

121,128 (App. Div. 1995): *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although two of the penalties were modified by the Commission, charges were sustained and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore upholds the 30 working day suspension, modifies the 60 working day suspension to a 30 working day suspension and modifies the 90 working day suspension to a 30 working day suspension.

The appellant is entitled to back pay, benefits and seniority for the period following the three 30 working day suspensions. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

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

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

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 1ST DAY OF SEPTEMBER, 2021

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 06019-20

AGENCY DKT. NO. 2020-2534,

2020-2535, 2020-2536

**IN THE MATTER OF JUAN CRUZ,
HUDSON COUNTY DEPARTMENT
OF CORRECTIONS.**

Frank C. Cioffi, Esq., for appellant Juan Cruz (Sciarra & Catrambone, attorneys)

Georgina G. Pallitto, Assistant County Counsel, for respondent Hudson County
(Donato J. Battista, County Counsel)

Record Closed: June 4, 2021

Decided: July 19, 2021

BEFORE MARGARET M. MONACO, ALJ:

STATEMENT OF THE CASE

This matter involves disciplinary charges against appellant Juan Cruz, who is employed as a corrections officer with respondent Hudson County Department of Corrections (the County). Appellant appeals from three suspensions (i.e., suspensions for 30, 60 and 90 days) that were imposed stemming from appellant's absence from work.

PROCEDURAL HISTORY

The County issued a Preliminary Notice of Disciplinary Action (PNDA) dated July 30, 2019, informing appellant of the following charges issued against him: (1) incompetency, inefficiency, or failure to perform duties; (2) insubordination; (3) inability to perform duties; (4) chronic or excessive absenteeism; (5) conduct unbecoming a public employee; (6) neglect of duty; and (7) other sufficient cause. He was also charged with violating Section III.D. of Department policy ADM.03 (Requesting Days Off); Sections III and IV of Department policy ADM.13 (Absenteeism and Attendance Control);¹ and Chapter 3 (Sections 3:2.1(a) and 3:6.4) and Chapter 5 (Section 5:1.1(a), (b), (c), (d), (k) and (l)) of the Custody Staff Rules and Regulations Manual. The charges were based on the following incidents set forth in the PNDA:

Juan Cruz contacted operations requesting an emergency vacation day on April 26, 27, [and] 30 [;] May 1, 2, 3, 4, 7, 10, 11, 14, 15, 16, 17, 18, [and] 31 [;] and June 13 and 19 (18 times). Ofc. Cruz failed to provide any documentation to support those absences and was marked Absent [N]o Pay (ANP) for each of those dates. Juan Cruz contacted operations requesting sick time on June 14 and June 18. Officer Cruz had exhausted all of his sick time and was marked . . . [ANP] for those dates. On May 31, 2019 Ofc. Cruz reported off duty requesting family emergency. Ofc. Cruz failed to provide any documentation for that day and was marked ANP for that date. On 3/21/2019, Director Ronald Edwards issued an Order that all law enforcement staff were to wear their class "A" uniforms [on] 4/7/19 to 4/13/19 for uniform inspections. Officer Juan Cruz was absent during this inspection due to being on medical leave. Officer Cruz was advised upon his return to work, on May 08, 2019, that he must wear his class "A" uniforms so that he can be inspected. Officer Juan Cruz submitted a letter on May 17, 2019, stating due to his extreme weight gain, he no longer fits in his class "A" uniform and he cannot afford financially a new uniform. Officer J. Cruz reported off duty requesting a family emergency and would provide supporting documentation upon return to duty. Officer Juan Cruz failed to provide any supporting documentation for his family emergency request and was marked . . . [ANP] for this day.

¹ The cited "reporting sick" section referred to in the PNDA should be Section IV, rather than Section III.

Subsequently, the County issued a Final Notice of Disciplinary Action (FNDA) dated April 16, 2020, sustaining the charges, and providing for appellant's suspension for thirty days.

