



STATE OF NEW JERSEY

In the Matter of Eric Card  
Kean University

CSC DKT. NO. 2020-1564  
OAL DKT. NO. CSV 17773-19

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: FEBRUARY 19, 2021 BW

The appeal of Eric Card, Campus Police Officer, Kean University, 20 working day suspension, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on January 20, 2021. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on February 17, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision to modify the 20 working day suspension to a 15 working day suspension.

Since the penalty has been modified, the appellant is entitled to five days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C. 4A:2-2.12(a)*, the award of counsel fees is appropriate 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 any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *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. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 20 working day suspension to a 15 working day suspension. The Commission further orders that appellant be granted five days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as set forth in *N.J.A.C. 4A:2-2.10*. Proof of income earned 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*.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 17<sup>TH</sup> DAY OF FEBRUARY, 2021



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT.NO. CSV 17773-19

AGENCY DKT. NO. 2020-1564

**IN THE MATTER OF ERIC CARD,  
KEAN UNIVERSITY,**

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**Sebastion Ionno, Esq., on behalf of appellant**

**Ellen M. Horn, Esq., on behalf of Respondent, (Rudderman & Roth, LLC.,  
attorneys)**

**BEFORE KIMBERLY A. MOSS, ALJ:**

Record Closed: January 13, 2021

Decided: January 20, 2021

Appellant, Eric Card, Jr. (Card or appellant), appeals his twenty-day working suspension by respondent, Kean University (Kean), on charges of incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause. At issue is whether Card engaged in the alleged conduct, and, if so, whether it constitutes incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause.

## **PROCEDURAL HISTORY**

On or about November 22, 2019, Kean served Card with a Preliminary Notice of Disciplinary Action. A Final Notice of Disciplinary Action dated December 5, 2019, was served by Kean, sustaining charges of incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause. Following Card's appeal to the Civil Service Commission the matter was transmitted to Office of Administrative Law (OAL). The appeal was filed with the OAL on December 19, 2019. Ellen Horn, Esq., attorney for respondent Kean University filed a motion for summary decision on June 26, 2020. Petitioner filed opposition to the motion on July 31, 2020. At that time, I concluded that the charges of incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause were sustained. However, the length of discipline was a question of fact. I granted the motion in part and denied the motion in part. The hearing was held on November 2, 2020. The parties submitted closing brief on January 13, 2021, at which time I closed the record.

## **FACTUAL DISCUSSION**

Appellant has been employed by the Department of Public Safety and Police since 2014. He is employed as a police officer. Michael Fong was a sergeant with Kean at all relevant times.

On October 23, 2018, Card worked from 8:00 a.m. to 11:00 pm, Fong was Card's immediate supervisor. At 12:00 pm Card and Fong responded to a trespassing call that was close to headquarters. They walked to the location; Card placed the person he determined to be trespassing under arrest. The person passively resisted as they walked him to headquarters.

There is an option when an officer is on foot patrol and cannot bring a prisoner in through the sallyport, the officer can bring the prisoner in through the front door of

headquarters. If transporting a prisoner through the sallyport, there is a very visible gun lock box. Officers are supposed to lock up their gun before processing a prisoner.

While processing the arrest Card entered the secure holding area and the secure corridor with the prisoner. Card had his firearms in his holster. The secure holding area has video surveillance. He put the prisoner between the cells and began removing the handcuffs. At that point Fong came into the holding area and took Card's gun from the holster. Card remained in the area.

Kean's Department of Public Safety/Police Policy Manual Chapter 71.1.1, states: Prisoner Transportation and Management prohibits officers from bringing firearms in the secure holding area and the secure corridor. At 10:21 minutes into the video on October 23, 2018, Card entered the secure holding area with the prisoner. Card's firearm was in his holster. At 10:44 minutes into the video Card removes the prisoner's handcuffs. At 10:52, Fong enters the secure holding area. At 11:01 Fong removes Card's firearm from Card's holster. At 11:08 Fong leaves the secure holding area with Card's firearm in his hand. Fong's firearm is in his holster.

Manuel Alfonso was the Assistant Director of Public Services at Kean during the time of the incident. He is familiar with the incident. The secure corridor leads to the holding cells and the interrogation area. It is meant to be a place with no weapons. It is strictly forbidden for any weapons to be that area. The reason for this is that there is a risk that the person in custody who is being put into a holding cell cannot attempt to take the officer's weapon. The prisoner's handcuffs are removed before placing them in the holding cell.

Appellant does not contest or dispute that occurred on the day in question. He disputes whether the discipline was appropriate. Card has no prior disciplines. Since the incident he has emphasized to younger officers the need to remove your weapon when in the secure holding area and the secure corridor.

## LEGAL ANALYSIS AND CONCLUSION

The charges of incompetency, inefficiency, or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause were previously sustained. The only issue is the discipline.

When determining the appropriate penalty to be imposed, the appointing authority must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions, Town of W. New York v. Bock, 38 N.J. 500, (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990).

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. *Id.* at 522–24. Major discipline may include removal, disciplinary demotion, suspension, or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions evaluated by progressively

increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

In this matter, Card does not have a prior discipline. He has been an Officer with Kean for six years. Card's not taking his gun out of the holster in a secure area, is a clear violation which could have led to the prisoner accessing his weapon. He admitted to not taking his gun out of his holster in a secure area. He has cautioned younger officers about not taking their gun into the secure corridor or the secure holding area. Card has no prior disciplines. In light of the above, a fifteen-day suspension would be appropriate.

### **ORDER**

Based on the foregoing findings of fact and applicable law, it is **ORDERED** that the determination of respondent of a twenty-day working suspension of appellant is hereby **MODIFIED** to a fifteen-day suspension.

It is **FURTHER ORDERED** that Card be awarded back pay, if applicable, in accordance with this decision.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

January 20, 2021



\_\_\_\_\_  
DATE

\_\_\_\_\_  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

January 20, 2021

Date Mailed to Parties:  
ljb

January 20, 2021



**WITNESSES**

For Appellant

None

For Respondent

Manuel Alfonso

Megan Horn

**EXHIBITS**

For Appellant

None

For Respondent

R-1 Preliminary Notice of Disciplinary Action Dated December 7, 2018 and Attachments

R-2 Action Memorandum of Kean From Alfonso to Card Dated November 2, 2018

R-3 Final Notice of Disciplinary Action Dated December 5, 2019 and Attachments

R-4 Kean Incident Summary Dated October 23, 2018

R-5 Secure Holding Area Video Surveillance

R-6 Kean Police Policy Manual

R-7 Not in Evidence