



STATE OF NEW JERSEY

In the Matter of Muhammad Asghar
Camden County, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-2537
OAL DKT. NO. CSR 05213-19

ISSUED: MAY 19, 2021 BW

The appeal of Muhammad Asghar, County Correctional Police Officer, Camden County, Department of Corrections, removal effective January 29, 2018, on charges, was heard by Administrative Law Judge Carl V. Buck, III, who rendered his initial decision on March 30, 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 of May 19, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Muhammad Asghar

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 19TH DAY OF MAY, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05213-19

AGENCY DKT. NO. N/A 2019-2537

**IN THE MATTER OF MUHAMMAD
ASGHAR, CAMDEN COUNTY
CORRECTIONAL FACILITY.**

John P. Rowland, Esq., for appellant, Muhammed Asghar (The Cushane Law Firm, LLC, attorneys)

Antonieta P. Rinaldi, Assistant County Counsel, for respondent, Camden County Correctional Facility (Christopher A. Orlando, County Counsel)

Record Closed: May 1, 2020

Decided: March 30, 2021

BEFORE CARL V. BUCK III, ALJ:

STATEMENT OF THE CASE

Muhammad Asghar (Appellant or Asghar), a Corrections Officer (CO) at the Camden County Correctional Facility (CCCCF or Jail), appeals his removal, effective January 29, 2018, by respondent on charges of violation of N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(7) neglect of duty, N.J.A.C. 4A:2-2.3(a)(9) discrimination that affects Equal Employment Opportunity including sexual

harassment and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause: C.C.C.F. Rules of Conduct, 1.1 Violations in General, 1.2 Conduct Unbecoming, 1.3 Neglect of Duty, 2.10 Inattentiveness to Duty, 3.3 Fraternalization, 4.1. Courtesy, 4.10 Civil Rights; and General Orders number(s) 50, 73, 74, and Internal Affairs Order number 001. The specifications identify a date of alleged conduct on January 18, 2018. The alleged conduct complained about included unwelcomed and inappropriate statements of a sexual nature and which created a hostile or offensive work environment. The details of the alleged violations are related to the date above and include contact with and comments toward a female kitchen worker and several inmates.

Appellant denies the allegations.

PROCEDURAL HISTORY

On January 29, 2018, the appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) removing him effective January 26, 2018. The charges were sustained after a departmental hearing on August 2, 2018 and a Final Notice of Disciplinary Action (FNDA) was issued on February 13, 2019. Subsequently, appellant appealed this removal on March 4, 2019¹ and the matter was then transmitted to the Office of Administrative Law (OAL) for hearing as a contested case where it was filed on April 1, 2019.

Testimony was taken at hearing on May 22, 2019 and June 28, 2019 and the record remained open for the submission of post-hearing briefs by the parties. Appellant waived his right to restoration of pay in the event a disposition of this matter under N.J.S.A. 40A:14-201, otherwise known as the 180-day rule in or about September 2019. Submissions were made and the record then closed on May 1, 2020.

On March 9, 2020, the Governor of the State of New Jersey issued Executive Order 103, declaring a public health emergency, due to the COVID-19 pandemic. The Governor's Executive Order 127 authorized the extension of time for the completion of

¹ The letter of appeal was erroneously dated March 4, 2018.

administrative decisions, after the public health emergency. Subsequent Executive Orders have extended the public health emergency, which continues as of the date of this initial decision.

FACTUAL DISCUSSION AND FINDINGS

A number of the facts of this case are not in dispute; therefore, I **FIND as FACT**:

1. The appellant was employed as a CO at CCCF during all relevant times.
2. A Preliminary Notice of Disciplinary Action (PNDA) was issued on January 29, 2018. (R-10.) A Final Notice of Disciplinary Action (FNDA) was issued on February 13, 2019, (R-10), whereby the appellant was charged with the violation of the following:
 - a. N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee;
 - b. N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty;
 - c. N.J.A.C. 4A:2-2.3(a)(9) Discrimination that affects equal opportunity including sexual harassment;
 - d. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause;
 - e. C.C.C.F. Rules of Conduct;
 - i. 1.1 Violations in General;
 - ii. 1.2 Conduct Unbecoming;
 - iii. 1.3 Neglect of Duty;
 - iv. 2.10 Inattentiveness to Duties;
 - v. 3.3 Fraternalization;
 - vi. 4.1 Courtesy;
 - vii. 4.10 Civil Rights;
 - f. General Order #50
 - g. General Order #73
 - h. General Order #74
 - i. Internal Affairs Order #001
3. The PNDA and FNDA described the incident giving rise to the charges and the date on which they occurred.

Testimony

Respondent

Antoine Vaughan (Vaughan), a civilian kitchen employee, testified that he worked at the jail for Gourmet Dining, a food service company at the jail. He worked inside the jail kitchen where he supervised approximately twenty inmates cooking the food for the jail and worked alongside of Asghar. He filed a "General Incident Report" (R-2) and testified that he wrote his complaint because the comments made by Asghar made him feel uncomfortable.

The first comment on the general incident report dated January 18, 2018 stated:

"[T]oday is January 18th before C/O M. Asghar was relieved of duty, he was looking for the blade guard that he had to give to ITI C.G. ("C.G."²). While looking for the blade guard, ITI C. missed placed it. (sic) C/O M. Asghar couldn't find the blade glide he continued to call her, "retarded" and a "bitch".

Vaughan stated he actually heard Asghar say that C. was "retarded" and a "bitch" which statement also was overheard by inmates. Vaughan responded by saying, "Give her a second. She'll be right back."

The second comment which occurred on January 18, 2018 on the report stated:

"Saturday or Sunday around 6 a.m., C/O M. Asghar made a racist . . . joke to an inmate, A.J., that I heard him say, 'how can you tell if a black woman is pregnant? Shove a banana up her pussy to see if a monkey will grab it.' I felt very uncomfortable at that moment. It is very unprofessional that an Officer would with an inmate."

