



STATE OF NEW JERSEY

In the Matter of Justin Payne  
 Camden County, Department of  
 Corrections

FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-2574  
 OAL DKT. NO. CSV 04382-19

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

ISSUED: JULY 2, 2021      BW

The appeal of Justin Payne, County Correctional Police Officer, Camden County, Department of Corrections, of his release at the end of the working test period effective February 22, 2019, was heard by Administrative Law Judge Tama B. Hughes, who rendered her initial decision on May 11, 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 June 30, 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 releasing the appellant at the end of the working test period was justified. The Commission therefore affirms that action and dismisses the appeal of Justin Payne.

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 30<sup>TH</sup> DAY OF JUNE, 2021



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 04382-19

AGENCY DKT. NO. 2019-2574

**IN THE MATTER OF JUSTIN D.  
PAYNE, CAMDEN COUNTY  
DEPARTMENT OF CORRECTIONS.**

---

**Patrick J. Cornely, President, PBA 351, for appellant, appearing in accordance  
with N.J.A.C. 1:1-5.4(a)(16)**

**Antonieta Paiva Rinaldi, Assistant County Counsel, for respondent, Camden  
County Department of Corrections, (Christopher A. Orlando, County  
Counsel, attorney)**

Record Closed: April 15, 2021

Decided: May 11, 2021

**BEFORE TAMA B. HUGHES, ALJ:**

**STATEMENT OF THE CASE**

Justin Payne ("Payne" or "appellant"), appeals his dismissal by the Camden County Department of Corrections ("CCDOC" or "respondent") at the end of his working test period.

## PROCEDURAL HISTORY

By letter, dated February 22, 2019, the respondent notified the appellant that his employment with the CCDOC was being terminated effective February 23, 2019, and advised of his right to appeal. Appellant filed a timely appeal and the matter was transmitted to the Office of Administrative Law (OAL) on March 29, 2019, for a hearing as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13.

The matter was subsequently assigned to the Honorable Tama B. Hughes, ALJ and an initial call was scheduled for August 14, 2019. On August 14, 2019, hearing dates were set for March 16, 2020, and March 19, 2020, which were embodied in a Prehearing Order, dated September 25, 2019.

Due to the Covid-19 pandemic, in March 2020, the OAL offices were closed and all hearings adjourned including appellant's matter. The matter was subsequently rescheduled for a hearing on January 26, 2021, at which time the matter was heard remotely – via Zoom. The record remained open to allow the parties the opportunity to obtain transcripts and submit summation briefs. Upon receipt of the same, the record closed on April 15, 2021.

## TESTIMONY

**Linda Blackwell (Blackwell)**, a Captain with the CCDOC, testified that she has worked for the CCDOC for the past fifteen years and has served as a Captain for the past four. She was in her current capacity during Payne's probationary period. Among other responsibilities, she reviews officer's evaluations which includes their disciplinary history, and thereafter makes recommendations as to whether the officer should continue their employment permanently at the facility.

She is familiar with Payne having seen him periodically during his tours of duty during his probationary year. At the end of his probationary period, she reviewed his personnel file, which included his performance evaluations as well as his disciplinary history. (R-2, R-3, R-4 and R-13.) Based upon her review of his evaluations and

disciplinary history, she did not recommend him for “permanency” with the CCDOC. (R-1.)

Blackwell described the probationary period that officers go through when they come out of the academy. The officers are evaluated every one-hundred-and-twenty-days for a year. The evaluations are filled out by the officer’s sergeant and the form itself is broken down into Sections A-E. (R-2 – R-4.) According to Blackwell, Section A lists twenty-five skill areas that the officer is rated on. An officer can be rated as “Meets Standard”, “Needs Improvement” or “Unsatisfactory”. Points are attributed to skill areas that are marked “Needs Improvement” or “Unsatisfactory” and at the end of the evaluation the points are added up for an overall performance rating. Section B provides the officer’s job function and strengths. Section C outlines proposed goals or improvement programs to be undertaken by the next evaluation period. Section D outlines deficiencies that were noted during the evaluation period. Section E identifies promotional potential. A definition or a description of the twenty-five skill areas that are assessed is located on the second page of the evaluation form.