The County issued a PNDA dated September 12, 2019, informing appellant of the following charges issued against him: (1) incompetency, inefficiency, or failure to perform duties; (2) insubordination; (3) inability to perform duties; (4) conduct unbecoming a public employee; (5) neglect of duty; and (6) other sufficient cause. He was also charged with violating Section III.D. of Department policy ADM.03 (Requesting Days Off); Section III of Department policy ADM.13 (Absenteeism and Attendance Control); and Chapter 3 (Sections 3:2.1(a) and 3:6.4) and Chapter 5 (Section 5:1.1(a), (b), (c), (d), (k) and (l)) of the Custody Staff Rules and Regulations Manual. The charges were based on the following incidents set forth in the PNDA:

On July 16, 31, August 01, and 06, [O]fficer Juan Cruz contacted operations requesting emergency vacation days and stated he will provide documentation. Officer Juan Cruz failed to provide supporting documentation for his request and was marked with an . . . [ANP].

Subsequently, the County issued a FNDA dated April 16, 2020, sustaining the charges, and providing for appellant's suspension for sixty days.

The County issued a PNDA dated November 18, 2019, informing appellant of the following charges issued against him: (1) insubordination; (2) inability to perform duties; (3) chronic or excessive absenteeism; (4) conduct unbecoming a public employee; (5) neglect of duty; and (6) other sufficient cause. He was also charged with violating Section III.D. of Department policy ADM.03 (Requesting Days Off); Section III of Department policy ADM.13 (Absenteeism and Attendance Control); and Chapter 3 (Sections 3:2.1(a) and 3:6.4) and Chapter 5 (Section 5:1.1(b), (k) and (l)) of the Custody Staff Rules and Regulations Manual. The charges were based on the following incidents set forth in the PNDA:

On Sept. 03, 2019, Officer Juan Cruz contacted Operations and told the officer that he would not be in because he had to take his son to the hospital. This resulted in his being marked ANP

... for that day. On Sept. 12, 2019, Officer Juan Cruz contacted Operations requesting to use his remaining time to care for his wife. Officer Cruz did not supply sufficient documentation to grant this request. This resulted in Officer Cruz being marked ANP for that day.

Subsequently, the County issued a FNDA dated April 16, 2020, sustaining the charges, and providing for appellant's suspension for ninety days.

Appellant filed an appeal, and the matter concerning the three suspensions was transmitted to the Office of Administrative Law, where it was filed for determination as a contested case. The hearing was held, via Zoom, on November 16, 2020, and January 21, 2021. After the conclusion of the testimony, the record remained open for the receipt of post-hearing submissions. The parties filed briefs in support of their respective positions, and appellant filed a reply brief. The County did not submit a reply brief by the required deadline, on which date the record closed.

FACTUAL DISCUSSION

At the hearing, the County presented testimony by Captain John Geoghegan and Jennifer DeSalvo. Appellant testified on his own behalf and offered testimony by his wife. Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I FIND the following pertinent **FACTS**.

BACKGROUND FACTS

Appellant has been employed as a corrections officer with the Hudson County Department of Corrections (the Department) since 1999. In 2019, appellant's tour of duty was Tuesday through Saturday, 2:00 p.m. to 10:00 p.m.

Captain John Geoghegan (Geoghegan) has been employed by the Department since 1996 and has served as a captain since September 2017. Geoghegan has been appellant's tour commander since March 2017.

Jennifer DeSalvo (DeSalvo) is employed as an employee benefits specialist with the County's Central Personnel. Her responsibilities in this position include processing leave of absences available to County employees. Appellant had applied for, and obtained, leaves of absences in 2016, 2017, 2018 and 2019. (See R-12.)

Appellant submitted a Leave Request Form, dated February 4, 2019, in which appellant requested intermittent leave for a "seriously ill spouse" starting on January 28, 2019 and ending on July 28, 2019. (J-1.) The application includes a Certification of Health Care Provider for Family Member's Serious Health Condition, which was completed by a treating doctor for appellant's wife, Dr. Medunick, and is dated January 30, 2019. The certification lists the approximate date that the wife's condition commenced (September 1, 2018); the probable duration of her condition (September 1, 2019); and the dates that the doctor treated the wife for the condition (September 9, 2018, October 10, 2018, December 4, 2018, January 2, 2019, and January 30, 2019). According to the certification, the wife "becomes incapacitated and needs help" due to her listed condition, and the wife will not be incapacitated for a single continuous period of time. Dr. Medunick estimated that the wife will require follow-up treatments two to three times a month; the wife will require care on an intermittent basis eight hours a day approximately one day a week from September 1, 2018, through September 1, 2019; and the wife may have flare-ups one to two times per month for a duration of eight hours per episode. On February 5, 2019, DeSalvo approved appellant's leave under the New Jersey Family Leave Act (NJFLA).²