Vaughan testified he heard Asghar make that entire joke and it made Vaughan feel uncomfortable. Vaughn did not complain right away because he tried to let it go, "but

² Individuals not subject to discipline in this matter nor publicly identified by their position(s) will be referred to by their initials to maintain their privacy – not the confidentiality of the statement.

when he came at C., called her 'retarded' and a 'bitch,' I felt as if he had something against black — black Americans, African Americans." C.G. is an African American. Vaughan (also African American) said it bothered him because "C. is probably about 50, and grandmother, mom in her 40's. She is a black African woman. Grew up — that's all I know, she reminds me of my grandma." That is what triggered him to file the complaint. Vaughan also testified that he found the joke Asghar told to the inmates to be offensive and racist and told Asghar after he made the joke that it was unnecessary. Asghar said he was just kidding.

When Vaughan was asked whether he had heard Asghar tell racist jokes in the past, Vaughan said (during his Internal Affairs interview) that "he was not surprised cause he does racist shit, he says racist jokes all the time." He stated Vaughan had never heard it, but an inmate told him (Vaughan) that in the past.

Vaughan said that after Asghar made the joke and then made comments to C. within one week, "You call black people a monkey, a bitch and a retard . . ." He tried to let it go and give him a chance but . . . "he had problems towards African Americans that it was more personal . . . then I had to write it down." Vaughan also stated he had no prior issues with Asghar and is not aware of any issues Asghar had with him.

On cross-examination, Vaughan confirmed he actually heard the joke and the report was based on his memory of it.

On redirect, Vaughan stated that when Asghar called C. those names, Asghar was acting in a rush, "he wanted to leave from what I seen." He told Internal Affairs during his interview that Asghar was angry and testified that "you have to be angry to call somebody retarded and a bitch." So, Vaughan assumed Asghar was angry.

John Jones (Jones) is a Lieutenant and a twenty-year employee at CCCF. Jones has been employed for twenty years; has been in Internal Affairs for twelve years; was a Lieutenant for two years; a Sergeant for four years prior and the remainder of the time he was a Corrections Officer. (TI p.27-28 lines 1156-1179.)

His job duties are to conduct criminal and administrative investigations and prepare reports. (R-1.) He prepared the report on Asghar at the direction of his supervisor, Deputy Warden Christopher Foschini (Foschini) after Foschini handed Lt. Jones a report prepared by Kitchen Supervisor Antoine Vaughan. (R-2.)

Lt. Jones testified about the two incidents that involved Asghar on January 13, 2018 and incident of January 18, 2018 which comprised Mr. Vaughan's complaint. After he reviewed that document, he conducted an Internal Affairs interview with Inmate J.A. on January 18, 2018. (R-3.) (TI p.29 lines 1220-1260.)

Lt. Jones then read his Internal Affairs summary on Inmate A. to the Court:

"Uh, page 8, paragraph 5 . . . Inmate A. confirmed that on January 18, 2018 at approximately 6:50 hours while he was in the kitchen, he heard Officer Asghar say, 'Ms. C. walking around looking all retarded.'" Officer Asghar then called her a bitch. Kitchen Supervisor Vaughan told Officer Asghar, 'Please do not call her that. She's known as a woman, not a bitch.' . . . Inmate A. also confirmed to me that on a previous Saturday or a Sunday, January 13th or 14th of 2018, that he . . . also . . . heard Officer Asghar make the following joke: 'How do you find out if a black woman is pregnant? Shove a banana up her pussy to see if a monkey grabs it.' Inmate A. reported this joke to Kitchen Supervisor, Mr. Vaughan and explained his frustrations regarding the joke . . . Inmate A. told me during the interview that he was offended by the joke and he told Asghar that that's not a cool joke to make. And Asghar's response was, 'It's just a joke.' . . . Inmate A. also told me that . . . Officer Asghar told this same joke . . . while out in North (Mode), which is a unit where the kitchen workers . . . reside while they're house in the facility. Uh, sometime back in November of 2017." (R1 p.8.) (R-3.) (TI p.33 lines 1419-1435.)

Lt. Jones then went on to interview Inmate K.J. on January 18, 2018 and this was his Internal Affairs summary of same. (R-4.)

"Uh, again, on my — in my Internal Affairs report on page 8, um, I guess it's the second paragraph up from the bottom where Inmate Jones confirms that on January 18, 2018, at approximately 6:50 hours while he was in the kitchen, he

heard Officer Asghar say, 'I'm not giving that stupid bitch anything else again.' Officer Asghar was looking for a missing kitchen part which Ms. C. had in her possession. Inmate J. told me that he heard Officer Asghar tell a joke in the kitchen to Inmate A. on January 13, 2018 at approximately . . . 6 a.m., in which Officer Asghar stated, 'Do you know how you can tell if a black woman is pregnant?' Officer Asghar then stated, 'Stick a banana in her vagina and if the baby reaches for it, uh, then she is pregnant.' Inmate J., after hearing this joke, it made him moody— it made him become moody and he was hoping that Kitchen Supervisor Vaughan would address . . . this issue with Officer Asghar making those comments." (TI p.34 lines 1462-1474.)

When asked about the fact that the exact wording of the joke is not the same, Lt. Jones testified it is the same context — word differences, still a violation, still inappropriate conversation. (TI p.34 lines 1476-1481.)

Lt. Jones then stated he interviewed a third inmate, R.M. (R-5) on January 18, 2018:

"[H]e confirmed that on January 18, 2018 between the hours of 6:50 and 7:00 a.m. that he heard Officer Asghar call Ms. C. a retard and a dumb bitch. As Asghar was walking around the kitchen venting, Officer Asghar was getting upset because he . . . was getting ready to leave at the end of his shift and couldn't leave . . . until all the kitchen equipment was accounted for and there was a Buffalo Chopper part missing . . . Inmate M. stated that Inmate J. told him that on a previous Saturday or Sunday that Officer Asghar told the following joke, 'How can you tell if a black woman is pregnant?' And something about sticking a banana in her pussy and see if the monkey takes a bite out of it. He said that Inmate J. was offended by the joke and Inmate A. told Officer Asghar, 'Yeah, that's a messed up joke.' Officer Asghar responded back saying that it's the only joke he knows because he's in the military and he works in the jail. Inmate M. went on to state that he also heard Officer Asghar make comments about Spics and Spanish people. Uh, he heard him — he tried to clarify his statement by saying that he tells different kinds of jokes regarding Mexicans, Spics, Nigger, Honkey, and Rednecks. And that was . . . his statement." (TI p.35-36 lines 1524-1540.)