When the form is completed, it is signed by the sergeant and reviewed by the lieutenant and is thereafter discussed with the officer. If an officer disagrees with the evaluation, he/she has the right to challenge the rating and meet with the rater and reviewer.

According to Blackwell, on Payne’s first evaluation he incurred ten points – primarily for calling out sick. (R-2.) While ten points on a first evaluation is not uncommon, his attendance issues were significant. Blackwell stated that an officer fresh out of the academy needed to, not only make an effort to get to work, but to get there on time. The evaluation also noted that Payne needed to work on his compliance with rules, work judgment, planning and organization and meeting deadlines.

On his second evaluation four months later and eight months into the job, Payne received thirteen points. Blackwell stated that the accumulation of points was unacceptable. (R-3.) Typically, an officer’s performance during their probationary year improves, however, Payne’s got worse. During this evaluation period, Payne received

minor and major discipline. He was suspended for three days and then another six days for chronic or excessive absenteeism. He received a ten-day suspension for conduct unbecoming – one of the charges resulting from calling an inmate a “faggot” which was overheard by a civilian nurse who reported the same. (R-13.) As with the first evaluation, Payne signed the evaluation and did not request to discuss the report with the reviewer.

Payne’s third and final evaluation occurred one-hundred-and-twenty-days later and reflected that Payne had received four points for unsatisfactory performance and needing improvement in his knowledge of work and work judgments. (R-4.) He also received a fifteen day suspension, thirteen of which were served administratively, for an incident wherein he failed to notify his supervisor that contraband had been passed between inmates. (R-13.) Blackwell stated that this last infraction was significant and went to safety and security issues with inmates and staff members. While the incident itself had occurred during the second evaluation period, the ensuing disciplinary action did not settle until November 2018, and was appropriately reflected in the third evaluation.

Blackwell testified that she looked at the totality of Payne’s probationary year in making her determination. Based upon her review of his evaluations and his disciplinary history, which was concerning, she recommended that he not remain on staff. (R-1.) She noted that if his disciplinary history and evaluations were solely based on his sick time, they could have possibly worked around it, but Payne was not showing progress across the board and she could not in good conscience recommend that he be offered a permanent position. She went on to state that throughout his test period, due to the areas of deficiency, he received additional training and counselling. (R-2 - R-4.)

On cross-examination, Blackwell was asked why the contraband incident, which had occurred in September 2018 – the second evaluation period, was noted in Payne’s third evaluation. She was also questioned how his third evaluation could be accurate given that fact. In response, she stated that while the incident had occurred in the second evaluation period, the matter was not resolved/settled until the third evaluation period. Had it been placed on the second evaluation period and based upon his challenge, been absolved of the charges, his evaluation for that period would have been inaccurate.

Blackwell was also questioned about Sergeant Maksymowicz comments in Payne's third evaluation which stated, inter alia, that with more experience, that Payne would become a well-rounded officer. (R-4.) Blackwell responded by stating that all comments, good and bad, were taken into consideration when she made her recommendation. Additionally, when a supervising sergeant fills out the evaluation form, many times, they do not know if the officer for whom they are evaluating are in the beginning, middle or end of their probationary period. Therefore, they do not know if the candidate has another evaluation cycle left for them to gain further experience.

**George James Pizzo (Pizzo)**, a Supervising Sergeant with the CCDOC, testified that he has been with the department for thirteen years and has been a Sergeant for the past four years. He was Payne's supervisor during his working test period and he is the sergeant who filled out Payne's second working test period evaluation. (R-3.)

According to Pizzo, during the evaluation period, Payne received thirteen points for unsatisfactory performance. The thirteen points for that evaluation period placed Payne in the category of "unacceptable overall evaluation". (R-3.) The basis for the points ranged from attendance issues to compliance with rules to public contacts. (R-3.) Multiple areas of "needs improvement" were also noted on the evaluation which ranged from work judgments, job skill level and report writing to quality of work.

As the supervising sergeant, he is responsible to provide guidance to his officers which was expected, however, Payne consistently and constantly - as in daily, needed guidance. Sometimes this guidance was on the same issue. Additionally, his work product was poor – using for example logs that were required to be kept when an officer was on the floor or "pod". Payne's logs continuously had to be corrected and many times, he (Pizzo) would have to go to another officer to get the information needed. He was not comfortable with Payne's skills and did not feel that he was competent in what he was doing. Over the evaluation period, Payne arrived late to work, received two suspensions for chronic absenteeism and received a ten-day suspension for conduct unbecoming to name a few areas of deficiency. According to Pizzo, when the evaluation was provided to Payne, he did not ask to speak to the reviewer, nor did he provide any explanations or rationale for his conduct.

