecoming an employee; C17 possession of contraband on State property;

D4 improper or unauthorized contact with inmate-undue familiarity with inmate; D7 violation of administrative procedures and/or regulations involving safety and security; D15 entering restricted areas without specific permission; E1 violation of a rule, regulation, policy, procedure; and E2 intentional abuse or misuse of authority or position.

PROCEDURAL HISTORY

On March 29, 2019, the DOC issued a Preliminary Notice of Disciplinary Action (PNDA) to appellant, alleging violations of several charges and asserting removal as the disciplinary action to be taken against appellant. Appellant requested a departmental hearing which was conducted on May 21, 2019, and May 31, 2019. An FNDA issued on August 6, 2019, removing appellant, for multiple sustained charges.

Appellant requested an appeal. The matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13. The appeal was perfected on September 11, 2019. Written confirmation of appellant's waiver of 180 days processing was received on January 31, 2020.

The hearing was conducted in the OAL Atlantic City office on December 4, 2019, and December 27, 2019. Appellant's motion for directed verdicts to dismiss some of the charges were denied. Telephonic conferences were conducted on several dates in January and February of 2020, to address the status of the submission of final evidence and written summations. Counsels' requests to extend the time to submit same was granted. Submissions were received as of April 22, 2020.

The Governor of the State of New Jersey issued Executive Orders in March of 2020, declaring a public health emergency due to the COVID-19 pandemic, and requiring "work from home" status for OAL staff. The normal operations of the OAL were disrupted, including restricted access to work resources. Subsequent Executive Orders extended the time for administrative decisions to issue by September 4, 2021. An order granting additional extension for the completion of this decision was entered.

FACTUAL DISCUSSION AND FINDINGS

Kevin Schultheis testified on behalf of the DOC. He was presented as a policy witness. He began his career with the NJ DOC approximately twenty-two years ago, as a Corrections Officer (CO) at Bayside. He was promoted through the ranks working at Southern, South Woods, and Bayside facilities. He attained the rank of major in 2013 and has served in that position at several facilities. He is currently working as a major at Mid-State Correctional Facility.

Major Schultheis was at Southern in charge of all security, certain staff members and supervised the Special Investigations Division (SID). He has been involved in the discipline of employees, sometimes handling investigations, and is involved in discussions regarding minor discipline matters. He is familiar with the policies and penalties of the NJ DOC. He is familiar with Dramis, professionally having worked at Southern during the time Dramis was a housing unit CO at the facility. He is aware that she was removed from employment pursuant to the FNDA of August 1, 2019. (R-1.) He personally never had to mete out discipline to Dramis. He knew her generally to be a conscientious, good employee.

The PNDA alleging charges against Dramis was entered on March 29, 2019, and served upon Dramis on April 1, 2019. (R-1.) Dramis was immediately suspended, pending the recommended discipline of removal. After her departmental hearing, the FNDA issued, with the penalty of removal. (R-1.) The sustained charges were: N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, and HRB 84-17 (as amended) C8 falsification, intentional misstatement of material fact; C11 conduct unbecoming an employee; C17 possession of contraband on State property; D4 improper or unauthorized contact with inmate-undue familiarity with inmate; D7 violation of administrative procedures and/or regulations involving safety and security; D15 entering restricted areas without specific permission; E1 violation of a rule, regulation, policy, procedure; and E2 intentional abuse or misuse of authority or position. (R-2.)

Major Schultheis read from the FNDA, that the incidents giving rise to the charges were as follows: "An investigation by SID staff has revealed that you have engaged in improper contact with an inmate, brought contraband into the institution, and provided personal information to an inmate. Your unduly familiar conduct is contrary to relevant rules and regulations, is unbecoming a law enforcement officer and a public employee, violates the public trust, damages the core mission of the Department and cannot be tolerated." (R-1.)

Dramis received DOC policies regarding its operations from Human Resources when she was hired, and during her employment, as per her signed policy receipt forms, and new-hire orientation checklist. (R-7, R-8.) One of those documents, HRB 84-17 as amended, established a list of offenses with the progressive discipline and corrective action to be taken regarding DOC staff, such as Dramis, who are found to have committed the listed offenses. (R-2.)

Major Schultheis highlighted portions of HRB 84-17 as amended, which are applicable to Dramis' matter, regarding her charges and the progressive discipline that could be imposed pursuant to the policy. The offense listed under section C, Personal conduct, subsection 11, is identified as "conduct unbecoming an employee." (R-2 at Bates 348.) For a first infraction, the table lists a minimum of three days working suspension to removal of the employee from their employment. (Id.) He acknowledged that removal was not mandatory discipline for a first infraction of conduct unbecoming an employee. Removal was mandated only if it was a second infraction. (R-2 at Bates 348.) He confirmed he had been involved in at least approximately 100 instances of disciplinary action for an employee regarding unbecoming conduct. He could not recall if there had been a situation where an employee charged with a first infraction of unbecoming conduct had been removed. He recalled one situation with a six-month suspension having been imposed.

For a violation of HRB 84-17 as amended, C17, which is listed as "possession of contraband on State property or in State vehicles" a first infraction penalty ranges from official written reprimand (OWR) to removal. (R-2 at Bates 349.) The NJ DOC internal management procedure CUS.001.EPS.01, entitled "Security at Facility Entry Points"

applies to all employees and addresses procedures for how people are admitted into the facility through security and what items are defined as contraband if someone is attempting to enter the facility with such items. (R-4.) The policy identifies items considered to be contraband, such as weapons, prescription medications, and tobacco products. (R-4 page 2.)

Major Schultheis added that food and drink and any outside food products are considered contraband, although not specifically listed as contraband in the policy. (R-4 page 2.) The policy does list authorized items DOC staff members may carry into a facility, such as a comb, sunglasses, and factory sealed plastic bottles of water. (R-3 page 11.) Authorized items shall be carried in a clear plastic bag and are scanned through security. Major Schultheis explained that if an item is not on the authorized list, then the item is considered contraband. Outside food is not listed as an authorized item, and therefore is considered contraband. There are dining room CO's who oversee the preparation of food inside the facility. Staff can take a meal break there.

It is important to the security and safety of the facility to prohibit food items from coming into the secured area of the facility. Inmates should not have excess food and they can fashion a weapon out of outside food items. If an inmate receives outside food from a CO, it can present a problem to the inmate, who may be viewed by others as getting a personal favor, which can place the inmate at risk with other inmates. The information can be used by other inmates to harass the staff member who supplied the outside food. Inmates use "premium" food items to gain favor with other inmates or use it to barter for drugs or other favors.

Major Schultheis candidly acknowledged he never dealt with discipline of an employee for possessing contraband of dry cereal in a baggie. He was aware that something perceived by others as a minor issue, such as a single cigarette, is considered for disciplinary purposes, as "significant" contraband. He acknowledged that water bottles are permitted to be brought in by employees under the policy. He candidly noted he was not aware if flavoring packets for the water were permitted. He has observed bulk powder mix in a bucket inside the facility, so possibly flavoring packets were considered permissible. He opined that it may be possible that a sergeant or

lieutenant could give permission to bring in Keurig coffee K-cups but believed that would be beyond the scope of what a superior officer could approve.

If an inmate is handed a water bottle by an officer, that is not permitted, and considered contraband provided to the inmate. Major Schultheis ruminated that such an incident may be considered a minor infraction. He was not sure what the scale of discipline would be, whether reprimand or more discipline, and he would be speculating on the level of discipline, without knowing the specific circumstances.

The offense of HRB 84-17 as amended, D4, under the heading of Safety and Security Precautions, is listed as "Improper or unauthorized contact with inmate-undue familiarity with inmates, parolees, their families, or friends." (R-2 at Bates 352.) The penalty for a first infraction ranges from OWR to removal. (*Id.*) Major Schultheis asserted that he was only aware of the discipline of removal being imposed upon an employee who was found in violation of being unduly familiar with an inmate, whether that relationship occurred inside or outside of the facility.

Major Schultheis indicated that NJ DOC policy number ADM.010.004, entitled "Standards of Professional Conduct: Staff/Inmate Over Familiarity" sets forth the ethical standards to be used as a guide for NJ DOC staff in their professional relationships with inmates, parolees, and their families. (R-3.) The policy confirms that NJ DOC staff must meet a "higher standard of personal conduct and ethical behavior" and shall not establish a personal relationship with inmates. (R-3 at Bates 108-109.) Physical contact with an inmate is not required to establish undue familiarity. Major Schultheis stated that a staff member having a conversation with an inmate can be "undue familiarity" and it is a good practice for staff members to not share personal information with an inmate. The over familiarity policy indicates that violations of the policy shall subject the staff member to disciplinary action, including immediate dismissal for a first offense. (R-3.)