Finally, on that same date of January 18, 2018, Lt. Jones testified he interviewed a fourth inmate, W. S. (R-6) and was told:

"Uh, Inmate S. confirmed that on January 18, 2018 around 6:50 in the morning, he was preparing food, uh, in the ODR prep room, which is in the kitchen. Uh, Officer Asghar entered the prep area and stated, 'Where is that bitch at?' Inmate S. asked, 'Who are you talking about?' Officer Asghar replied, 'Ms. C.' Kitchen Supervisor miss . . . Vaughan told Officer Asghar, 'Don't call her that.' Uh, Inmate S. reported that Inmate M. told him that racist joke which Officer Asghar made which was, 'How do you tell if a black woman is pregnant? Stick a banana in her vagina and see if the monkey eats it or takes a bite.'" (TI p. 36 lines 1564-1573.)

Lt. Jones testified that, "inmates do lie," but he felt that their stories were consistent in the fact that the joke had the same context and several of them heard the "retard" and "bitch" comment . . . "the joke was similar in nature every time it was said to me by the inmates. One of the inmates even said Asghar was a good officer that helped him in the past with his case . . ." Lt. Jones went onto state, "the inmates seemed sincere and they were consistent in their statements." (TI p.37 lines 1584-1596.)

Lt. Jones then stated he interviewed the Kitchen Supervisor, Mr. Vaughan (R-7) on January 18, 2018 and testified to the following:

"Uh, Mr. Vaughan — first of all, he submitted the general incident report, which alerts me that he had an issue with something, 'cause he's reporting it on a general incident — an official legal document. So he writes the report and he documents that, uh, on his report and he tells me in the interview that, um, on January 18, 2018, that C. who works in the kitchen — I believe her name is C.G. — that she took a break and had a kitchen part with her. And Mr. Vaughan told Officer Asghar that C. would return to the kitchen in about five minutes. Uh, but Officer Asghar was in a rush to leave and he called Ms. C. retarded and a bitch in front of him and the inmates. Uh, Mr. Vaughan to — he related to me that Ms. C. was not present to hear those comments.

Um, Mr. Vaughan also told me that, uh, previously on Saturday January 13 or Sunday, January 14, around 6:00 a.m. there was a situation where Inmate J.A. was upset while

working in the kitchen, and that Officer Asghar's way of calming him down was to tell racist jokes. Officer Asghar stated, 'Hey, do you want to hear a racist joke?' Uh, Officer Asghar then stated, 'How can you tell if a black woman's pregnant? Shove a banana up her pussy to see if the monkey will grab it.' Uh, Mr. Vaughan stated when he heard the racist joke, he initially left it alone. But when Officer Asghar started calling Ms. C. a bitch and a retard, uh, he started putting it together that this is how Officer Asghar thinks. And now he has an issue with Officer Asghar because he's putting it together. That there might be a problem with this officer. Uh, with these . . . issues." (TI p.38 lines 1625-1660.)

Lt. Jones also confirmed what Mr. Vaughan had testified earlier at this hearing that the joke was offensive to him, it is a racist joke and that Ms. C. is like a mother or grandmother figure to people and should not be called names. (TI p.38-39 lines 1664-1672.)

Lt. Jones also interviewed C/O Asghar on June 19, 2018 and he declined union representation. (R-8.) "He was told that he must give a truthful statement to Internal Affairs and that he could be reprimanded up to and including termination if he was found to be lying or giving mistruths or false information during the interview and that he has terminated people for lying to Internal Affairs." (TI p.40-41 lines 1754-1763.)

Throughout the interview, Lt. Jones stated that C/O Asghar stated he never called Ms. C. a retard or a bitch and that C/O Asghar adamantly denied it every time. (TI p.41 lines 1785-1796.)

C/O Asghar admitted he has no problems with Mr. Vaughan and never mentioned that he had ever written up Mr. Vaughan for being late during the entire interview. In addition, no documents to that effect were ever introduced into evidence. (TI p.42 lines 1808-1837.)

Lt. Jones testified at the hearing:

"[C/O Asghar] stated, that um, on — on page 5, third paragraph up, it says, 'Officer Asghar stated he is more

professional when staff are near him.' But what he said that struck me as odd was, 'Officer Asghar stated this is a jail and he doesn't always remember everything that happens or what he says about a half hour after he says it because it is the life of the jail.' And I find that odd — meaning, we're law enforcement officers. We're held accountable for what you say to people and your reactions and — and statements that you make. Um, he's telling me here that he doesn't remember everything that he says. I'm confronting him with direct information about, 'Did you call Ms. C. a retard and a bitch' and he's now telling me during the interview that he doesn't recall what he says a half hour after — after he possibly says it." (TI p.43 lines 1850-1861.)

Ironically, Lt. Jones stated that during C/O Asghar's interview, he called himself retarded twice, which he thought was odd and he said he explained to him that in law enforcement, ". . . that vocabulary . . . we don't use the word 'retarded.' It is very offensive to many people. C/O Asghar said he only used it 'cause I used it . . . I think Asghar used that language in his vocabulary 'cause he said it twice without having to think about it." (TI p.43 lines 1883-1890.)

Specifically, C/O Asghar said:

"Well, he was being questioned. He says, 'I'm not retarded. Why would I — why would I do this? I'm not retarded.' So, I asked him. I stopped and I said, 'Let me ask you a question since you said that.' I said, 'Retarded is a word you use in your vocabulary? Your daily vocabulary?' He says, 'No.' I said, 'Well, you just used it twice to me.' But he's saying that he's just — because I brought it up."