On cross-examination, Pizzo was asked when he generated Payne's evaluation report to which he responded at the end of the one-hundred-twenty-day cycle. He was asked in great detail how the instances of deficiencies were noted – simultaneously with the event or from his memory. After multiple questions on how the deficiencies were documented in Payne's file if at all, he finally responded by stating that for the major infractions, such as absenteeism and conduct unbecoming, they were simultaneously documented in Payne's personnel files. For the other deficiencies noted in Payne's performance evaluation - such as effectiveness under stress, quality of work, knowledge of work, they were based upon his own observations.

**Karen Taylor (Taylor)**, the Warden at CCDOC has worked for the at the facility for the past twenty-four years and has been the Warden for the past four years. She was the Warden during Payne's probationary period.

She is familiar with Payne and was aware of Blackwell's recommendation to terminate his employment at the facility. (R-1.) Upon receipt of the recommendation, she met with Blackwell and the Deputy Warden. She also met individually with Blackwell to discuss her recommendation.

When she reviews a recommendation, in this case Payne's, she looks at all the evaluations over the test period, reviews the disciplinary history as well as the attendance record. Taylor went on to state that when she looks at the global picture of an officer who is on probation, she looks to see if there is improvement. While she does not expect an officer, who was right out of the academy, to have a perfect evaluation, she does expect them, as they moved forward in the process, to meet the facilities standards. That was not the case with Payne. On his first and second evaluation, the second one being his worst, Payne failed to meet the required standards. (R-2, R-3 and R-4.) On the last evaluation, he continued to need improvement. Payne had received additional training, yet he had attendance issues and incurred minor and major discipline over the course of the test period – all of which she reviewed in making her determination. (R-13.) At no time did Payne request to speak with the reviewer about his evaluations.



In going through Payne's chronology of disciplinary infractions, Taylor stated that he had several major disciplinary infractions for major offenses. For one of the offenses, he was suspended for fifteen days, on another offense, he was suspended for ten days. After several of the infractions, she met with him to discuss the discipline that had been imposed and sent him for further training which she believed would be of assistance to him. Regarding the offense that resulted in the fifteen-day suspension, Taylor opined that Payne had failed to report a transfer of contraband between inmates and that he had cut off hot water to the inmate population. But for the fact that the inmates complained to the staff sergeant about the hot water, no one would have known what had happened. Such action on Payne's part called into question his judgment among other things and violated the Department of Corrections policies. The incident occurred during Payne's second evaluation cycle, however, was not reflected until his third evaluation cycle which was when the matter settled – noting that all officers are entitled to due process. (R-13.)

According to Taylor, she agreed with the recommendation that Payne should not be retained for several reasons. In looking at the totality of his three evaluations and chronology of discipline, noting that even his third and last evaluation had areas of deficits, and counterbalanced those considerations against the safety and security of the facility, its employees and inmate population, she believed that the right decision was not to offer Payne a permanent position.

After speaking to both Blackwell, the Deputy Warden and Human Resources, Payne was notified that he was being terminated from service due to his unsatisfactory performance during his working test period. (R-12.) Taylor went on to state that Payne had had a year to show everyone that he could meet the facility standards and based upon his performance throughout the year, it was apparent that he could not. His poor attendance, unprofessionalism, and poor judgement – particularly with regard to the contraband - which would not have come to light but for grievances filed by the inmates, to name a few, underscored this fact.

On cross-examination, when questioned why the contraband infraction and the subsequent disciplinary action taken were noted on the third evaluation cycle, not the

second, she stated that officers are entitled to due process. In this case, Payne had requested to meet with her about the charges and once he did, an agreement was reached as to what penalty should be imposed and the matter settled. That occurred in November 2018. (R-13.) She could not commit one way or the other whether Payne would have had an otherwise satisfactory evaluation but for the last disciplinary action noted in the evaluation.