Major Schultheis explained that the undue familiarity policy is important for the safety and security of the facility and the staff, like the reasoning behind the contraband

policy. Inmates will manipulate circumstances if they gain personal information from a staff member.

Section D7, listed as "violation of administrative procedures and/or regulations involving safety and security" indicates that a first infraction carries a penalty ranging from OWR to removal. (R-2 at Bates 352.)

General offenses are listed in Section E of HRB 84-17 as amended. The offense of E1 is "violation of a rule, regulation, policy, procedure, order or administrative decision." (R-2 at Bates 356.) A first infraction penalty ranges from OWR through removal. (Id.) The offense of E2 is "Intentional abuse or, misuse of authority or position." (Id.) The penalty for a first infraction ranges from OWR through removal.

Dramis received the NJ DOC Handbook when she was hired in October of 2004. (R-7, R-8.) The handbook outlines information and rules for NJDOC employees. (R-5.) If a staff member violates the general principles of the rules and regulations in the handbook, the employee is subject to penalties ranging from an official reprimand through termination of employment. (R-5 at Bates 125.)

The general principles of the DOC are listed in the handbook. This includes recognition by DOC staff that maintaining discipline among inmates must never be a personal issue for the staff member. The employee must avoid giving any impression that they are trying to impose their personal will upon an inmate. (R-5 at Bates 117.) DOC staff are trained to discipline inmates in a firm, fair, and consistent manner. Violations of rules will not be tolerated. The system is designed so that the discipline imposed upon an inmate is not done arbitrarily and is consistent under the laws, regulations, and the DOC policies. (R-5 at Bates 117.)

The handbook further confirms that employees "shall not indulge in undue familiarity with inmates or parolees or permit inmates or parolees to be unduly familiar toward them." (R-5 at Bates 119.) Employees are not to convey either to or from an inmate any oral or written message, except as necessary and authorized by the facility for transaction of DOC business. (R-5 at Bates 120.) Major Schultheis stressed this is

important so that only authorized communications with an inmate pertaining to official business are done in a professional manner.

Dramis also received the Law Enforcement Personnel Rules and Regulations promulgated by the DOC. (R-7, R-8.) The rules of conduct for law enforcement personnel, such as Dramis as a CO, are set forth in the document. (R-6.) Law enforcement officers are held to a higher standard of behavior, than other employees. Major Schultheis confirmed that Dramis, as a CO is thus held to that higher standard. The rules of professional conduct for law enforcement officers confirm that officers shall not act or behave in a manner discrediting the officer or the DOC, whether on or off duty. (R-6.) COs must conduct themselves in a professional and unbiased manner, so that they do not cast doubt upon the public's trust of them, twenty-four hours per day, whether in private, or in their official capacity.

The Law Enforcement Rules of Conduct confirm that officers shall not become unduly familiar with inmates. (R-6 page 9.) Major Schultheis again stated that undue familiarity does not require physical touching between a CO and an inmate. The Rules of Conduct also confirm that officers shall not make false or misleading statements or written reports. (R-6 page 6.)

On October 26, 2017, Major Schultheis authored an email to all sergeants, lieutenants, and members of the administration at Southern, with the subject "Housing Unit Offices." (R-9.) The email indicated: "Effective immediately, any offices located in housing units are effectively closed. These offices are off limits for inmates. The practice of interviewing inmates in housing unit offices will cease immediately without exception. Staff may use the offices for the storage and retrieval of supplies only." (R-9.)

He authored the email for several reasons. The video system at Southern had a weakness. The video cameras did not cover the housing unit Sergeant offices. Inmates being interviewed by SID complained of threatening behavior by some staff members and that they were being subjected to strip searches. Schultheis believed that many SID investigations could be avoided if inmates were restricted from access to the

offices. There also were many staff members removed for bringing in contraband and using the housing unit offices to store the contraband. He did not recall that he had stated during his testimony in the departmental hearing that the locks on the offices were changed because a CO was caught sleeping in an office.

On August 13, 2018, Major Schultheis forwarded his prior email of October 26, 2017, to the same group of individuals to whom he had sent the original email. He included in the email of August 13, 2018:

As it has become apparent that the below instructions have not been followed and I have noted several instances of unauthorized use over the past year, the locks to all offices located in housing units are being changed. Unit Officers will no longer have access to these offices. The Housing Sergeant, Compound Sergeant, and Area Lieutenant will have the keys to these offices once all the locks have been changed.

As a final clarification, the offices may be used for storage of supplies and paperwork completion by Supervisors only. Inmates are not permitted in the offices for any reason, including interviews and searches. Storage of personal items is prohibited in the offices (a separate directive regarding the removal of any personal lockers will be issued this week.)

(R-9.)

Major Schultheis indicated he had to send the email again, due to several violations and incidents in the offices. Another staff member was removed due to drugs. Officers had personal locks on the storage units. Another officer was disciplined due to a significant neglect of duty. The bulk of inmate paperwork forms are stored in the housing unit office. Officers are responsible to refill the forms when the stock is low. Inmates are not supposed to do that.

Following the issuance of the directives in his emails, inmates were not permitted to clean the housing unit offices, were not permitted to retrieve paperwork from the

offices, and there was no legitimate reason for any inmate to be in the housing unit offices. He was aware that there were storage facility sheds at Southern where cleaning supplies and tools were stored and inmates had certain access to same, such as to obtain and carry into the facility cleaning supplies. It would be considered typical for an inmate to be assigned to do such a task.

Major Schultheis acknowledged that Dramis was not listed as a recipient on his emails. He confirmed she would not have received the email from him. The information would be conveyed to her by her supervisors. He would expect the superiors to implement his directive and advise the officers. He acknowledged he would have no way of knowing if the superiors had not passed along the information to officers unless those superiors were reprimanded for such behavior.

He left Southern as of November 2018. The locks were never changed on the housing unit offices before he left. He did not ask his replacement to implement the locks getting changed. He was no sure whether the information was transmitted by the administration to the individual who replaced him.

He was aware that there is a video of Dramis from 2019 regarding this disciplinary issue, which depicts one of the offices. He could not recall specifically what was depicted in the video, but was aware inmates were seen going into the office, so his email directive was apparently not implemented. He is unfamiliar as to whether inmates and officers are routinely going in the offices since his departure from Southern. He recognized that most of the facility is cleaned by inmates. He believed that sensitive areas of the facility, such as the offices, were not to be cleaned by inmates. He would expect officers to clean the sergeants' offices. He admitted he never cleaned a sergeant's office during his career.

Major Schultheis acknowledged on cross examination that if he came upon four inmates huddled together and smelled smoke, he would likely charge all with the offense of smoking if no one took responsibility for same.

There are several things considered when a decision is made regarding the

penalty to impose upon an employee who has been found in violation of a charge such as unbecoming conduct. Major Schultheis described that such things are the severity of the employee's actions or behavior, their work history, and whether they are in probationary status or a long-time employee. It is not necessarily a "black and white" clear cut decision. He was not aware whether a CO who had been reprimanded for sleeping on duty was still employed or had been removed as discipline for such an infraction. Ultimately, he believed the employee was not removed, yet acknowledged it is a serious offense and poses a hazard to inmates and other officers if an officer was sleeping on duty.

Elizabeth Adams testified on behalf of Southern. She is employed at Southern as a Senior Investigator in the SID unit. As of 2006 she was a CO, became a Senior CO (SCO) in 2007, and an Investigator in the SID unit in approximately 2012. She became a Senior Investigator in 2015. She is familiar with Dramis professionally through their employment, and through the investigation she conducted relative to this matter.

Dramis was a housing unit SCO at Southern for Housing Unit 6. Approximately 160 inmates were housed in Unit 6. Two COs were assigned to the unit during each shift.

Adams was assigned to investigate Dramis after an inmate Adams was interviewing in an unrelated narcotics matter, indicated that Dramis was having an inappropriate relationship with another inmate, J.L.¹ When Adams completed her investigation, she authored an investigative report as of March 22, 2019. (R-10.)² Adams issued a supplemental report as of May 14, 2019, to correct a clerical error she identified where the wrong date was written on a video, and the wrong video was recorded for Dramis' investigation. (R-11.)

¹ Initials of inmates are used for confidentiality purposes.

² Portions of Adams' report have been redacted, due to the hearsay information contained therein, from statements made by others and through others, and those witnesses not having been produced at the hearing to testify. There was no residuum of competent evidence otherwise provided to support such statements. See N.J.A.C. 1:1-15.5; N.J.R.E. 802; Weston v State, 60 N.J. 36, 51 (1972).