As to complaint number two of January 18, 2018, Lt. Jones testified at the hearing:

"So, then I asked him about complaint number two. I asked him about on Saturday, January 13th or Sunday, January 14th, uh, if he made a racist joke, uh, which consists of, uh, 'How can you tell if a black woman is pregnant? Shove a banana up her pussy to see if a monkey will grab it.' Uh, I told him that Mr. Vaughan was very uncomfortable with this statement. It was very unprofessional. Um, Officer Asghar told me that this is a false statement, that he stated he is a minority middle

eastern man, and he thinks there's a lot of racism going on, and he denied making this racist — racist comment or joke."

Throughout the entire interview, Lt. Jones stated that C/O Asghar denied making that joke. He admitted that he thought he joked with inmates which Lt. Jones found to be inappropriate because it is fraternization. "We don't joke with the inmates. We're there to supervise them. But he told me that he does joke with the inmates, but he said that . . . he does not tell racist jokes." (TI p.44 lines 1906-1924.)

Lt. Jones stated:

"Well, here you have four inmates and a civilian employee that are making a complaint about Officer Asghar. Uh, the complaints all, uh, have the same context. The retard and the bitch was heard by numerous people. Um, the . . . racist joke which was offensive to many people, was heard by many people. Even though the . . . wording was changed through the interviews, I still believe that . . . horrible racist joke was said. I don't even call it a joke. I think it's just a comment . . . that was said by Officer Asghar . . . Maybe some of the inmates had a hard time remembering the exact wording, but they had the wording right enough for me to find that a violation of policy and procedure. Enough that — to find wrongdoing. But, it was one civilian and four . . . inmates that were involved. (TI p.45 lines 1966-1976.)

Lt. Jones also interviewed Officer John Gillen on January 18, 2018. (R-9.) Officer Gillen was the relieving Officer who told C/O Asghar the kitchen part was missing. He states he never heard anything and had no knowledge of the joke told on January 13, 2018.

Lt. Jones testified after all the interviews were complete, he notified his supervisor, Deputy Warden Christopher Foschini. He discussed his findings and found the complaint by Kitchen Supervisor Vaughan to be sustained. He does not determine penalty. (TI p.47 lines 2051-2065.)

On cross examination, Lt. Jones was asked if C/O Asghar explained his reasoning as to why these allegations were filed against him. Lt. Jones recalls that C/O Asghar

believes the motive was that the inmates wanted him out of the kitchen. Lt. Jones states, "I explored it — the fact is that I didn't sense that with any of the interviews. Um, and he was only in the kitchen for five or six days. So, I — I can't see how that would happen in five or six days for the inmates to concoct this type of a story or plan with two separate complaints in a matter of five or six days. With so many players." (TI p.48-49 lines 2095-2116.)

On re-direct, Lt. Jones confirmed that he gave Asghar every opportunity to explain to him during his Internal Affairs interview as to why he felt the inmates were lying and no documentation or proof was provided by C/O Asghar other than his own perception that the inmates did not want him in the kitchen. (TI p.54 lines 2342-2355.)

Captain **Linda Blackwell** testified she has been with the Camden County Department of Corrections for twenty-two years, four years as a Captain, eight years as a Lieutenant, four years as a Sergeant and the remainder as a Corrections Officer. She oversees the daily operations of her shift, ensures that subordinates follow policies and procedures, recommends discipline when necessary, receives, reviews and signs 31A's and 31B's, reviews chronologies and discusses discipline with Deputy Warden Christopher Foschini and Warden Karen Taylor. (TI p.55-56 lines 2428-2463.)

Captain Blackwell states she spoke to both the Deputy Warden and the Warden about C/O Asghar's racial joke and the offensive comments that he made towards Ms. C. and that they did consider the chronology of discipline (which was practically nothing). During this discussion, penalty came up. Captain Blackwell testified that due to the severity and egregiousness of his comments, he became a liability to the Department. Termination was agreed by all three as the appropriate penalty. In addition to the egregiousness, he also lied to Internal Affairs and now his credibility was questionable. (TI p.56-57 lines 2472-2474, 2476-2511.)

Captain Blackwell identified having signed the Preliminary and Final Notices of Discipline after having reviewed all of the information, reports, audio and having discussed the policies and procedures with Lt. Richer, the Department's disciplinary Lieutenant who actually types up those documents. (R-10.)

Captain Blackwell then testified about the policies and procedures that C/O Asghar violated that were set forth in (R-10). She began with the Jail's Rules of Conduct. (R-11.)

- 1.2 Conduct Unbecoming: Captain Blackwell stated that C/O Asghar was charged because he was unprofessional... and that personnel are required to conduct themselves both on and off duty in a manner that reflects favorably upon the Department and he failed to do that when he made a racist joke towards inmates. (TI p.58 lines 2553-2556.)
- As to 1.3 Neglect of Duty: Captain Blackwell stated: Officer Asghar was a kitchen officer at the time. He should have been monitoring the kitchen duties, uh, making sure that inmates were doing what they were supposed to be doing. But he failed to do that by, uh, telling jokes instead. Telling racial jokes. (TI p.58 lines 2559-2564.)
- As to 2.10 Inattentiveness to Duty: Captain Blackwell stated:

"Inattentiveness to Duty falls in line with, um, neglect of duty. Same- really it's the same thing. Repeating myself that instead of, um, paying attention to what was going on in the kitchen, he was telling offensive, uh, racist jokes and offensive remarks."
- As to 3.3 Fraternization: Captain Blackwell stated:

"Officer Asghar... became overly familiar with the inmates. Um, again, he was — we hold, um, our officers to a higher standard. Um, as sworn law enforcement officers. And he was becoming overly familiar with inmates by telling racial jokes and having, uh, idle chit-chats to be specific with our policies."
- As to 4.1 Courtesy: Captain Blackwell stated:

. . . The policy states that personnel should be courteous to the public at all times, tasked on the performance of their duties and in control of their tempers. So, uh, when Officer Asghar felt that the missing... the blade was missing, he lost his temper and, you know, he made disparaging remarks, uh,

inappropriate remarks, degrading remarks to Ms. Carmella. About Ms. Carmella, I'm sorry . . . His remarks were disparaging, uh, concerning race, religion, and national origin." (TI p. 59 lines 2574-2610.)