Taylor was also asked about the type of additional training Payne received due to his infractions. In response she stated that after the incident regarding the foul language, he received harassment training. She also acquiesced that employee evaluations can be perfect or may note that the employee needs improvement in certain areas. She went on to state, however, whether an employee remains employed is not looked at in a vacuum – it is based upon the totality of their performance.

She was also asked whether anyone had ever asked Payne why he had repeatedly called out sick. Taylor indicated that she did not know the answer to the question, however, he did inform her of the reason why he had called out in September 2018. She was not sure whether Payne qualified for FMLA for his condition or even if he would have been eligible given the length of his employment with the CCDOC. She acquiesced that she would probably allow an employee to use sick time for a condition if they did not qualify for FMLA.

When questioned about the purpose of suspending an employee, she stated that suspension is not punishment, it is imposed to change or alter an employees' behavior – placing them on notice that their performance is unsatisfactory and that their behavior needs to change. She agreed that after Payne was suspended for using foul language, and after he received additional harassment training, there were no further issues in this regard. The same after the contraband incident, such conduct did not occur again.

**Justin D. Payne (Payne)**, testified that he suffers from cystic fibrosis and asthma. When his condition flairs up - which can happen at any time, he becomes completely incapacitated and could be out of commission one day but better the next. It depended on the severity of the flare up. He used his sick time when this occurred. When he first

started at the CCDOC, his condition flared up – the facility was dirty and moldy and it took him awhile to stabilize his treatments so that he could go to work and remain, for the most part, healthy. As he became use to the environment and got into a routine with his treatment regimen, he had fewer breathing issues. The last sick day that he used was because his mother’s house had caught on fire and he called out to assist her – that was in August 2018 – six months prior to his termination.

In discussing what had occurred during his second evaluation period that resulted in a ten-day suspension for using foul language, he stated that he had been going back and forth with an inmate all day. When one of the nurses arrived on the floor to administer medications, he made a comment to the inmate which the nurse overheard and told him was offensive. As soon as she said something, he immediately stopped talking to the inmate, however, shortly thereafter, he was approached by his sergeant and questioned about what had happened. Thereafter he was written up, suspended and received additional training. He never spoke like that again and was moved to a different side of the unit.

With regard to the fifteen-day suspension due to inmates passing exchanging contraband, he stated that on the date in question, one of the sections in the unit that he was working on was closed down. The section that was closed was where the hot water was located. He allowed an inmate from another section, whom he felt could be trustworthy, was allowed to go into the closed section and bring back hot water for the commissary. During one of his trips to and from the closed section, he noticed that the inmate stopped at one of the cells along the way and pass something through. When he saw this, he immediately went to the cell and upon arrival, the inmate inside was already in the process of flushing down the toilet whatever had been handed to him. He told the inmate who had handed him the item to go back to his cell and he shut down any further transportation of hot water into the unit. He decided not to write up the inmates because there was no evidence of contraband and he did not believe that the administration would do anything about it regardless. This last point proved true when the matter was subsequently brought forward - the inmates in question were not found guilty of having contraband. He was unaware, nor was he informed by the administration, that if he questioned the disciplinary action that had been filed, that the incident would not get

reflected on his evaluations until the matter had been completely resolved and closed out, not in the evaluation period when it occurred. He also noted that after both the foul language incident and the contraband incident, he met with the Warden and felt that after both meetings, things had been resolved. His recollection was that the Warden was primarily concerned that he had used foul language towards a person, which he had not. With regard to the contraband matter, she appeared to be focused on the denial of water to the inmates - not the contraband itself. In his third and final meeting with the Warden in January 2019, he questioned her about possible career opportunities at the facility. Her response surprised him because she questioned whether she could be sure that he would not use more [sick] time. Given that comment, he knew he would not get anywhere even though he had shown significant improvement in all areas.

On cross-examination, Payne was asked whether he had ever requested an accommodation for his medical condition. In response he stated that he had spoken to Blackwell and another captain about his medical issues and what he could do about it however, he did not ask them for any specific accommodation. He never put anything in writing, nor did he get a note from his doctor seeking an accommodation. He went on to comment, however, that when he was leaving the academy, he spoke to his instructor and questioned whether he needed to do anything further as far as his medical condition and needs. According to Payne, the instructor told him that nothing further was required from him (Payne) and that he [the instructor] would inform every one of his medical condition and need to take medication at meals.