The inmate Adams interviewed in the unrelated narcotics matter was given confidential informant status and assigned the identification of CI1. That inmate is no longer in custody. On November 11, 2018, during her interview of CI1, Adams did not specifically ask CI1 about Dramis. She asked CI1 a general question as to what was going on in the unit and learned that there was an alleged relationship between J.L. and Dramis. Adams interviewed CI1 again during her investigation of Dramis. She wanted to clarify where CI1 alleged he had seen physical touching occur between J.L. and Dramis and CI1 indicated that occurred in the mop closet. (R-10.) In her investigative report, Adams notes "the Unit 6 Cameras did not capture SCO Dramis and inmate [J.L.] going into the Unit 6 mop closet." (R-10 at 7.) Adams acknowledged in cross examination she did not find any evidence to corroborate the informant's claim that Dramis and J.L. were in the mop closet and physical contact had occurred.

Adams spoke to another confidential informant, inmate, CI2, on November 16, 2018, regarding the narcotics matter. CI2 also volunteered information that he believed inmate J.L. and Dramis were having a relationship. She interviewed CI2 once. CI2 is no longer in custody. It was after that interview when Adams alerted her principal investigator about the allegation involving Dramis and J.L. Adams acknowledged she had no way to corroborate the reliability of the two confidential informants.

Pursuant to the Prisoner Rape Elimination Act (PREA), once Adams learned of the alleged relationship between Dramis and J.L., she contacted inmate J.L. to determine if he was going to make a PREA allegation against Dramis. J.L. told Adams that he was the head runner of the unit, referring to an inmate who helps out in the unit. As per her report, Adams noted that J.L. was the "Unit 6 Tier Representative" and his work detail was "Housing Unit Sanitation." (R-10 at 1.) J.L. indicated to Adams he had no problems with the unit, and he did not want to make any PREA allegations. He was not having any PREA related problems. (R-10 at 2.) Adams indicated J.L. provided this information in a written statement, but acknowledged the written statement was not produced or otherwise provided in this matter.

Adams received information from a SID investigator from Bayside Correctional facility, from an inmate there being interviewed in an unrelated matter, who claimed their

cellmate made a comment regarding J.L. and Dramis. Adams also received information from her partner, Investigator Newton, who was conducting an unrelated investigation, that an inmate he interviewed made a comment regarding J.L. and Dramis. No information was provided as to whether the other unrelated matters were matters involving J.L., Adams' other narcotics investigation, or what potential connection or motive the other inmates may have had with respect to their circumstances and how they had any relation to J.L. and/or Dramis.

There is a facility-wide video surveillance system at Southern, which video footage is maintained for a period of thirty days. Adams began her investigation of Dramis in November of 2018. She was able to go back and view footage from approximately thirty days prior to that date. She reviewed video surveillance from Unit 6 of the facility, which depicted the area of the Sergeant's office door and the area outside of the office, known as the day room, where inmates could watch television, and where they sit at tables to eat. She began reviewing dates when she believed Dramis was working, during the shift she thought Dramis was working. She taped some of the video segments from the video surveillance system in which Dramis appears and took still shots from one video. None of the video has audio or any sound recorded.

Adams noted in her report that Major Schultheis sent a memo on October 26, 2017, that any offices located in Southern housing units were "effectively closed." (R-10 at 4.) She noted that the "offices are off limits for inmates." (Id.) There would no longer be any interviews of inmates in housing unit offices and that staff could only use the offices for storage and retrieval of supplies. (Id.) Adams indicated in her report that there was a sign posted on the Unit 6 Sergeant's office door stating "Out of Bounds. No Unauthorized Inmates." (Id.)

As part of her investigation of prior video surveillance, Adams reviewed video footage from November 17, 2018, of the day room of Unit 6. The day room is an area where inmates can watch television and can eat at the tables and use the benches. The Sergeant's office door opens to the day room. On the video from November 17, 2018, Adams saw Dramis and inmate J.L. in the day room by themselves, appearing to have a conversation. (R-10 page 2.) Adams saw a black coffee mug next to J.L., which

is not an institutional mug. Adams opined that the black coffee mug would be contraband and had to have been brought into the facility. She acknowledged only still shots from that video clip were provided in this matter. (R-12 photographs.) Two of the photographs appear similar, with Dramis leaning on a table with her back to the camera, in the day room, while facing inmate J.L. who is seated on a separate bench, facing Dramis, and a black mug is on the bench seat next to him. There was no explanation as to how long the two were seen in the video.

Adams reviewed video footage from November 28, 2018. The area in the view of the video is of Unit 6, left side, where an officer's desk is in an open corridor area. Adams identified Dramis standing in front of the desk and then is seen walking away. (R-20, 11/28/2018.) Inmate J.L. walks into the area a few minutes later carrying a plastic water bottle, which appears to contain a red substance. He places it on the desk. A few minutes later, Dramis walks to the desk, picks up the bottle, and takes a drink from it. (R-20.) Adams opined that the water in the bottle had been flavored with a flavoring powder packet and indicated that flavoring packets would be contraband. She conceded she did not see Dramis add a flavoring to the bottle. She did not have any knowledge as to whether Dramis may have obtained flavoring from powdered drink mixes available in the facility. Adams acknowledged if the flavoring was obtained from the Officers Dining Room (ODR), such food item would not be contraband.

In her report, Adams describes that when J.L. walked to the desk with the bottle, he then rummaged through a jacket which was on the back of the chair. She conceded on cross examination that was a mistake and thought it was a jacket when she first viewed the video. When she reviewed the video again, she saw that J.L. was reaching into the desk drawer. She further acknowledged that she had not indicated in her report that there was another officer seated near the desk. She candidly admitted she had not seen there was another officer in the video when she viewed the video. She did not know whether that officer had given permission to J.L. to go into the desk drawer.

Adams viewed Video footage from December 1, 2018, of Unit 6 in the day room, of the view of the doorway to the Sergeant's office. At approximately 12:16 pm, Dramis and J.L. are seen standing on either side of a mounted box on the wall near the

Sergeant's office door. Adams indicated the box was previously used as a mailbox for inmates. Dramis is seen on the right of the box in the video and J.L. is on the left. The door to the Sergeant's office is further to the right in the video. It is closed. Several inmates are seen walking through the area, standing together, seated at tables eating, and some are cleaning up the area. (R-13.) Adams described this video as depicting Dramis and J.L. having a conversation for a prolonged period of time.

Dramis is first seen leaning back against the wall. J.L. is standing on the other side of the box. He walks away and returns with another inmate. Other inmates gather at the box area. Several inmates are standing together in the corridor area near the Sergeant's office door and others are cleaning and wiping the tables. Dramis steps away as mopping is being done. She is seen pacing away briefly, staying in the area of the mailbox.

Adams believed that Dramis and J.L. were in a "prolonged conversation" yet acknowledged that there was no sound recording. At one point, J.L. walks away and returns to stand further to the left of the screen with another inmate. He then walks back to the box area. J.L. hands something to Dramis, which Adams believed was a note. Dramis looks at it and hands it back to J.L. Adams conceded she does not know what was written on the note.

Dramis at times stretches her leg, walks away from the box and paces in the area as the other inmates are walking through and doing cleaning tasks. Another inmate is seen approaching the box area and appears to dance and then moves away. At approximately 12:36 p.m. Dramis walks away from the box area. J.L. then walks away. (R-20.)

On January 15, 2019, a hidden surveillance video camera was placed in a cardboard box on the wall in the Sergeant's office. When the camera detects motion, a one-minute recording is made. It reactivates recording when motion is detected. Adams described the Sergeant's office as a very small room with a desk, chair, and lockers on the wall. She asserted that the office is to be kept locked at all times unless an officer needs to retrieve something from the office.

The video clip from the Sergeant's office on January 15, 2019, depicts J.L. entered the camera view, appears to get a trash bag from above the lockers in the office, turns and Dramis is entering the office with what appears to Adams as a Ziplock bag in Dramis' hand with some type of orange food contents. (R-14 clip 6.) The two crisscross in the video and Dramis hands the Ziplock bag to J.L. Adams took a screen shot from the video, in which Dramis appears with something in her hand that is orange in color. (R-16.) Another inmate is seen entering the office at the end of the video clip.

The hidden camera recorded another view of Dramis and J.L. in the office on January 15, 2019. (R-14, clip 15.) Dramis is seen putting on gloves and then packing what apparently was another inmate's gear into a box. J.L. appears across from her, apparently assisting with the packing. Another inmate walks in and reaches up to get a trash bag from the office and exits.