- As to 4.10 Civil Rights: Captain Blackwell stated:

". . . The nature of his comments speak for itself for that one. (TI p.60 lines 2612-2614.)

- As to Internal Affairs Policy #001 (R-12): Captain Blackwell stated:

"Um, all employees, uh, during any investigation are to be, uh, truthful and Officer Asghar was not truthful and misleading. Um, also, uh, he lied during an investigation which means that, um, he can't be trusted and he can never be used as a witness for, uh, the prosecution. Prosecutor's Office." (TI p.60 lines 2620-2627.)

- As to General Order #50 Harassment (R-13): Captain Blackwell stated:

". . . He violated this policy by telling sexual jokes or humor with sexual overtones . . . and suggestive, insulting, obscene, or demeaning comments or gestures of a sexual nature."

". . . This agency considers harassment and discrimination of others a form of serious employee misconduct. Therefore, this agency shall take direct and immediate action to prevent such behavior and remedy all reported instances of harassment and discrimination. A violation of this agency policy can lead to discipline up to and including termination." (TI p.60-61 lines 2629-2656.)

- As to General Order #72 Personal Conduct of Employees (R-14): Captain Blackwell stated:

"All employees are expected to treat fellow employees and offenders and the public with respect and courtesy at all times. Um, his demeaning comments toward Ms. Carmella — he had no respect when he was calling her a retard and a bitch. Um, employees will comply with all Department rules and regulations, and then employees will cooperate and provide full disclosure in

any departmental investigations involving employees or of offender misconduct . . . Um, employees are responsible to know all departmental policies and procedures, and employees will not become overly familiar with inmates." (TI p.61 lines 2670-2681)

- As to General Order #74 Professional Code of Conduct (R-15): Captain Blackwell stated:

"All sworn personnel will treat all fellow employees with respect. They will be courteous and civil at all times with one another. Um, sworn personnel will not use derogatory language or actions which are intended to embarrass, humiliate, or shame any person. Um, sworn personnel will be decorous in their language and conduct and, uh, refrain from actions or words that bring discredit to the Department." (TI p.61 lines 2686-2691.)

Captain Blackwell also stated, "Our Department has zero tolerance for, um, any racial comments, racial jokes, anything that has to do with, um, racism and/or, uh, demeaning comments towards employees." (TI p.62 lines 2701-2703.) (R-10.)

Captain Blackwell finally testified that C/O Asghar's Chronology of Discipline (R-16) was considered in their assessment of penalty and Warden Taylor still determined that termination was the only appropriate penalty. (Paraphrase TI p.62 lines 2718-2719.)

Appellant

C/O **Muhammad Asghar** testified on direct that he was hired by the Department on September 1, 2014. When he was made permanent and able to bid, he bid for the Kitchen and was in charge of making sure all the food was prepared properly, all the equipment was issued to the staff and inmates. (T2 p.6 lines 182-187.) He denied making the racist joke to an inmate on January 13, 2018 and states he was working that day but, was just helping Inmate J.A. from being picked on because he was crying. (T2 p.8 lines 271-307.)

C/O Asghar also confirms he was working on January 18, 2018 and C/O Gilliam told him a buffalo chopper was missing at the end of his shift. (T2 p.8-9 lines 309-343.)

He denies calling Ms. C. a retard and a bitch. (T2 p.10 lines 364-385.)

On cross examination, C/O Asghar confirmed he was familiar with the policies and procedures of the Department, that his job duties are care and custody of inmates and he provides security and control for the civilians. (T2 p.11 lines 422-434.)

C/O Asghar testified that the inmates and Kitchen Supervisor Vaughan are lying, and he was telling the truth. (T2 p.12 lines 451-468.)

During his Internal Affairs interview on January 19, 2018, C/O Asghar gave several different responses when asked why he thought all five individuals (four inmates and Kitchen Supervisor Vaughan) were lying about him. (R-8.)

Q³ : You were asked by Sergeant — now Lieutenant John Jones why these individuals would say this about you.

Q: Your answer to that is, uh, "I don't know, sir. Maybe I'm pushing them where they'd be talking in lineup and I'm telling them, 'Stop talking,' and, 'Let's keep the line moving.' Maybe they don't know. They don't want me to work in the kitchen." Was that your response?

A: Yes.

Q: You're asked the same question, "Why would these inmates all tell me the exact same story?" Your answer, 652, sir, "Why would they make this racist joke?" And 654 your answer, "Maybe they don't want me to work in this kitchen. I don't know, sir. I just came back from maternity leave. I don't

³ Attorney Rinaldi, A-C/O Asghar

Officer Asghar first stated he did not know why they would do this. Then he stated it is because he silenced them during a kitchen lineup. Then he stated they did it because he enforces the rules and they like weak officers, and then finally he stated they all got together. "They conspire and get the officers out of the kitchen." When asked which response was correct, he stated:

Q: They conspired against you, because they're inmates?

A: I wish I would know, ma'am, but I don't. I'm just telling you what I believe. Uh, I don't know why they did that.

Q: But they didn't do that. A kitchen worker did it. He's a civilian. He's not an inmate. He's the one that brought the complaint. Why would he lie about you?

A: I don't know, ma'am.

(T2 p. 12-14 lines 489-583.)

know, sir. I don't know what — why they would accuse me of that." Is that what you stated?

A: Yes, I did.

Q: Okay. Now if you turn to page 22 line 954, they ask you, "Do you tell jokes during the course of your employ, during the course of the day?" Your response, "No, I'm very professional. I'm sure that you can look at my record. You can speak to — to any — every inmate that I work with, any officers that I work with, I'm very professional. That's the reason why they kept putting complaints on me, because they don't want me to work wherever they're working, because I enforce the rules and the regulations of this department. They want weak officers. They don't want — they don't want somebody with a s- who's strict and enforce all these rules regulations." Is that what you said, sir?