After being apprised by the Department of the frequency of appellant's absences from work, DeSalvo informed appellant, via letter dated March 4, 2019, that the medical certification submitted by Dr. Medunick "needs to be re-certified due to the circumstances described in the previous certification changing significantly." (J-2.) The letter listed the documentation that appellant must provide by March 19, 2019 for "re-certification of [his] Intermittent Leave of Absence." The listed documents included a letter from DeSalvo to Dr. Medunick that states in pertinent part:

² At the hearing, appellant's wife testified about her medical condition, which is not in issue in this matter.

We received the attached medical certification from you on February 4, 2019, certifying that your patient, Jane Cruz, requires intermittent medical care from her spouse. The medical certification indicates that, due to Jane Cruz's condition, she may need care during flare ups to 1-2 times a month, 8 hours per episode.

Since the date of the medical certification . . . Mr. Cruz has called out of work to care for his spouse on the following consecutive days: **Tuesday, February 5, through Saturday, March 2, totaling 20 consecutive days out of work using intermittent medical leave**

20 Consecutive call-outs far exceeds the above listed estimated of need for leave. Due to this pattern of absence, we are requesting that you re-certify medical documents. Please complete the attached medical certification and indicate if Ms. Cruz's serious health condition and need for care from her spouse is consistent with the pattern of absences listed above. (J-2.)³

Subsequently, appellant submitted an undated Leave Request Form, in which appellant requested leave for a "seriously ill spouse" starting on March 28, 2019 and ending on April 25, 2019. (J-3.) In the medical certification, which is dated March 21, 2019, Dr. Medunick lists the approximate date that the wife's condition commenced (January 1, 2019); the probable duration of her condition (January 1, 2020); and the same dates of treatment set forth in his earlier certification. According to the certification, appellant "will need to care" for the wife "when incapacitated" due to the wife's listed condition, and the wife will not be incapacitated for a single continuous period of time. Dr. Medunick again estimated that the wife will require follow-up treatment two to three times a month. He also estimated that the wife will require care on an intermittent basis twelve hours a day, seven days a week, and the wife may have flare-ups two to three times per month for a duration of twelve hours per episode.

By memorandum dated April 1, 2019, DeSalvo informed appellant:

³ Dr. Medunick acknowledged receiving this letter on March 21, 2019. (J-2.)

This office has accepted your recertification of leave documents. Absences from February 5–April 25, 2019 will be covered under the NJFLA to care for your spouse.

...

As of April 25, 2019, you will have reached 12 weeks of leave under the NJFLA. If you require an extension, please contact me to review options that may be available to you

If you have any questions, please contact me at the above listed telephone number. (J-3.)

DeSalvo also provided a memorandum to appellant dated April 1, 2019, entitled “Leave of Absence Return Requirements,” which states in pertinent part:

If your Leave of Absence is approved, it will expire on 04/25/2019. You will be expected to return to work on 04/26/2019.

...

If you wish to apply for an extension of your leave, you must submit an application along with supplemental medical documentation. You are solely responsible for a request for an extension. The request must be submitted to this office at least ten work days prior to the expiration of your leave. Failure to do so may result in denial of the requested extension.

Unless a request for an extension of your leave is granted, your failure to return to work on 04/26/2019, will result in you being subject to discipline up to and including termination (J-3.) (Emphasis added and in original.)⁴

DEPARTMENT POLICIES AND RULES

Department Policy ADM.03, entitled “Requesting Days Off” (R-5), states in pertinent part:

III. PROCEDURES

...

B. Reporting Off-Duty Sick and Family Emergency

⁴ In connection with appellant’s earlier leave request, DeSalvo provided a similar memorandum to appellant, which he signed on February 4, 2019. (J-1.)