A third video clip from January 15, 2019, demonstrates Dramis with a yellow plastic sheet of paper, leans over and J.L. leans over, also out of view of the camera. (R-15, clip 20.) Adams confirmed that other officers and inmates were seen throughout the day on January 15, 2019, going in and out of the office on the video surveillance from the office on that date.

The camera was again placed in the Sergeant's office on January 16, 2019. However, the view of the camera angle was too high, and nothing was detected on that date. Adams acknowledged the hidden view camera was not placed in the office any other time. She acknowledged it was not placed there on any other shift or any other day. She further confirmed as part of her investigation, she did not interview any sergeants or lieutenants regarding whether inmates were in the office at any time and whether there were circumstances when inmates would be in the Sergeant's office.

Adams acknowledged she only viewed video from shifts when Dramis was working. She affirmed that she viewed hours of video tape from Unit 6 and the video from the hidden camera. She affirmed she found no evidence of any physical contact between J.L. and Dramis on any video. In her supplemental report, she indicated that

upon review of her investigative report on May 14, 2019, she saw there was a clerical error, and the incorrect date was referenced in the report regarding video surveillance from December of 2019. During cross examination she conceded that she mistakenly had recorded video from an incorrect date in December, which was a date when Dramis was not at work. She further acknowledged during cross examination that when one of the dates of video surveillance was recorded for the Dramis investigation, only a portion of the video had been copied, and the entire morning portion was not recorded.

Adams reviewed inmate J.L.'s recorded telephone calls. He referenced that he was attempting to obtain contraband and mentioned money transactions, "however, there was no evidence that the phone calls made were affiliated with SCO Dramis at this time." (R-10 at 4.) Adams reviewed J.L.'s written correspondence and it was "negative for any interaction with SCO Dramis at this time." (R-10 at 4.) She confirmed during cross examination there was no evidence to connect Dramis to any efforts to bring narcotics into the facility.

On January 16, 2019, another inmate from Unit 6 was transported to the local hospital due to a suspected overdose. (R-10 at 4.) The following morning, SID investigators conducted interviews and searches in Unit 6. (R-10 at 5.) Thereafter, at approximately 11:30 a.m., on January 17, 2019, Dramis wrote in a preliminary incident report that J.L. and three other inmates were observed smoking in C-Wing of Unit 6. The inmates were issued institutional charges and escorted to a restrictive housing unit.

Dramis authored disciplinary reports regarding the four inmates. (P-3, P-4, P-5, P-6.) Adams affirmed that Dramis wrote in her reports that she observed the inmates smoking in the unit between two beds. (P-3, P-4, P-5, P-6.) She confirmed that Dramis does not state that she saw each inmate with a cigarette in hand.

On January 23, 2019, J.L. and two of the other inmates were found not guilty for the administrative charges related to the smoking incident reported by Dramis. One inmate, J.P., admitted it was his cigarette and he received the charges. (R-10 at 5.)

On January 22, 2019, J.L. was interviewed by SID, and then transferred to South

Woods State Prison. Adams searched J.L.'s personal property and found a note in J. L.'s journal which indicated "Heels will go great with your uniform." (R-10 at 5.) She confirmed the note was not addressed to anyone and Adams had no evidence to connect that note with Dramis.

Adams testified that on the following day, January 23, 2019, Adams went to South Woods and again interviewed J.L. She had forgotten to review some information with him the prior day. Her report indicates she interviewed him on January 25, 2019. (R-10 at 6.) She testified that the purpose of her interviewing J.L. was to determine whether there was an inappropriate relationship between J.L. and Dramis. Apparently, J.L. claimed while in detention for the administrative charge that he was willing to talk because he was not comfortable at Southern and was transferred to South Woods.

On February 28, 2019, Adams and special investigator Gonzalez interviewed Dramis. A union representative was present with Dramis. (R-18.) Dramis confirmed having received training regarding the policy of undue familiarity. Dramis indicated that she works five days a week in a Unit with 160 inmates and she gets approached by inmates all the time.

Dramis denied getting notes from any inmates at the facility and adamantly denied ever giving a note to an inmate. Adams advised Dramis that she was seen on video surveillance standing with J.L. for twenty-three minutes and that he walked away and came back and exchanged a note with J.L. Dramis indicated that she gets paperwork all the time from inmates. She recalled that on one occasion, J.L. handed her a paper with an inmate's name and information on it and asked to have the inmate transferred to the Unit and she told him no. When shown still shots from the video of December 1, 2018, Dramis did not recall getting a note from J.L. then, and that it was "bullshit." (R-18.) When Dramis was asked by the investigators if she had gotten a note that indicated "high heels would look great with your uniform" she did not know what the investigators were talking about.

During the interview, Dramis acknowledged she was aware there was a sign posted on the Sergeant's office door that inmates were not permitted. She

acknowledged she was aware of a memo sent out by the majors' office approximately two years prior, that inmates were not permitted in the office. Dramis indicated that inmates do need to go into the office to clean it or when they are getting inmate paperwork or returning the paperwork. Dramis stated that inmates go into the Sergeant's office approximately once or twice a day to clean it or get their paperwork.

Dramis confirmed during her interview that there were personal items in the office, such as a microwave and coffee pot, acknowledging that inmates should not have access to such items. She agreed that inmates should not be left unattended in the office. She further confirmed that inmates are not permitted to eat in the Sergeant's office. In response to the question as to whether inmates may walk into the office with food or drink, she stated she would tell them to get out of there. If the food items were considered contraband, she would confiscate them from the inmate and write up an appropriate institutional charge.

Adams testified that initially during the interview, Dramis denied bringing contraband into the facility. Dramis does admit during her interview that she has brought what is considered contraband into the facility. She admitted that the Keurig coffee maker in the office was her item. She brought it in when she was transferred onto the shift. She drinks a cup a day from the coffee maker and brings in the K-cups for it, approximately every week. (R-18.)

Adams indicated that while Dramis was being interviewed, other SID investigators went into the Sergeant's office of Unit 6 and seized personal items from the office and a locker in the office. Photographs of the items seized depict a Keurig coffee machine, some locks, K-cups, and batteries. (R-19.) Adams asserted these were items associated with Dramis since there was a sweater in the locker with Dramis' name on it. Adams confirmed that no other lockers in the office were searched that day to her knowledge. She confirmed that the coffee machine was in the office, not in a locker, and that it was out in the open and not secreted. Adams confirmed that she did not speak to any Sergeants or Lieutenants, or Dramis' supervisors to determine if any had given Dramis permission to set up the coffee maker in the Sergeant's office.

Dramis was questioned during her interview about the institutional charges of smoking she issued against four inmates, one of whom was J.L., on January 17, 2019, the same day that SID had been on the unit interviewing inmates. Dramis stated she had completed the count, saw that an inmate was not on their bunk, and when she went to address that, she saw the four inmates huddled together, smelled smoke, saw smoke, and one inmate made a body motion of moving his hand from his mouth and quickly putting the hand down. She adamantly described the situation the same way. Adams described during her testimony that Dramis was "indecisive" as to who was actually smoking, yet Dramis admitted she did not see four inmates with cigarettes in their mouths smoking, but believed they were all engaged in smoking since they were huddled together, and she smelled smoked. The inmates were all patted down, and a search of the area revealed a cigarette in the bunk area of one of the inmates, whom she saw make the quick motion from his mouth down when she approached the four inmates huddled together.

Dramis was continually pressed during her interview by Adams and the other investigator, to concede that she factually wrote incorrect information about the four inmates, including J.L., on the charges issued for smoking, since she did not actually observe them smoking with cigarettes in their mouths, and assumed they were engaged in the activity due to their body motions. Dramis conceded she did not physically see four inmates with cigarettes in their mouths. She continually responded to the investigator's pressure that she wrote factually incorrect charges against the four, that she observed the four inmates huddled together and with the smell of smoke, it was apparent they were smoking and sharing a cigarette. Adams confirmed during cross examination that she stated in her report that Dramis admitted that she did not witness any of the four inmates smoking. Adams indicated she stated that because Dramis had stated she did not see any one inmate with a cigarette in their mouth.

Adams affirmed that she does not have a say in what type of disciplinary charges are issued to an officer or the discipline that may be imposed. She did not have a say in the charges issued against Dramis, she just completed the investigation of Dramis.

Tara Dramis testified on her own behalf. She began her employment with DOC

November 4, 2004, as a CO. She has never received a write up, reprimand, nor ever suspended or removed from her job until this matter. She has no prior discipline from her approximate fifteen years of employment.

Dramis denies any physical relationship ever having occurred between her and J.L. She reviewed the videos provided in discovery in this matter from DOC and never saw any physical contact between her and inmate J.L.