A: Yes, I did.

Q: The comment was made about Ms. C. So short of time you already angered these people that they would make — make this up about you. You respond down on line 1341, "They know that's how administrations work. As soon as a couple of them get together, they put a complaint on you. Next thing you know, the officer doesn't work— work on the post no more. They already know that. They have told me that. You can talk to the officers, too."

C/O Asghar admits he had a relationship with the inmates and Kitchen Supervisor Vaughan and had no problems in the past.

C/O Asghar also admitted that he told Internal Affairs, "Everywhere I go, everywhere I work there's a problem." When asked by Counsel to explain this, he referenced an incident three years prior when an inmate put a complaint on him saying he used profanity towards her which he admitted. (T2 p.15 lines 594-614.)

C/O Asghar was asked about telling jokes to inmates was fraternization, a fact which C/O Asghar denied until he was asked.

Q: Okay. Do me a favor. Turn to page 12. Line 521 (of Internal Affairs Interview R-7) You were asked, "Do you tell jokes?" Your response is, "No, I don't, sir. I don't." And then you said, "I do tell jokes. I don't tell any racist jokes." So, do you tell jokes to inmates?

A: No, inmates no. But I was trying to say in- in that statement is that everybody tells a joke. Everybody needs to laugh. I tell jokes to my friend, to my wife, officers that were friends with me, but inmates, no, I don't tell them a joke.

Q: . . . Give me one minute, sir, please. I have one more question, sir. I just can't find the page. Page 40, sir. You turn to that. They they're asking you about whether you heard the joke about the pregnant woman. Um, and that's on line 1774. And then you answer, "No, sir, to me that's not even funny." If you skip down to line 1792 you state, "Your statement is you never heard the joke?" And your answer is, "I — I never heard that joke before. I did, like I said, I've been in the military. I have or I have heard a lot of jokes that are racist that are funny, all kinds of jokes, you know what I mean, sir? But I never — never heard a joke like that, because that's not even funny." So, you would agree that based on your sometimes you said that some racist jokes to you are funny.

A: No.

Q: But that's what you said.

A: That's not what I was trying to say.

Q: But that is what you said, correct?

A: That's not what I was trying to say, ma'am.

(T2 p.17 lines 683-711.)

FINDINGS OF FACT

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." *Id.* at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton

v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep’t, 182 N.J. Super. 415, 421 (App. Div. 1981).

The testimony presented by Lt. Jones about his investigatory actions, interviews with inmates, observations of appellant’s behavior and statements, review of Vaughan’s statement, and the facts as detailed in Jones’ report were consistent. The testimony provided by Capt. Blackwell was also comprehensive and provided the appropriate perspective. They were also consistent with the evidence provided. Collectively, their testimony of the events of the incident and the information they gathered during their investigation made sense and “hung together” to describe what occurred. Contrary to appellant’s inference and arguments, Jones’ report revealed no bias against Asghar by Vaughan or any of the inmates, which made their testimony believable. Likewise, the testimony provided by Vaughan had no hint of bias toward the appellant. There was no competent evidence in the record to support appellant’s contention that the inmates “had it out for him”. These statements were inconsistent with appellant’s allegations of bias or motive. Appellant’s inference alone was insufficient to mar the credibility of Jones or those he interviewed for his report.

Appellant’s testimony was confusing. He contradicted himself and his IA interview statements, and his statements could not be reconciled with the contemporaneous reports of his statements (notwithstanding that the statements were not “exact”, they were extremely close in detail). The other witnesses’ renditions of the disputed facts have a greater “ring of truth,” than the statement offered by appellant, who plainly had a greater interest in the outcome of this proceeding.

I accept Jones's testimony about his investigation, the interviews he conducted and his conclusions. Likewise, I accept the testimony of Capt. Blackwell and Vaughan to be believable and credible.

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that witnesses set forth by respondent were truthful and credible. Their testimony was consistent with the evidence and the statements that were taken during the I.A. investigation. With respect to Officer Asghar, he disputed the essential facts in this case and stated that the respondent witness' to the report "had it in for him" (paraphrasing) because the inmates wanted him moved from the kitchen. When reminded that respondent's first witness was a civilian and not an inmate and asked why that person lied about him (the appellant), the appellant stated he did not know. Further, after stating during the I.A. investigation that he did not tell jokes, he then testified that "I do tell jokes. I don't tell any racist jokes." (R-7.)

With respect to the nature of the incident and the "joke" told and overheard, I deem appellant's testimony was not credible that he did not tell racist jokes. The argument that the inmates and the civilian employee were conspiring against appellant is specious and unfounded in light of their corroborating testimony.

Accordingly, I **FIND**:

1. On February 13, 2018, appellant told a joke, overheard by inmates, that was derogatory, misogynistic, inappropriate, and racist.
2. On February 18, 2018, appellant issued derogatory, misogynistic, and inappropriate statements directed to an employee which was overheard by at least one civilian employee and several inmates.
3. The joke and the comments were inappropriate, misogynistic, derogatory, and (on one occasion) racist and violated the policy prohibiting discrimination, harassment, or hostile environments the workplace and constituted conduct unbecoming and other sufficient cause.

LEGAL ANALYSIS AND CONCLUSIONS

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The appointing authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant's status as a correction's officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They 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), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial

notice that such facilities, if not properly operated, have a capacity to become “tinderboxes.”

Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

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

Appellant was charged with “conduct unbecoming a public employee.” N.J.A.C. 4A:2-2.3(a)(6). “Conduct unbecoming a public employee” is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

As a corrections officer, appellant’s conduct was such that it adversely affected the morale or efficiency of a governmental unit and would have a tendency to destroy public respect in the delivery of governmental services. Under the circumstances presented here, appellant displayed a significant lack of judgment in telling an inappropriate and racist joke and calling a civilian employee inappropriate and misogynistic names which violated his obligations and duties. I **CONCLUDE** that appellant’s behavior did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). I **CONCLUDE** that respondent has met its burden of proof on this issue.