1. Any officer . . . wishing to report off-duty due to illness or family emergency must first contact the unit manager or area supervisor.

....

3. [A] doctor's note or other proper documentation substantiating the medical or family emergency must be provided upon return to duty.

...

D. Emergency Vacation and Personal Days

1. In the case of an emergency, such as a motor vehicle accident or death of an immediate family member, an officer ... may request an Emergency Vacation or Emergency Personal Day. The request must be made to the Operations Officer, who shall then make the proper notation in the COSS system as a DNR: Requesting Emergency Vacation/Personal Day.

2. Upon returning for the next tour of duty, proper documentation must be provided substantiating the emergency. If not approved due to the failure to submit proper or adequate documentation, the day shall remain a DNR and will result in disciplinary action.⁵

3. Emergency Vacation or Emergency Personal Day shall be processed through his/her Unit Manager and forwarded to Administration for final approval. (Emphasis added.)

Department Policy ADM.13, entitled "Absenteeism and Attendance Control" (R-6), states in pertinent part:

IV. REPORTING SICK

...

C. Reporting Off Duty Sick and Family Emergency

1. Any officer . . . wishing to report off-duty during any scheduled work . . . day due to illness or family emergency must first contact their immediate supervisor.

....

⁵ Geoghegan explained that the Department uses ANP (rather than do not report (DNR)), meaning that the officer had called in, but the time was not approved. See also R-6 (Department Policy ADM.13 defining DNR as "[a]n individual is charged 'Did Not Report' upon failing to report for duty and failure to notify the department of the inability to report.").

3. [A] doctor's note or other proper documentation substantiating the medical or family emergency must be provided upon return to duty. (Emphasis added.)

The policy also defines various terms (R-6 at III), including the following:

Absent No Pay (ANP)

An individual runs out of sick time, is unable to report or calls out sick to work after the 1 hour cut off.

Chronic or Excessive Absenteeism

Chronic or excessive absenteeism is frequent and[/]or repetitive absences, or when an HCDOC&R employee has depleted all available sick leave balances.

Unauthorized Absence

Every employee who fails to appear for duty at the date, time and place specified and without consent or proper authorization is "Absent No Pay" (ANP) or "Did Not Report" (DNP). This absence must be reported in writing to the Unit Manager and also on a Request for Disciplinary Action Report by the Officer-in-Charge.

Appellant received Department Policy ADM.03 and ADM.13. (See R-11.) Appellant does not dispute his awareness of the requirement that proper documentation must be submitted upon an officer's return to duty to substantiate the emergency underlying a request for an emergency vacation day or reporting off duty due to a family emergency.

Chapter 3 of the Custody Staff Rules and Regulations Manual, entitled "Performance of Duties" (R-7), states in pertinent part:

Insubordination

3:2.1 Custody staff members shall not commit acts of insubordination. The following specific acts are prohibited by this section:

(a) Failure or deliberate refusal to obey a lawful order, verbal or written, by the Director of Corrections, Deputy Director, Unit

Manager(s) or other supervisory staff member(s) or any authorized person

...

Absenteeism

...

3:6.4 Every employee who fails to appear for duty at the date, time and place specified and without consent or proper authorization is "Absent No Pay" (A.N.P.) or "Did Not Report" (D.N.R.). Five (5) days of being absent without leave or D.N.R. constitutes "Resignation Not in Good Standing."

Chapter 5 of the Custody Staff Rules and Regulations Manual, entitled "Disciplinary Action" (R-8), states in pertinent part:

Violations Subject to Disciplinary Action

5:1.1 Any staff member of the HCDOC&R found guilty of the following may be subject to disciplinary action:

- (a) Unethical Behavior
- (b) Conduct Unbecoming an Officer
- (c) Disobeying any lawful command received from a superior officer
- (d) Incompetent performance of duty
- ...
- (k) Absence or tardiness
- (l) Any other misfeasance, malfeasance or nonfeasance of duty. . . .