Specifically, as to the allegation that Dramis had physical contact with J.L. in the mop closet, she denied same. She acknowledged she had been in the mop closet with J.L., as she is required to do a count of the mops and there had been issues with toilets backing up while construction was going on in the facility. She has to unlock the closet for the inmate. There are utensils in the pantry area of the closet, and she is required to retrieve them. She denied that any time she may have been in the mop closet when J.L. was there, that there was any inappropriate contact.

Dramis never personally saw the memo from Major Schultheis regarding inmates not being permitted in the sergeant's offices. When the memo was first issued, she was then working the third shift. She was told that inmates were not to be hanging out in the offices. At the time, she did not think this was an issue since the third shift is the nighttime when the inmates are sleeping. Dramis understood that inmates were not permitted in the Sergeant's office "for the most part." Inmates get paid for completing duties such as cleaning the unit. An inmate will be in the Sergeant's office to clean the office. She observed other officers in the video and saw other inmates come into the office. As far as she knew, inmates were permitted in the office to do the cleaning and chores such as assisting with the packing of inmate's gear. No supervisor ever told her from the time the memo was issued that an inmate was in the office and that it was a problem. No supervisor ever told her that inmates were not allowed in the office to clean or assist with tasks such as packing an inmate's gear.

Dramis asserted that the only time she is in the Sergeant's office with an inmate is to retrieve supplies, get inmate paperwork, and clean up. The main paperwork for inmates is stored in the office. She confirmed that there were cubes on the pole outside

of the office to hold inmate paperwork. The two little cubes hold five or six pieces of paper and do not provide enough room for all the paperwork. If the stock runs low, inmates have to restock by getting paperwork out of the office. Dramis indicated that she had put in a requisition request for a larger cabinet to be installed to hold the inmate paperwork, so that the inmates would not have to go into the office. She was waiting for confirmation that the cabinet would be built.

Dramis recalled the date of January 15, 2019, when she was on the hidden video camera in the Sergeant's office. She had to pack an inmate's property. She explained that if an inmate is being moved, their personal property needs to be packed up. After packing the items, she must complete many forms for the inmate whose property it is, including an inventory of the items packed. She will usually have an inmate assist her by writing down on a scrap of paper the items as she packs them so she can complete the inventory forms. For safety reasons, her CO partner on the shift cannot be in the office with her packing items, since they are the only two in the Unit with approximately 160 inmates for the shift. She confirmed she put the latex gloves on in the video, to begin packing the inmate's items. J.L. was writing down the items. J.L. did not pack the items. She denied that only J.L. would assist with this task. She has had other inmates assist her.

Dramis acknowledged she was never trained on how to pack inmate gear. She recalled that when she first started at the facility inmates would be the ones to pack up another inmate's gear. She was not aware if she needed explicit permission from a superior officer to allow an inmate to assist her. She was just told that an inmate is not allowed to pack up another inmate's gear. She never has the inmate do that. She does the packing herself. She denied having a safety concern for being in the office with an inmate while packing up gear.

On January 15, 2019, she saw the photograph taken of the video tape when she was inside the Sergeant's office and has an item in a baggie in her hand. After reviewing the video and the photograph, she recalled that she had been off for two days prior to that date. When she came back to work, she went to clean out the refrigerator in the Sergeant's office and removed a piece of chicken she had previously stored in the

refrigerator. She handed it to J.L. to throw into the trash can. She saw him do so.

Regarding the note passing as alleged to have occurred in the video from December 18, 2019, Dramis indicated that she had not been shown the video before she was interviewed on February 28, 2020. She recalled that during her interview, she did state that she had not received a note from J.L. She did not mean to be deceitful. After seeing the video, she was able to recall standing at the mailbox area on December 18, 2019. She saw that J.L. walked away, returned, and stood to the side with another inmate. On the video she could see that J.L. and the other inmate were looking at a piece of paper. Then J.L. came to the mailbox area where she was. Dramis recalled seeing a note paper with another inmate's name and number on it. J.L. asked if that inmate could be transferred into Unit 6 and Dramis told him "no" and gave the paper back to him.

Dramis described that the unit will run chow time for the inmates at approximately 12 noon. She generally stands by the mailbox area during chow time. She needs to open the mop closet for the day room so that inmates can access the cleaning supplies. She acknowledged she appears to be talking to J.L. but did not recall the conversation. She opined she probably talked about things on the unit, which other inmates would also approach her and talk to her. She indicated that every day inmates will come up and talk during the shift. It was not unusual for J.L. or the other inmates to come up and stand there to talk to her.

Dramis addressed the red water bottle seen on the video of November 18, 2018. She confirmed that was her water bottle. She usually would bring two water bottles in for the day. The liquid was red because she used the powdered flavoring from the kitchen food cart. There are large pouches of powder to flavor beverages for lemonade, iced tea, and fruit punch. She recalled using the powdered flavoring from the facility that day. She did not bring powdered flavoring into the facility.

Dramis recalled asking J.L. to place her water bottle on the desk for her, as seen in the video. She knew another officer was seated there. She could view J.L. the entire time from where she handed the bottle to him to the desk area, which was

approximately twenty feet away from her. She could clearly see the other officer and never lost sight of J.L. Dramis candidly acknowledged that the inmates cook for them, and no one is directly on top of them watching the food preparation. She did not have a problem asking an inmate to put her closed bottle on the desk. She ordinarily does such a thing herself. She did not see a problem with giving the bottle to J.L. to handle for her when she could see him the whole time.

Dramis confirmed there was no jacket on the back of the chair at the desk, as reported by Investigator Adams. Dramis reviewed the video tape many times. She never saw J.L. going through a jacket. He is seen going through the desk drawer on the video. Dramis indicated that pencils, pens, a stapler, and paperwork would be in there. Inmates have access to those items but are not supposed to be going through the drawer. She did not know if the officer who was seated by the desk had given J.L. permission to go through the drawer.

Dramis confirmed that during her interview, she initially denied bringing any contraband into the facility, assuming the investigators were talking about drugs. She did confirm that she brought the Keurig cups in the plastic bag. (R-19.) That day she walked into the facility with the coffee in a clear plastic bag. There is a Sergeant there at the main base. She puts everything down to go through the x-ray machine. She is then wanded or patted down and cleared to enter. She put the coffee down to go through the scan and retrieved it after being cleared to enter. She was not told that she could not bring the coffee into the facility. She brought the coffee in and placed it in her locker.

She indicated that it is "unspoken" that every unit has a coffee maker and coffee in the office. The Sergeant's office in Unit 6 had a microwave, refrigerator, and coffee maker. She has seen coffee makers in other areas of the facility such as in the main center, in the academic building, and in the staff building. The coffee maker was out in the open in the office. She was not the only one to use it. Other officers used it. She knew her immediate supervisor was aware it was there as she recalled making a cup one time and asking the supervisor if they wanted a cup of coffee as well.

Dramis addressed the issue of the administrative charges she wrote against four inmates. On January 17, 2019, she was aware that SID had come to the unit earlier that day and made the inmates stand outside in the “freezing cold” weather. The inmates were very upset, and they all wanted grievance paperwork to fill out. She told them she would give the paperwork out at count time. She was seated in the office to do paperwork and recalled that J.L. wanted the grievance paperwork and she told him she would give it to him in a few minutes. She did the count and saw that an inmate was off of his bunk. She did her paperwork, and then went back down the wing to ask the inmate where he had been. As she went down the wing, she could see and smell smoke between beds three and four. She saw four inmates huddled together. She asked them who was smoking and told them if one was not admitting it, they were all going to be charged.

Dramis went to her Lieutenant, told him what happened, and the Lieutenant told her that all four inmates would get charged. She went back out to the unit, patted them down, sent them to the day room, then searched the area and found a piece of a cigarette, matches, and sandpaper under inmate I.G.’s bed. None of the inmates took responsibility. She issued administrative charges to each of the four inmates for smoking. She wrote the charges that she observed them smoking because she saw smoke, smelled it, and saw all four huddled together in the area. She later learned that one of the four inmates, J.P., took responsibility for the cigarette, even though it was found at the other inmate’s bunk area.

Credibility

A fact finder is obligated to weigh the credibility of witnesses. The fact finder must choose to accept or reject whether a witnesses’ testimony is credible. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to a witness’ testimony. It is best described as that quality of testimony or evidence that makes it worthy of belief. “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 observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950), (citations omitted).