N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty

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

Appellant neglected his duty when he failed to conduct himself in the manner and demeanor befitting a C/O through telling an inappropriate and racist joke and using derogatory and misogynistic statements in describing a civilian employee.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7). I **CONCLUDE** that respondent has met its burden of proof on this issue.

N.J.A.C. 4A:2-2.3(a)(9) Discrimination that affects equal opportunity including sexual harassment

Appellant engaged in discrimination that affects equal opportunity including sexual harassment when he failed to conduct himself in the manner and demeanor befitting a C/O through telling an inappropriate and racist joke and using derogatory and misogynistic statements in describing a civilian employee.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of discrimination that affects equal opportunity including sexual harassment, in violation of

N.J.A.C. 4A:2-2.3(a)(9). I **CONCLUDE** that respondent has met its burden of proof on this issue.

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

Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. As detailed above, appellant's conduct was such that he violated this standard of good behavior. As such, I **CONCLUDE** that the respondent has met its burden of proof on this issue.

CCCF Rules of Conduct

1.1 Violations in General

Rule 1.1 provides as follows:

Any employee who violates any rule, regulation or procedure, order or directive, either by an act of commission or omission, whether stated in this manual or elsewhere, or who violates the standards operating procedure as dictated by departmental practice, is subject to disciplinary action in accordance with the New Jersey Department of Personnel (Civil Service) rules and regulations. Disciplinary actions shall be based on the nature of the rule, regulation, procedure, order or directive violated, the severity and circumstances of the infraction and the individual's record of conduct.

Based on the foregoing facts and evidence, I **CONCLUDE** that appellant's behavior did rise to a level of violating rules, regulations, and procedures by acts of both commission and omission, in violation of CCCF Rule of Conduct 1.1. I **CONCLUDE** that respondent has met its burden of proof on this issue.

1.2 Conduct Unbecoming

Rule 1.2 provides as follows:

All personnel are required to conduct themselves, both on and off duty, in such a manner as to reflect favorably on the department. Conduct unbecoming an employee shall include that which brings the department into disrepute, reflects discredit upon the employee as a member of the department, or which impairs the operation or efficiency of the department or the employee.

Based on the foregoing facts and evidence, I **CONCLUDE** that appellant's behavior did rise to a level of unbecoming conduct, in violation of CCCF Rule of Conduct 1.2. I **CONCLUDE** that respondent has met its burden of proof on this issue.

1.3 Neglect of Duty

Rule 1.3 provides as follows:

Personnel are required to give suitable attention to the performance of their duties. Any act of omission or commission indicating the failure to perform or the negligent performance or compliance to any rule, regulation, directive, order or standard operating procedure as dictated by department practice or as published, which causes any detriment to the department, its personnel, any inmate, prisoner, or to any member of the public shall be considered neglect of duty.

Based on the foregoing facts and evidence, I **CONCLUDE** that appellant's behavior did rise to a level of neglect of duty, in violation of CCCF Rule of Conduct 1.3. I **CONCLUDE** that respondent has met its burden of proof on this issue.

2.10 Inattentiveness to Duties

Appellant's actions regarding Rule 2.10 was testified to by Captain Blackwell and per her testimony I **CONCLUDE** that appellant's behavior did rise to a level of inattentiveness to duties, in violation of CCCF Rule of Conduct 2.10. I **CONCLUDE** that respondent has met its burden of proof on this issue.

3.3 Fraternization

Appellant's actions regarding Rule 3.3 was testified to by Captain Blackwell and per her testimony I **CONCLUDE** that appellant's behavior did rise to a level of fraternization, in violation of CCCF Rule of Conduct 3.3. I **CONCLUDE** that respondent has met its burden of proof on this issue.

4.1 Courtesy

Appellant's actions regarding Rule 4.1 was testified to by Captain Blackwell and per her testimony I **CONCLUDE** that appellant's behavior did rise to a level of violation of courtesy to fellow employees and inmates, in violation of CCCF Rule of Conduct 4.1. I **CONCLUDE** that respondent has met its burden of proof on this issue.

4.10 Civil Rights

Appellant's actions regarding Rule 4.10 was testified to by Captain Blackwell and per her testimony I **CONCLUDE** that appellant's behavior did rise to a level of violation of the civil rights of fellow employees and inmates, in violation of CCCF Rule of Conduct 4.10. I **CONCLUDE** that respondent has met its burden of proof on this issue.

General Order #50

General Order #50 provides in pertinent part as follows:

1. Sexual harassment consists of one or more of the following behaviors:
2. Other verbal or physical conduct of a sexual nature when:
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

I **CONCLUDE** that appellant's conduct violated General Order #50. In telling an inappropriate, misogynistic, and racist joke appellant conducted himself in a manner while on duty, which created an intimidating, hostile or offensive work environment. I **CONCLUDE** that respondent has met its burden of proof on this issue.

General Order #73

General Order #73 provides in pertinent part as follows:

All department employees, when on and off duty, will conduct themselves in a manner that will not bring discredit or criticism to the department. Common sense, good judgment, consistency and the department's mission will be the guiding principles for the expected employee standard of conduct.

1. Employees are expected to treat fellow employees, offenders and the public with respect and courtesy at all times.
2. Employees will not exhibit behavior that demonstrates prejudice or that holds any person, group or organization up to ridicule or contempt . . .

I **CONCLUDE** that appellant's conduct violated General Order #73. Appellant conducted himself in a manner while on duty, which brought criticism to the department. His conduct was a departure from that required of his position. He acted in a way that violated the public trust. I **CONCLUDE** that respondent has met its burden of proof on this issue.

General Order #74

General Order #74 provides that all sworn personnel in the department will conduct themselves in a professional and ethical manner at all times. Conduct which detracts from a professional and ethical manner is prohibited and circumstances suggesting an officer has engaged in unbecoming conduct will be investigated and disciplinary action will be taken when appropriate.