When he subsequently received write ups for absenteeism, he spoke to one of the captains about the situation. He did not ask for an accommodation at the time and the captain told him that she did not know what to do about the rules on sick leave. He recalled saying to her that it was a double edged sword - on the one hand the facility had rules on sick leave and he had to be there and on the other, he had a medical condition that would not allow him to come to work. He believed that Captain Blackwell was also present when this conversation took place. However, when questioned further on the conversation, he stated that he really could not recall when and what specifically was talked about. At no time did he obtain a doctor's note for his absenteeism.

He is familiar with FMLA but believed that he was not eligible for it based upon conversations that he had with captains and lieutenants. Therefore, he did not go to human resources to apply for it.

According to Payne, he did not ask to speak with anyone after he received his evaluations because when the evaluations were handed to him, the sergeant went through it with him. On the first evaluation, he did not have much to say to the sergeant because the sergeant was not the one who had supervised him during that evaluation period. Additionally, the sergeant told him that the evaluation was pretty bad - primarily because of his attendance for which he (Payne) could not argue with, so he signed off. Regarding the second evaluation, it was the same thing. Pizzo went through it with him and there was nothing to be changed, the absenteeism and offensive language were what they were, so he signed that as well. He did not feel the need to go through the areas of noted deficiencies any further at the time, which was why he signed the evaluations and did not request any additional meetings.

When questioned if his medical condition improved after he started at the facility, Payne indicated that it had. He sees his doctor every three months and over the course of his probationary period, his breathing improved, and his physical status was such that after August 2018, he did not have a flare up that necessitated him to take off from work.

### **FACTUAL FINDINGS**

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' 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 521-522. See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

After due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** that for the most part, all of the witnesses were credible however, give great weight to the testimony of Blackwell, Pizzo and Taylor.

Blackwell and Taylor's were both candid in their testimony that when looking at an officer's probationary year to determine whether they will be offered a permanent position, they look at the totality of the officer's progress over the course of the year, not just the last review cycle. In Payne's case, he had significant areas of deficits in all three evaluation cycles. In looking at Payne's performance reviews and his disciplinary history and weighed it against the safety and security of the facility, employees, and inmate population, in good conscience they could not recommend that he be retained permanently.

I found that Pizzo, Payne's supervising sergeant during the second review cycle, also credibly testified about his observations of Payne's performance and his lack of confidence in Payne's work product and level of competency. While somewhat evasive on cross-examination when asked how Payne's difficulties were documented in his file – contemporaneously or by memory at the end of the cycle, he did respond that the incidents which resulted in major discipline were contemporaneously documented and for all other deficiencies, they were based upon his own observations and noted in the evaluation.

I also found Payne candid and credible in his testimony surrounding why he called out sick, why he did not dispute the disciplinary charges that had been levied against him and why he did not challenge his evaluations. While his testimony surrounding the September 11, 2018, Final Notice of Disciplinary Action (FNDA) that resulted in a ten-day suspension, and the October 31, 2018, FNDA that resulted in a fifteen-day suspension,

was somewhat self-serving, it appeared that he offered the testimony as an explanation, not an excuse.

With the above in mind, and based upon the testimonial and documentary evidence presented, and having the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following as **FACTS**:

Upon graduation from the Training Academy, in February 2018, Payne commenced working at the CCDOC as a Corrections Officer.

When Corrections Officers are first hired, they are required to go through a one year probationary (test) period. Every one-hundred-and-twenty-days during the test period, the officers are evaluated by their supervising sergeant. The evaluations are broken down into Sections A-E. Section A lists twenty-five skill areas that the officer is rated on with the rating consisting of "Meets Standard", "Needs Improvement" or "Unsatisfactory". Each rating is attributed a numerical value. Section B provides the officer's job functions and strengths. Section C outlines proposed goals or improvement programs to be undertaken by the next evaluation period. Section D outlines deficiencies that were noted during the evaluation period. Section E identifies promotional potential.

When the evaluation is completed, it is signed by the sergeant and reviewed by the lieutenant and then it is discussed with the officer. If the officer disagrees with the evaluation, they have the right to challenge the rating and meet with the rater and reviewer.