A credibility determination requires an overall assessment of the witness' story "in light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder should also consider the witness' interest in the outcome, or any motive or bias. The fact finder may reject testimony because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Major Schultheis testified in a professional and respectful manner. He did not display animosity nor bias towards Dramis. He candidly acknowledged when he did not have firsthand knowledge of circumstances, such as when he described what he believed were specific rules or directives yet did not know if such rules and directives were being adhered to during the daily functioning and operation of the facility. His testimony as to the policies, rules, and discipline which may be imposed, was credible, in line with the documentary evidence and his years of experience.

Investigator Adams testified in a respectful manner. She acknowledged having made mistakes in her investigation. She stoically attempted to evade directly answering cross examination questions, by offering information to explain how she believed there was some type of wrongdoing by Dramis. This is disconcerting, when she confirmed that she is only to be the investigator to determine facts, and not to pass judgment as to whether the subject of her investigation committed any improper acts. There were several missteps which renders the accuracy of the recitation of her factual findings questionable, such as indicating in her report that inmate J.L. was seen going through a jacket on the back of a chair, when there was no jacket depicted in the video, and she never saw that another officer was seated near the desk. She further characterized Dramis' statements during her interview as being "indecisive" which would not be the proper adjective to describe Dramis' interview and statements. Adam's testimony is deemed to be truthful and honest, yet the reliability of her investigation and characterization of certain facts in her written report, are questionable.

Dramis testified in a straightforward and anxious manner. The anxiety appeared to be due to nervousness, and not attributed to being deceptive. Likewise, when seen on her interview tape, Dramis was straightforward. She did exude frustration at times, such as when continually pressed by both investigators about the semantics of the use of the word "observed" in her report about the inmates smoking in the unit. Her description of her work duties, understanding of rules, and description of the daily functioning of Southern, was not exaggerated or animated, and was delivered in a very matter-of-fact manner. It is acknowledged that Dramis' ability to be deceitful regarding certain allegations, such as denying having been in the Sergeant's office with inmate J.L., would be contrary to the visual evidence. She confronted such evidence with direct and plausible explanations. For example, in the video from the Sergeant's office where she is packing up another inmate's items, she is very business-like, focused on the task, and the same can be said as to her appearance in the video where she is standing post in the day room and handed the note by J.L. and then hands it immediately back to him. I deem her testimony credible without attempting to be deceptive or deceitful.

Having had the opportunity to observe the witnesses and having reviewed the evidence admitted, I **FIND as FACTS** the following:

Dramis has been employed as a CO since November 4, 2004. She has no prior discipline. As of November 2018, Dramis was working as a SCO, unit housing officer for Unit 6 at Southern.

As of November of 2018, inmate J.L. was assigned to Unit 6. He was the Southern Unit 6 Tier representative, also referred to as an inmate head runner of the unit, which is an inmate who does work in the unit, including tasks such as cleaning.

An FNDA issued on August 6, 2019, removing Dramis for sustained charges of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)12, other sufficient cause; and HRB 84-17 (as amended) C8 falsification, intentional misstatement of material fact; C11 conduct unbecoming an employee; C17 possession of contraband on State property; D4 improper or unauthorized contact with inmate-undue familiarity

with inmate; D7 violation of administrative procedures and/or regulations involving safety and security; D15 entering restricted areas without specific permission; E1 violation of a rule, regulation, policy, procedure; and E2 intentional abuse or misuse of authority or position. The incidents giving rise to the charges were stated in the FNDA as: "An investigation by SID staff has revealed that you have engaged in improper contact with an inmate, brought contraband into the institution, and provided personal information to an inmate. Your unduly familiar conduct is contrary to relevant rules and regulations, is unbecoming a law enforcement officer and a public employee, violates the public trust, damages the core mission of the Department and cannot be tolerated." FNDA.

Dramis admittedly brought a Keurig coffee machine into the Southern facility, where it was kept in the Unit 6 Sergeant's office. Dramis admittedly brought in K-cup coffee to Southern and stored same in a locker in the Sergeant's office.

On November 17, 2018, still photographs taken from a video camera in the Unit 6 day room, depict inmate J.L. seated on a bench across from Dramis. Dramis' back is to the camera, and she is leaning/seated on a table across from J.L. There is a black coffee mug on the bench next to J.L., that was not an institutional mug.

On November 18, 2018, Dramis is seen on video surveillance handing to J.L. a closed water bottle, which had been flavored with red powdered punch mix by Dramis, obtained from the facility. J.L. walks with the bottle approximately twenty feet and places the bottle on the desk in an open area of Unit 6. Another CO is seated near the desk.

On December 1, 2018, Dramis is seen on video surveillance in Unit 6, day room, standing post during chow time. During her post, inmate J.L. is seen handing a note to Dramis, which she views, and immediately hands back to J.L. Dramis is seen speaking to J.L. at times, and speaking to other inmates. Other inmates traverse the area and are seen standing and speaking to one another or eating.

On October 26, 2017, Major Schultheis authored an email/memo to sergeants, lieutenants, and members of the administration at Southern, with the subject "Housing Unit Offices." The email indicated: "Effective immediately, any offices located in housing units are effectively closed. These offices are off limits for inmates. The practice of interviewing inmates in housing unit offices will cease immediately without exception. Staff may use the offices for the storage and retrieval of supplies only." On August 12, 2018, Major Schultheis forwarded the prior email to the same group of individuals to whom he had sent the original email. He added in the email of August 12, 2018, that due to the instructions from the prior email not being followed, the locks to all offices located in the housing units would be changed and unit officers would no longer have access to the offices. The email further stated: "Inmates are not permitted in the offices for any reason, including interviews and searches." Major Schultheis confirmed that as of the time he left Southern in November of 2018 to go to another work location assignment, the locks had not been changed on the unit offices. Dramis was not a recipient of the Schultheis' emails. She was aware there was a memo about inmates not being allowed to hang out in the offices, but believed they were still permitted to be in the office for cleaning and getting supplies.

As of March of 2019, when investigator Adams authored her report, she confirmed there was a sign posted on the Sergeant's office in Unit 6 stating: "Out of Bounds. No Unauthorized Inmates."

On January 15, 2019, Dramis is seen on video surveillance in the Sergeant's office, walking past J.L. as he exits after getting a trash bag from the office. Dramis hands a baggie with a piece of chicken in it to J.L. as they pass one another. Another inmate is seen entering the office at the end of the video clip.

On January 15, 2019, Dramis is seen on video surveillance from the Sergeant's office, packing up another inmate's gear. Inmate J.L. is standing across from Dramis, assisting Dramis. During the video clip, another inmate is seen coming into the office, getting a trash bag, and leaving.

On January 17, 2019, Dramis wrote in preliminary incident reports, regarding J.L. and three other inmates, that she observed them smoking. Dramis had observed the four inmates huddled together between beds three and four, observed smoke, smelled smoke, and later located a portion of a cigarette, matches, and sandpaper, in the bunk of one of the other inmates.

LEGAL ANALYSIS AND CONCLUSION

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; 11A:2-20; N.J.A.C. 4A:2-2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or they engage in misconduct related to their duties. N.J.S.A. 11A:1-2(a). Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); and see, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown

Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) citation omitted. The evidence must “be such as to lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metro Bottling Company, 26 N.J. 263, 275 (1958).

Appellant's status as a SCO subjects her to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576-77 (1990). Law enforcement employees, such as a SCO, 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, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Service Commission, 115 N.J. Super. 64, 72 (App. Div.), cert. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

The FNDA recommending removal of Dramis for various sustained charges, generically states that an investigation by SID revealed that Dramis engaged in improper contact with an inmate, brought contraband into the institution, and she provided personal information to an inmate. The FNDA simply concludes this is unduly familiar conduct, without reference to dates, incidents, or actual evidence of such conduct. Similarly, as presented in this hearing, DOC attempted to rely upon all secondary and third hand information, hearsay statements from inmates and some made through other inmates, done by inmates in the midst of being investigated on narcotics charges. There was no explanation or understanding as to what motives the inmates who made such statements had towards Dramis and/or inmate J.L., to assess such information. There were no firsthand witnesses presented during the hearing, and no other residuum of competent evidence to support the hearsay statements. N.J.A.C. 1:1-15.5; N.J.R.E. 802; Weston v. State, 60 N.J. 36, 51 (1972.)

Each charge as to Dramis is enumerated and addressed as follows:

1. N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming

Dramis is alleged to have violated "conduct unbecoming a public employee" as codified at N.J.A.C. 4A:2-2.3(a)(6). The term "unbecoming conduct" has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of government services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

The DOC asserts that Dramis committed "unbecoming conduct" by directly disobeying the orders of Major Schultheis by repeatedly allowing inmate J.L. to be in the Sergeant's office in Unit 6. They contend such conduct was preferential treatment to an inmate and created a safety risk to herself, her fellow officers, and the inmates. They further assert that unbecoming conduct has been demonstrated when Dramis allowed J.L. to have a contraband coffee mug next to him, and she did not issue an institutional charge to him, which also demonstrates undue familiarity with an inmate. Additionally, the DOC asserts that Dramis gave a false narrative when she filed the smoking administrative charges against J.L. and the other inmates. They assert she was dishonest during the interview with SID about the charges.