I **CONCLUDE** that appellant's conduct violated General Order #74, as he did not conduct himself in a professional manner while on duty and acted in a way that violated the public trust. I **CONCLUDE** that respondent has met its burden of proof on this issue.

Internal Affairs Order 001

Finally, appellant has also been charged with violating Internal Affairs Order #001 which provides in Section 9 Interviewing the Subject Officer, subparagraph h. that "Employees being questioned are obligated to answer all questions truthfully or he/she will be subject to disciplinary action, up to and may include (sic) termination."

Appellant was required to make truthful statements to the IA investigator during his interview. Despite this knowledge and duty, appellant intentionally misstated facts repeatedly during his IA interview relative to facts and circumstances related to the incidents detailed herein.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Internal Affairs Order #001.

I further **CONCLUDE** that all charges brought herein against appellant are **SUSTAINED**.

PENALTY

The next question is the appropriate level of that discipline. 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. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. 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 should be addressed by progressively increasing penalties.

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

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See, In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker who snapped lighter in front of five-year-old), in which the Court stated:

“. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.”

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. 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, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

The penalty sought is removal of appellant from his employment as a Corrections Officer.

Relative to the existence of mitigating factors, there is no question that appellant had an uneventful disciplinary record, during his years of service. He did not have any prior incidents requiring major discipline. Appellant had two incidents requiring

counseling, one incident requiring a verbal reprimand and one incident requiring a written reprimand.

At least one incident involved inappropriate comments to an inmate.

These factors must be evaluated in relation to the following.

Appellant denied the allegations and steadfastly maintained that he did not tell the joke in question, nor did he use the verbiage in referring to Ms. C. on February 18, 2018.

Respondent argued that appellant used inappropriate, misogynistic, racist, and derogatory statements. Respondent submitted that appellant's conduct brought disrepute to the department. Respondent contended that appellant's actions were egregious. There is no tolerance for the impermissible use of racist, inappropriate, misogynistic, and derogatory statements.

One event of severe misconduct which is unbecoming in the employee's position may render an employee unsuitable for continuation in that position. Appellant's actions in the incidents of February 13, 2018 and February 18, 2018 were egregious and suitable for a charge of dismissal.

Here, progressive discipline must be bypassed. The penalty of dismissal is appropriate in light of appellant's comments and statements made both to inmates and to an employee about a second employee. Appellant's comments about Ms. C. were directed at a specific individual without concern or judgement as to the comments. Appellant showed a clear and obvious lack of perspective, judgement and understanding of his position as a CO. Appellant's conduct, in making these comments and statements, is so severe and egregious that the penalty of removal of his employment effective January 18, 2018 is justified.

Accordingly, I **CONCLUDE** that removal is the appropriate discipline for the violations of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7), discrimination that affects

equal opportunity including sexual harassment in violation of N.J.A.C. 4A:2-2.3(a)(9), other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically violations of CCCF Rules of Conduct, 1.1 violations in general; 1.2 conduct unbecoming; 1.3 neglect of duty; 2.10 inattentiveness to duties; 3.3 fraternization, 4.1 courtesy, 4.10 civil rights; General Order #50; General Order #73; General Order #74 and Internal Affairs Order #001 be **AFFIRMED**.

ORDER

I **ORDER** that the respondent has sustained its burden of proof as to the charges of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7), discrimination that affects equal opportunity including sexual harassment in violation of N.J.A.C. 4A:2-2.3(a)(9), other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically violations of CCCF Rules of Conduct, 1.1 violations in general; 1.2 conduct unbecoming; 1.3 neglect of duty; 2.10 inattentiveness to duties; 3.3 fraternization, 4.1 courtesy, 4.10 civil rights; General Order #50; General Order #73; General Order #74 and Internal Affairs Order #001.

I **ORDER** that the action of the appointing authority removing appellant from his position as a corrections officer is **AFFIRMED**.

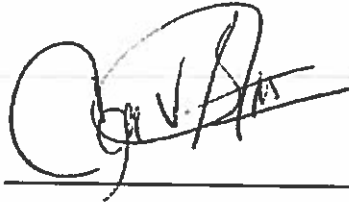
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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

March 30, 2021

DATE



Carl V. Buck III, ALJ

Date Received at Agency:

Date Mailed to Parties:

CVB/cb

APPENDIX

WITNESSES

For appellant:

Asghar Muhammad

For respondent:

Antoine Vaughan

John Jones

Linda Blackwell

EXHIBITS

For appellant:

None

For respondent:

- R-1 Internal Affairs report by Lieutenant John Jones
- R-2 General Incident report authored by Antoine Vaughan, dated January 18, 2018
- R-3 Internal Affairs Interview with Inmate Jerrell Adams, dated January 18, 2018
- R-4 Internal Affairs Interview with Inmate Keith Jones, dated January 18, 2018
- R-5 Internal Affairs Interview with Inmate Robert Malinowski, dated January 18, 2018
- R-6 Internal Affairs Interview with Inmate Waverly Smith, dated January 18, 2018
- R-7 Internal Affairs Interview with Gourmet Dining Staff member Antoine Vaughan, dated January 19, 2018
- R-8 Internal Affairs Interview with C/O Muhammad Asghar, dated January 19, 2018
- R-9 Internal Affairs Interview with C/O John Gillen, dated January 23, 2018
- R-10 Preliminary Notice of Disciplinary action (31-A), dated January 29, 2018

- Final Notice of Disciplinary Action (31-B), dated February 13, 2019
- Final Notice of Disciplinary Action (31-C), dated February 13, 2019
- R-11 Camden County Department of Corrections Rules of Conduct
- R-12 Camden County Department of Corrections IA Order 001 Internal Affairs Section
- R-13 Camden County Department of Corrections General Order 050 Harassment
- R-14 Camden County Department of Corrections General Order 073 Personal Conduct of Employees
- R-15 Camden County Department of Corrections General Order 074 Professional Code of Conduct
- R-16 C/O Muhammad Asghar Chronology of Discipline