Payne's first evaluation cycle started on February 25, 2018, and ended on June 25, 2018. During this cycle, he received counselling, a written reprimand, and a warning letter. All for abuse of sick leave. (R-13.)

Payne credibly testified that he suffers from cystic fibrosis and asthma. When he first started at the facility, his condition flared up which caused him to excessively call out sick. However, at no time did he formally notify the facility in writing of his condition, go

to the human resource department for assistance/guidance, provide a doctor's note, or seek an accommodation.

Also noted on his first evaluation, in addition to his time and attendance issues, were other areas that were marked as needing improvement which included compliance with rules, public contacts, work judgments, planning and organization, job skill level and meeting deadlines.

Payne scored ten points on his first one-hundred-twenty-day evaluation which placed his overall rating at "Unacceptable Overall Evaluation". (R-2.) Appellant went through his first evaluation with his sergeant and did not challenge any of the findings.

The second working test period ran from June 24, 2018, to October 21, 2018. During this cycle, Payne received a three-day suspension for chronic or excessive absenteeism, Neglect of Duty, Conduct Unbecoming and Other Sufficient Cause (Violation of Rules of Conduct). He also received a six-day suspension for chronic or excessive absenteeism, Conduct Unbecoming, Neglect of Duty and Other Sufficient Cause (Violation of Rules of Conduct). Also incurred was a ten-day suspension for Conduct unbecoming, Discrimination, Neglect of Duty and Other Sufficient Cause (Violation of Rules of Conduct). (R-13.)

The evaluator (Pizzo) also noted several areas where Payne needed improvement – knowledge of work, work judgments, job skill level, effectiveness under stress and report writing. (R-3.) This was based upon his personal observation of the appellant's performance and review of his work product.

Payne scored thirteen points on his second one-hundred-twenty-day evaluation which placed his overall rating for the second working test period at "Unacceptable Overall Evaluation". (R-3.)

Appellant was provided a copy of his evaluation and went through it with the sergeant. At no time did appellant challenge the findings.



The third working test period ran from October 22, 2018, to February 18, 2019. During this time period, Payne incurred a fifteen-day suspension for Neglect of Duty, Conduct Unbecoming, Incompetency, Inefficiency, Failure to Perform Duties, and Other Sufficient Case (Violation of Rules of Conduct). While the incident giving rise to the sustained charges arose in September 2018, during the second working test period, it was properly noted in the third evaluation cycle which was when the charges were sustained/settled. (R-13.)

Payne's evaluation during the third working test period also noted areas that required improvement – specifically – Knowledge of Work and Work Judgments. He scored four points on this evaluation placing his performance in the "Needs Improvement Overall Evaluation".

As previously noted, all three evaluations and recommendations for improvement were provided to Payne who did not challenge any of the findings. Over the course of his working test period, Payne was provided counselling and additional training.

In review of Payne's disciplinary history during his working test period, he was suspended four times, received a written reprimand, a written warning and was counselled. The last two major disciplines received by Payne were significant in nature - the last one directly impacting the safety and security of the facility and both called into question his judgement and unprofessionalism. Notably, all three evaluations which were generated by three separate supervisors, called into question Payne's work judgment and on the last two evaluations, the evaluators commented that his knowledge of work needed improvement.

At the end of his working test period, Payne was placed on notice that his performance was unsatisfactory and that his employment was being terminated effective immediately. (R-12.)

## LEGAL ANALYSIS AND CONCLUSIONS

One of the objectives of the Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 (the Act), is to obtain an efficient public service by merit appointments with broad tenure protection to all appointees in the classified service. Mastrobattista v. Essex Cty. Park Comm'n, 46 N.J. 138 (1965). However, before an employee receives such tenure protection, an appointing authority is permitted to observe a newly-appointed employee during a working test period. N.J.S.A. 11A:4-13(a).

The purpose of a working test period is to permit an appointing authority to determine whether an employee satisfactorily performs the duties of a title. A working test period is part of the examination process which shall be served in the title to which the certification was issued and appointment made.

[N.J.S.A. 11A:4-15].