Dramis was never directly issued the email/memo by Major Schultheis. There was no evidence presented to indicate that the email/memo was posted anywhere or otherwise disseminated to the direct line officers. He confirmed it never was sent directly to officers and assumed it was disseminated by the Supervisors. Dramis acknowledged being aware of the memo, believing it applied to not allowing inmates to hang out in the office and that inmates who were doing tasks such as cleaning and obtaining supplies and paperwork could still access the office. Schultheis' explanation for issuing the email was due to allegations that inmates were being interviewed in the offices and the inmates were alleging wrongdoing occurring in the offices during the interviews. He did not indicate that there were alleged secretive conduct between inmates and officers or that certain inmates were getting favorable treatment in the office.

Investigator Adams' quote of the sign posted on the office door, indicates that it was not clear that all inmates were banned or prohibited from the office, as the sign stated: "No unauthorized inmates." It was common practice for inmates to still be in and out of the office, and not just J.L. with Dramis, as depicted in the video clips in this matter. This was a practice that apparently continued after the issuance of Schultheis' memo, without being addressed by anyone of authority that there were no exceptions for inmates to be in the Sergeant's office. The continued physical layout and location of cleaning items, such as the trash bags, and inmate paperwork, lends itself that inmates were in and out of the office, who apparently would be the "authorized" inmates still permitted access to the office, as per the posted sign. I **CONCLUDE** that the DOC has not demonstrated by a preponderance of the evidence that Dramis disobeyed an order by Major Schultheis and thus did not commit unbecoming conduct.

Dramis is depicted in the photograph from a video that shows J.L. sitting across from her on a bench in the day room, and there is a coffee mug, which would be considered contraband next to him. There is no other context provided to determine by a preponderance of the evidence, that this is undue familiarity with an inmate or that by allowing a contraband coffee mug to be on the bench next to an inmate, demonstrates behavior by Dramis that adversely affects the morale or efficiency of the facility or has the tendency to destroy the public's respect for this public employee. I **CONCLUDE** that Dramis being seen in a photograph in which J.L. is seated across from her with a contraband coffee cup next to him does not demonstrate unbecoming conduct.

Dramis explained in her interview, and during her testimony, that she observed the four inmates huddled together, smelled smoke, saw smoke, and one made a quick motion from his mouth downward when she approached the men. The portion of the cigarette, matches, and sandpaper were then found under the bunk of one of the inmates. Dramis consulted with her Lieutenant before issuing the administrative charge of smoking to all of the inmates. She noted in her report that she observed them smoking. Admittedly, she did not see each inmate with a cigarette in their mouth. It was not deceptive or falsification of a report, to assert that she observed the inmates smoking. Under the scenario of seeing four inmates huddled together, with smoke seen and smelled, reaches a logical conclusion to infer they were smoking. I **CONCLUDE**

that Dramis did not falsify a report by stating she observed smoking in the charges issued against the inmates. I **CONCLUDE** that the DOC has not demonstrated that such action constitutes unbecoming conduct.

I thus **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)(6), unbecoming conduct, has not been sustained by a preponderance of the evidence for the reasons asserted by the DOC, and such charge shall be **DISMISSED**.

2. N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause

Dramis was charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. "Other sufficient cause" is essentially the catchall provision for conduct, which is not specified in the eleven listed causes at N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would "violate 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." In re Boyd, Cumberland County Dept of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final decision, 2019 N.J. CSC Lexis 621.

I **CONCLUDE** that any substantiated findings of violations of any of the specific charges from HRB 84-17 as amended, as addressed below, shall serve as demonstrating other sufficient cause. I **CONCLUDE** that the behavior by Dramis as addressed below, violates the implicit standard of good behavior due to her careless actions. I **CONCLUDE** that the evidence preponderates that the charge of N.J.A.C. 4A:2-2.3(a)(12) is **SUSTAINED** and warrants the imposition of discipline upon Dramis.

3. HRB 84-17 as amended C8 falsification, intentional misstatement of material fact

The DOC asserts that Dramis did not actually see any of the inmates smoking, despite writing that in her disciplinary charges on January 17, 2019. Dramis used the word "observed" in her reports, indicating she observed the inmate smoking, based

upon seeing the four inmates huddled together, saw and smelled smoked, and one made a quick motion from his mouth downward when she approached. The cigarette butt, matches, and sandpaper were found near the bunk of one of the inmates. Such information supports use of the terminology "observed" smoking. I have **CONCLUDED** that Dramis did not falsify the report, nor intentionally misstate a material fact. I thus **CONCLUDE** that the DOC has failed to demonstrate by a preponderance of the evidence that Dramis violated HRB 84-17 as amended C8, falsification. I thus **CONCLUDE** this charge shall be **DISMISSED**.

4. HRB 84-17 as amended C11 conduct unbecoming an employee

I have **CONCLUDED** above that the DOC has not demonstrated by a preponderance of the evidence that Dramis violated N.J.A.C. 4A:2-2.3(a)(6), unbecoming conduct. I thus **CONCLUDE** that the same charge of HRB 84-17 as amended C11 conduct unbecoming an employee, has not been sustained by the DOC and the charge shall be **DISMISSED**.

5. HRB 84-17 as amended C17 possession of contraband on State property

Dramis admitted having brought the coffee maker into the facility. She admitted having brought the K-cup coffee into the facility. Dramis asserts she was not stopped from bringing such items into the facility, apparently going through security screening openly possessing such items and being allowed through. She further asserts her supervising officer never took action against her, knowing there was a coffee maker and that she had coffee, and that there is an "unspoken" rule that coffee makers were allowed, given that she has seen them in other areas of the facility. This does not absolve Dramis from possessing same. It is acknowledged that the coffee maker was kept out in the open in the Sergeant's office, and apparently utilized by other officers as well. Dramis did know that such items would be considered contraband. I thus **CONCLUDE** that the charge of HRB 84-17 as amended C17 possession of contraband on State property has been **SUSTAINED**, the contraband being the coffee maker and the coffee K-cups.

**6. HRB 84-17 as amended D4 improper or unauthorized contact with inmate-
undue familiarity with inmate**

The DOC admittedly has no evidence of any improper physical contact between Dramis and J.L. They admittedly do not have evidence to support hearsay allegations of an improper relationship between Dramis and J.L. There was nothing to support the allegation that Dramis was improperly in the shed or mop closet having physical contact with J.L. Adams could not find any video to support such allegations.

The explanation given by Dramis that she was standing at her home base area on post in the day room during chow, was plausible and credible. The video does not demonstrate Dramis engaged in a prolonged conversation or behavior that was unduly familiar with J.L. She talks to other inmates. Other inmates approach her. The note handed to her by J.L. was first looked at between J.L. and another inmate and then shown to her. She briefly glanced at the paper and immediately handed it back to J.L. I **CONCLUDE** this does not demonstrate unauthorized contact with an inmate or undue familiarity with an inmate.

Dramis is seen in the Sergeant's office with J.L. packing up gear and passing by handing him a piece of old chicken to throw in the trash. The email by Schultheis was never provided to Dramis, nor posted for officers. She learned of the information through a supervisor, yet understood it to mean inmates should not be hanging out in there. The sign posted on the door even referred to "No unauthorized inmates" to be in the office. Having seen no improper contact between J.L. and Dramis in the office, and given the circumstances of the encounters there, I **CONCLUDE** that the DOC has not demonstrated by a preponderance of the evidence, that Dramis was engaged in an unduly familiar relationship with J.L. I thus **CONCLUDE** that this charge shall be **DISMISSED**.

**7. HRB 84-17 as amended D7 violation of administrative procedures and/or
regulations involving safety and security**

Dramis is seen in the photograph from the video of November 17, 2018, seated across from inmate J.L., while a contraband coffee mug is on the bench next to him. The DOC asserts that Dramis acted inappropriately for not having taken the contraband and failing to issue an administrative charge to J.L. There is no context or explanation as to how the cup got on the bench next to J.L. There is nothing alleged that Dramis provided the cup or any contents thereof. There is no information as to what happened to the cup. Without such details, there is not enough to demonstrate that Dramis acted improperly by failing to confiscate the cup or failing to issue administrative charges. It does reflect a carelessness on the part of Dramis to have the contraband cup in plain sight before her, next to an inmate. I **CONCLUDE** that the carelessness on the part of Dramis posed a safety issue for allowing contraband to be near the inmate, within his reach.