THE DISCIPLINARY ACTIONS

The July 30, 2019 PNDA

Appellant was on an approved medical leave until April 25, 2019. (See J-3; R-2.) On April 26, 2019, appellant contacted operations requesting an emergency vacation day. (R-2.) On April 27, 2019, appellant contacted operations requesting an emergency vacation day. (ibid.) Appellant's next scheduled day at work was April 30, 2019. (ibid.) On April 30, 2019, appellant contacted operations requesting an emergency vacation day. (ibid.) Appellant worked no days in April 2019. (ibid.)

On May 1, 2019, appellant contacted operations requesting an emergency vacation day. (R-3.) On May 2, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) On May 3, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) On May 4, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) Appellant's next scheduled day at work was May 7, 2019. (Ibid.) On May 7, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.)

Appellant returned to work on May 8, 2019. Pursuant to Department policy, appellant was required to provide proper documentation substantiating the emergencies in April and May upon returning for his next tour of duty. Geoghegan makes the determination regarding whether an officer has submitted sufficient documentation. He described that on or about May 10, 2019, appellant submitted a report requesting the emergency vacation days, which attached excerpts from appellant's expired leave paperwork, similar to appellant's later memorandum dated May 31, 2019. (See R-10; J-3.) The attachment consisted of two of the three pages completed by Dr. Medunick that addressed the approximate date the wife's condition commenced (January 1, 2019), its probable duration (January 1, 2020), the dates the doctor treated the wife, and appellant's need to care for the wife when incapacitated. Appellant did not attach the third page that included Dr. Medunick's signature with the date of March 21, 2019.

Geoghegan determined that appellant failed to provide sufficient proof of the emergency on the dates that he requested an emergency vacation day, and, therefore, appellant was marked ANP for the eight consecutive workdays. Geoghegan explained that, pursuant to Department policy, an emergency vacation day requires appropriate documentation upon an officer's return to duty and is for a situation that is immediate and of an emergent nature, such as a motor vehicle accident. (See R-5.) He noted that the attachment did not specifically address the dates in issue and reflected that the doctor had last treated the wife on January 30, 2019, or months before the requested emergency vacation days. Had appellant furnished proper documentation upon his return to duty, Geoghegan would have changed the ANP to a vacation day. Additionally, appellant could have used his vacation time for the days in issue if he provided the required seventy-two

hours' notice. Geoghegan described the impact on the jail when an officer calls out one or two hours before the officer's shift. In such cases, the Department must hire voluntary overtime at a higher rate of pay or, if this is not an option, an officer would be required to do the work of two officers which presents security risks.

On May 10, 2019, appellant contacted operations requesting an emergency vacation day. (R-3.) On May 11, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) Appellant's next scheduled day at work was May 14, 2019. (Ibid.) On May 14, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) On May 15, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) On May 16, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) On May 17, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) On May 18, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) Upon appellant's return to work on May 21, 2019, appellant failed to provide sufficient proof of the emergency on the dates that he requested an emergency vacation day, and, therefore, appellant was marked ANP for the seven consecutive workdays.

Appellant submitted a memorandum to Geoghegan, dated May 10, 2019, entitled "Requesting Emergency Vacation Days." (A-1.) The memorandum states in pertinent part:

On May 10, 2019, I . . . called out requesting emergency vacation days, due to the fact I completed my FMLA . . . for my wife. I am requesting the following days on duty from ANP . . . to vacation days from May 10, 2019–May 21, 2019 I filled paperwork with personnel indicating my wife will need assistance 7 days a week. [A]lthough we are working this situation out, we need your assistance with this matter. I am submitting medical documentation paperwork and highlighted the section filled out by my wife's physician Doctor David Medunick indicating how many days my wife will need assistance I still have several months remains of this year and I cannot afford a suspension, not to be terminated due to this situation. Is there any alternative leave of absence that will cover days missed? I believe I exhausted my FMLA for this current year and I truly need your help in this matter

Although it appears that this memorandum is the report that Geoghegan referred to receiving on or about May 10, 2019, it appears that appellant submitted this memorandum sometime after May 21, 2019 by appellant's reference to changing the days from May 10, 2019–May 21, 2019 from ANP to vacation days. Geoghegan would not allow an officer to use future vacation time to retroactively cover days that the officer called in as an emergency vacation day unless the officer furnished appropriate documentation substantiating the emergency. He explained that otherwise an officer could not report to work and then ask to use vacation time without providing the required seventy-two hour notice. In response to the above memorandum, Geoghegan directed Lieutenant Martins to contact the Personnel Department regarding possible types of leaves available to appellant.