Pursuant to the Act, the Civil Service Commission adopted regulations which provide that during the working test period, an employee shall perform the duties of the title for which appointment was made. N.J.A.C. 4A:4-5.1(c). For corrections officers, the test period shall be for twelve months. N.J.A.C. 4A:4-5.2(d) The employer must provide the probationary employee with progress reports at such times during the working test period as provided by rules of the commission and a final progress report at the end of the entire working test period shall be provided to the employee and the commission. N.J.S.A. 11A:4-15(b) Notice of termination must be provided to the employee following the last day of the test period. N.J.S.A. 11A:4-15(b)

“A fair evaluation period is further evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance.” Sokolowsky v. Twp. of Freehold, 92 N.J.A.R.2d (CSV) 155, 157; Davis v. Newark Pub. Library, 9 N.J.A.R. 84, 87–88 (Merit Sys. Bd. 1986). In this regard, the CSC has consistently emphasized the necessity on the part of an appointing authority to comply with the regulatory requirements governing the provision of progress reports. The

progress reports required by N.J.A.C. 4A:4-5.3(c) are a means of notice to an employee in the working test period that his performance is unsatisfactory so that the employee has an opportunity to improve specified performance deficiencies toward completing a successful working test period and attaining permanent appointment.

In an appeal from an employee's termination at the conclusion of a working test period, the employee shoulders the burden of proving that the appointing authority's "action was in bad faith." N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee is entitled to a new full or shortened working test period and, if appropriate, other remedies. N.J.A.C. 4A:2-4.3(c). The basic test is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of the position. See, Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960); Devine v. Plainfield, 31 N.J. Super. 300, 303-04 (App. Div. 1954); Lingrell v. N.J. Civil Serv. Comm'n, 131 N.J.L. 461, 462 (1944). In general, good faith has been defined as meaning "honesty of purpose and integrity of conduct with respect to a given subject." Smith v. Whitman, 39 N.J. 397, 405 (1963). As stated in Schopf v. New Jersey Department of Labor, 96 N.J.A.R.2d (CSV) 853, 857:

No set rule may be formulated when attempting to determine whether an employee's termination at the end of the working test period was based on opinions of the appointing authority formed in good or bad faith. If the opinion is formed based upon actual observations of the employee's performance of the duties of the position, and is an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties if the appointment becomes permanent, it must be considered to have been made in good faith. If, on the other hand, the decision to terminate is not based upon actual observations of performance, or if it is made based upon dishonest motives, is based on bias, prejudice or self-interest, or is made with ill will toward the employee or because of some furtive design, it must be set aside. . . . It is only required that the opinion be based on actual observations and that those observations form a rational basis for the opinion. <sup>1</sup>

---

<sup>1</sup> The termination of an employee in situations in which the appointing authority has failed to provide progress reports or other notice has been found to be demonstrative of a lack of good faith and a denial of a fair evaluation of the employee's work performance. See, Sokolowsky, at 157 (employee who had

There are no reported decisions in cases appealing agency decisions at the end of a working test period where the courts have specifically defined what is meant by “good faith” or “bad faith.” In a non-Civil Service case, the New Jersey Supreme Court defined “good faith” to mean honesty of purpose and integrity of conduct with respect to a given subject. Smith v. Whitman, 39 N.J. 397 (1963). More recently, the Appellate Division defined “bad faith” as the antithesis of good faith, which must be a thing done dishonestly; “bad faith” contemplates a state of mind affirmatively operating with a furtive design or some motive of interest or ill-will. Lustrelon, Inc. v. Prutscher, 178 N.J. Super. 128, 144 (App. Div. 1981).

In the instant matter, appellant asserts that, as a probationary employee, the CCDOC held him to a stricter standard than full time employees as it related to his sick leave. He had a medical condition and the facility failed to provide him with the necessary services to accommodate the same, despite being made aware of the same. Appellant further contends that the evaluation process was subjective, incorrect, and inconsistent. It is his further belief that over the course of his probationary period, he showed consistent improvement, took all training to heart, never made the same mistake twice, and took responsibility for all discipline received.

The respondent on the other hand asserts that appellant's evaluations spoke for themselves. Appellant was accorded sufficient time, training, and direction to learn his job responsibilities and job expectations. Given the totality of his performance throughout his working test period, it was properly determined that he was not qualified to be a corrections officer at the CCDOC.