Dramis also admittedly handed her water bottle to inmate J.L. and had him walk it over to the desk for her. This does not demonstrate that Dramis was providing contraband to an inmate nor that she was unduly familiar in a relationship with J.L. It again demonstrates carelessness on her part. I **CONCLUDE** that this carelessness on the part of Dramis posed a safety issue for allowing an inmate to handle her water bottle.

Dramis admittedly handed a baggie with a piece of chicken in it to inmate J.L. as they passed one another in the Sergeant's office. I accept Dramis' explanation that she was cleaning the refrigerator out and handed it to J.L. to throw in the trash. J.L. is seen in the video getting a trash bag from the office, apparently engaged in a cleaning task. This does not demonstrate that Dramis was handing off contraband to an inmate nor does it rise to the level of demonstrating undue familiarity and being in a relationship with J.L. It again demonstrates carelessness on her part in casually going about cleaning the office and improperly passing along what could be deemed contraband. I **CONCLUDE** that this carelessness on the part of Dramis posed a safety issue for carelessly trusting an inmate with an item that may have been deemed contraband.

I **CONCLUDE** that Dramis' behavior was in violation of HRB 84-17 as amended D7 violation of administrative procedures and/or regulations involving safety and

security, having allowed the contraband to remain near J.L., handing off her water bottle to him, and having carelessly passed off the piece of chicken to be discarded. I **CONCLUDE** this charge has been **SUSTAINED**.

8. HRB 84-17 as amended D15 entering restricted areas without specific permission

There was no evidence presented or argument provided regarding this charge. I thus **CONCLUDE** that the DOC failed to meet its burden and the charge of HRB 84-17 as amended D15 entering restricted areas without specific permission is **DISMISSED**.

9. HRB 84-17 as amended E1 violation of a rule, regulation, policy, procedure

The DOC asserts that Dramis failed to follow Major Schultheis' order. Dramis never received the email/memo from Schultheis. She was aware of it, through her supervisor, but understood that inmates were not to be hanging out in the office. The email/memo was never posted as an order. Dramis' understanding was that inmates engaging in cleaning tasks and retrieving paperwork were still permitted in the office, as such inmates with duties get paid for their tasks. Her understanding is supported by the notice posted on the door with excluded unauthorized inmates from the office, and by the general practice which continued whereby inmates were still permitted in and out of the office. I **CONCLUDE** that the DOC has not sustained its burden, by a preponderance of the evidence, that Dramis violated this provision. I **CONCLUDE** that the charge of HRB 84-17 as amended E1 shall be **DISMISSED**.

10. HRB 84-17 as amended E2 intentional abuse or misuse of authority or position

Presumably, the DOC has asserted this charge against Dramis in conjunction with the charge of falsification of a documentation, alleging she misused her authority by issuing the administrative charges to all the inmates huddled together alleged to have been smoking. There was no evidence presented to support this charge nor argument.

I thus **CONCLUDE** that the charge of HRB 84-17 as amended E2 intentional abuse or misuse of authority or position is **DISMISSED**.

PENALTY

Once it has been determined that a civil service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523-524. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007.) "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Id. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

Sworn law enforcement officers are recognized as a "special" kind of public employee. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and to represent law and order to the citizenry. Id.

Hence, law enforcement employees must present an image of personal integrity and dependability to garner the respect of the public. Id.

Respondent, DOC, seeks the discipline of removal of Dramis from her position of employment as a SCO at Southern, based upon its determination that she violated multiple regulations and DOC administrative rules. Dramis has no prior discipline. I **CONCLUDE** that Dramis' conduct was not so heinous or egregious to warrant automatic removal, without regard for progressive discipline.

Discipline for the sustained charge of other sufficient cause can range from minor discipline to the major discipline of removal. Discipline for the sustained charge of HRB 84-17 as amended C17 possession of contraband on State and for the sustained charge of HRB 84-17 as amended D7 violation of administrative procedures and/or regulations involving safety and security, ranges from OWR to removal, for a first offense.

Dramis has taken responsibility for some of her actions, such as recognizing that the coffee maker and coffee were deemed contraband. She recognizes that this is a matter of utmost seriousness. She acknowledges this was a poor personal choice and such conduct was an aberration for her. She believes her actions are mitigated by her faithful service to the DOC for fifteen years. It is recognized that the contraband in question was not a weapon, nor narcotics.

Dramis' other careless actions giving rise to sustaining the charge of HRB 84-17 as amended D7 violation of administrative procedures and/or regulations involving safety and security, were due to her allowing the contraband coffee mug to be within reach of J.L.; passing off a piece of chicken to be discarded in the trash by J.L.; and allowing J.L. to handle her water bottle and carry it over to the desk for her. Such actions posed a safety risk to Dramis and potentially to J.L. if other inmates saw such actions as favorable treatment toward him, and potentially allowing items to be near or within his grasp, which could ultimately be used as a weapon or fashioned into same. The proximity in time when these events were observed, is concerning that Dramis' in

her years of experience, was carelessly letting her guard down and failing to remain vigilant in her duties as a SCO.

Having considered and weighed aggravating and mitigating factors, including Dramis' unblemished past record, I **CONCLUDE** that Dramis' misconduct does not warrant removal. Considering progressive discipline, I **CONCLUDE** that the imposition of discipline of 180-day suspension without pay, is appropriate for the charges sustained here: N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, HRB 84-17 as amended C17 possession of contraband on State property, and HRB 84-17 as amended D7 violation of administrative procedures and/or regulations involving safety and security, due to the nature of security being at risk, in that actions which may be deemed minor, or careless, can still result in a major security risk or hazard to the operation of the facility.

ORDER

It is **ORDERED** that the charges of N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause; HRB 84-17 as amended C17 possession of contraband on State property; and HRB 84-17 as amended D7 violation of administrative procedures and/or regulations involving safety and security; have been **SUSTAINED**. All other charges in the FNDA of August 6, 2019, are **DISMISSED**.

It is further **ORDERED** that the disciplinary penalty of removal of Tara Dramis is **MODIFIED** to a 180-day suspension without pay. It is **ORDERED** that appellant, Tara Dramis, be returned to her employment as a SCO with respondent, Southern State Correctional Facility, subject to the provisions of this Initial Decision and the accompanying separate Order of this same date.

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

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

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



October 18, 2021
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

October 18, 2021

Date Mailed to Parties:

October 18, 2021

EBF/tat

APPENDIX

WITNESSES

For appellant:

Tara Dramis

For respondent:

Kevin Schultheis
Elizabeth Adams

EXHIBITS

For appellant:

- P-1 Not entered as evidence
- P-2 Not entered as evidence
- P-3 J.P. disciplinary reports
- P-4 I.G. disciplinary reports
- P-5 A.G. disciplinary reports
- P-6 J.L. disciplinary reports

For respondent:

- R-1 PNDA 03/29/2019 and FNDA 08/01/2019
- R-2 HRB 84-17 as Amended (Bates stamp DOC341-DOC380)
- R-3 State of New Jersey DOC Policy Statement-Standards of Professional Conduct: Staff/Inmate Over Familiarity

- R-4 DOC Level I Internal Management Procedure-Security at Facility Entry Points (Bates stamp DOC89-DOC106)
- R-5 Handbook of Information and Rules for Employees of NJ DOC (Bates stamp DOC112-DOC128)
- R-6 Law Enforcement Personnel Rules and Regulations NJ DOC (DOC152-DOC172)
- R-7 Receipt forms, receipt of policies
- R-8 DOC Office of Human Resources New-Hire Orientation Checklist 11/4/04
- R-9 Emails authored by Kevin W. Schultheis, October 26, 2017, and August 13, 2018
- R-10 Investigator Elizabeth Adams, SID, report-redacted, signed March 22, 2019
- R-11 Supplemental Report Elizabeth Adams-redacted
- R-12 Three photographs-still shots from video 11/17/2018
- R-13 DVD Unit 6 – 12/01/18
- R-14 DVD Unit 6 Sgt. Office area, clips 6, 15, and 20, January 15, 2019
- R-15 DVD Unit 6 Sgt. Office area January 15, 2019, clips 23, 24, 30, 33
- R-16 Photograph-screen shot from video in office
- R-17 Pre marked, not entered
- R-18 DVD's "Officer Dramis Interview 1" and "Officer Dramis Interview 2"- February 28, 2019
- R-19 Two black and white photos depicting Keurig cups, Keurig machine, locks; second photo Keurig cups
- R-20 DVD "Unit 6 – 11/11/18, 11/28/18, and 11/29/18"