On May 31, 2019, appellant reported to work but reported off duty at 17:34 due to a family emergency. (R-3.) Pursuant to Department policy, a doctor's note or other proper documentation substantiating the family emergency must be provided upon return to duty. At some point after appellant returned to work in June 2019, appellant submitted a memorandum to Geoghegan dated May 31, 2019, which states in pertinent part:

On May 31, 2019, I . . . reported off duty family emergency due to my wife[s] . . . medical condition. My wife's condition is well documented with the Personnel Department as with our Department. Enclosed is a copy of my wife's Doctor (Dr. Medunick) paperwork indicating she needs my assistance
(R-10.)

Appellant attached to the memorandum the two pages by Dr. Medunick relating to appellant's prior leave of absence. (See J-3.) Geoghegan determined that the submitted documentation was insufficient proof of a family emergency on May 31, 2019 (e.g., the paperwork did not address the specific date, the doctor stated that he last treated the wife in January 2019), and appellant was marked ANP for a portion of that day. Appellant worked a total of nine full days in May 2019. (R-3.)

On June 6, 2019, Lieutenant Martins issued a memorandum to appellant, which appellant signed on that day, detailing possible leave options available to appellant (i.e., furlough leave, personal leave, donated leave). (R-17.)

On June 13 and 19, 2019, appellant contacted operations requesting emergency vacation days. (R-4.) On June 14 and 18, 2019, appellant called out sick. (Ibid.) At the time, appellant had exhausted all of his sick time and was marked ANP. He was also marked ANP based on his failure to provide sufficient documentation regarding his emergency vacation days. Although appellant testified that he provided a memorandum regarding those days, appellant offered no document to support his testimony. Appellant also described that he submitted the same paperwork from his prior leave of absence, which Geoghegan had determined to be insufficient to substantiate an emergency vacation day. In June 2019, appellant had approved vacation days for every Saturday (June 1, June 8, June 15, June 22, and June 29), and he worked a total of eleven days. (Ibid.)

From April through June 2019, appellant was ANP on twenty days.

On March 21, 2019, Director Ronald Edwards issued an order that all law enforcement staff were to wear their class A uniforms between April 7 and 13, 2019 for uniform inspections. Appellant was on medical leave during that period. Upon his return to work on May 8, 2019, appellant was ordered to wear his class A uniform so that he could be inspected. Appellant submitted a memorandum on May 17, 2019, advising that he no longer fit in his uniform due to his weight gain and cannot afford to purchase a new uniform. Pursuant to Department policy, an officer is required to have a usable class A uniform.

On August 6, 2019, appellant was served with the PNDA dated July 30, 2019. (J-4.) On April 16, 2020, the County issued a FNDA memorializing that the charges were sustained and providing for appellant's suspension for thirty days. (J-5.)

The September 12, 2019 PNDA

On July 16, 2019, appellant contacted operations requesting an emergency vacation day. (R-14.) On July 31, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) Geoghegan had no record of appellant submitting any

documentation substantiating the emergency on either day, and appellant was marked ANP for the two days. (Ibid.) To the extent that appellant testified that he submitted a report like his earlier reports regarding these days, appellant offered no document to support his testimony, which is overborne by Geoghegan's credible testimony. Geoghegan further noted that, even if appellant had submitted the type of documentation that he had submitted in the past, the documentation would have been insufficient for the reasons previously expressed. During July 2019, appellant took vacation days on every Saturday (July 6, 13, 20 and 27), and he worked a total of fourteen days. (Ibid.)