It is undisputed that during appellant's first and second working test period, he received counselling, a written reprimand, warning, a three-day suspension and a six-day suspension for chronic or excessive absenteeism. It is also undisputed that at no time, did he formally place the CCDOC on notice that he had a medical condition for which

---

received only verbal criticism from his supervisor during his working test period and never had the impression that his supervisor was unsatisfied with his work was entitled to full new working test period).

he required an accommodation or provide a doctor's note. While appellant testified that his academy instructor informed told him that he (the instructor), would advise the CCDOC of his medical condition/requirements and that no further action on his part was required, such testimony was hearsay. Appellant's testimony that he had spoken to Blackwell and another captain and requested guidance as it related to his condition and absences lacked credibility particularly since appellant's testimony changed upon further questioning.

The fact that appellant's excessive and unauthorized absenteeism and tardiness were noted in his evaluations is not surprising as that was relevant to the evaluation cycle in question and went towards his overall performance. The fact that the entirety of his disciplinary history during the working test period was taken into consideration at the end of his probationary period was also relevant in evaluating appellant's qualifications to continue on at the facility.

It is also undisputed that each and every performance evaluation was provided to the appellant and that he went through each evaluation with his sergeant and was provided the opportunity to challenge the same. At no time did he do so.

Appellant claims that the evaluations were subjective, incorrect, and inconsistent, however, no credible evidence was presented to support such a claim. There is no question that to some extent the evaluation process has some level of subjectivity - such is inherent in a performance-based evaluation. However, each evaluation was based upon direct observation of appellant's skills and review of his work product. On this last note, on each and every evaluation, his evaluator independently found that appellant was deficient in his work judgment. On his two evaluations, in addition to noting his deficiency in his work judgment, his evaluators found that his knowledge of work needed improvement. Absolutely no evidence was presented that any of the evaluations were done in bad faith, or that the evaluator(s) were unduly prejudiced against the appellant. In other words, each of the assessments were nothing more than an honest assessment of the appellant's skills and performance during each respective cycle.

While appellant contends that at the end of his probationary period, he showed marked improvement in his judgment, skills and performance, I **CONCLUDE** that the respondent properly looked at the totality of appellant's performance for the entirety of his working test period. In so doing - weighing the totality of appellant's performance and counterbalancing it against the overarching need for safety and security of the facility, its employees and inmate population, I **CONCLUDE** that in good faith, the respondent properly determined that the appellant was not qualified to perform the duties of a Corrections Officer at the CCDOC.

For the foregoing reasons, I **CONCLUDE** that the record is insufficient to establish bad faith by the appointing authority. To the contrary, the undisputed evidence demonstrated that appellant's performance ratings were unsatisfactory throughout the course of his working test period and appellant offered no evidence to the contrary. Therefore, I **CONCLUDE** that respondent's decision to terminate the appellant at the end of his working test period is **AFFIRMED**.

### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that the respondent's decision to terminate the appellant at the end of his working test period 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. 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.



May 11, 2021

DATE

TAMA B. HUGHES, ALJ

Date Received at Agency:

May 11, 2021

Date Mailed to Parties:

May 11, 2021 (Sent Via E-Mail)

/dm

**APPENDIX**

**WITNESSES**

**For appellant:**

Justin Payne

**For respondent:**

Karen Taylor

Linda Blackwell

George Pizzo

**EXHIBITS**

**For appellant:**

P-1 March 4, 2019, Letter from Justin Payne to NJ Civil Service Commission

**For respondent:**

R-1 February 18, 2019, Memorandum from Captain Linda Blackwell

R-2 July 19, 2018, Working Test Period Evaluation

R-3 October 22, 2018, Working Test Period Evaluation

R-4 February 1, 2019, Working Test Period Evaluation

R-5 New Jersey Civil Service Job Description for County Corrections Officer

R-6 Camden County Department of Corrections Rules of Conduct

R-7 Camden County Department of Corrections General Order #028 Sick  
Leave, Lateness

R-8 Camden County Department of Corrections General Order #050 –  
Harassment



- R-9 Camden County Department of Corrections General Order #073 – Person Conduct of Employees
- R-10 Camden County Department of Corrections General Order #074 - Professional Code of Conduct
- R-11 Camden County Department of Corrections Post Order #003 – Post Operations
- R-12 Camden County Department of Corrections Working Test Period Termination Letter, dated February 22, 2019
- R-13 C/O Justin Payne Chronology of Discipline