On August 1, 2019, appellant contacted operations requesting an emergency vacation day. (R-15.) On August 6, 2019, appellant contacted operations requesting an emergency vacation day. (Ibid.) Geoghegan had no record of appellant submitting any documentation substantiating the emergency on either day, and appellant was marked ANP for the two days. (Ibid.) To the extent that appellant testified that he submitted a report like his earlier reports regarding these days, appellant offered no document to support his testimony, which is overborne by Geoghegan's credible testimony. Geoghegan further noted that, even if appellant had submitted the type of documentation that he had submitted in the past, the documentation would have been insufficient for the reasons previously expressed. During August 2019, appellant took vacation days on every Saturday (August 3, 10, 17, 24 and 31) and he worked a total of fifteen full days. (Ibid.)

On September 12, 2019, appellant was served with the PNDA dated September 12, 2019. (J-6.) On April 16, 2020, the County issued a FNDA memorializing that the charges were sustained and providing for appellant's suspension for sixty days. (J-7.)

The November 18, 2019 PNDA

On September 3, 2019, appellant contacted operations and advised that he had to take his son to the hospital. (R-16.) Following his return to work, appellant brought in a note that his son had been seen for an office visit by a pediatrician. Appellant was marked ANP because he failed to provide sufficient proof for the emergency vacation day. Geoghegan explained that appellant would have been given an emergency vacation day

had he submitted documentation from the hospital. The use of sick time (if available) is appropriate for doctor's visit, not an emergency vacation day. At the hearing, appellant did not address the alleged emergent nature of the doctor's visit for his son.

On September 12, 2019, appellant contacted operations requesting to use his remaining vacation and personal time for his wife. (R-16.) Following his return to work, appellant brought in a note regarding an office visit for his wife, which Geoghegan explained was not sufficient for an emergency vacation day and resulted in appellant being marked ANP. At the hearing, appellant did not address the alleged emergent nature of the doctor's visit for his wife.

On September 17, 2019, appellant went on medical leave stemming from an injury that appellant sustained. (See R-16; R-18.) Appellant worked a total of six days in September 2019.

On November 18, 2019, the County issued the PNDA regarding the above absences. (J-8.) On April 16, 2020, the County issued a FNDA memorializing that the charges were sustained and providing for appellant's suspension for ninety days. (J-9.)

LEGAL DISCUSSION AND CONCLUSIONS

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the employee is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

The County bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). This forum has the duty to decide in favor of the party on

whose side the weight of the evidence preponderates, and according to a reasonable probability of truth. Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). 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). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Precisely what is needed to satisfy this burden necessarily must be judged on a case-by-case basis.

An appointing authority may discipline an employee for various causes as set forth in N.J.A.C. 4A:2-2.3. With regard to the July 30, 2019 PNDA relating to appellant's absences from work in April, May and June 2019 and appellant's failure to comply with the order regarding his class A uniform, the County charged appellant with incompetency, inefficiency, or failure to perform duties; insubordination; inability to perform duties; chronic or excessive absenteeism; conduct unbecoming a public employee; neglect of duty; and other sufficient cause; specifically, violation of Section III.D. of Department policy ADM.03; violation of Sections III and IV of Department policy ADM.13; and violation of Chapter 3 (Sections 3:2.1(a) and 3:6.4) and Chapter 5 (Section 5:1.1(a), (b), (c), (d), (k) and (l)) of the Custody Staff Rules and Regulations Manual. See N.J.A.C. 4A:2-2.3(a)(1), (2), (3), (4), (6), (7) and (12). With regard to the September 12, 2019 PNDA relating to appellant's absences on July 16, July 31, August 1 and August 6, 2019, the County charged appellant with incompetency, inefficiency, or failure to perform duties; insubordination; inability to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause; specifically, violation of Section III.D. of Department policy ADM.03; violation of Section III of Department policy ADM.13; and violation of Chapter 3 (Sections 3:2.1(a) and 3:6.4) and Chapter 5 (Section 5:1.1(a), (b), (c), (d), (k) and (l)) of the Custody Staff Rules and Regulations Manual. See N.J.A.C. 4A:2-2.3(a)(1), (2), (3), (6), (7) and (12). With regard to the November 18, 2019 PNDA relating to appellant's absences from work on September 3 and 12, 2019, the County charged appellant with insubordination; inability to perform duties; chronic or excessive absenteeism; conduct unbecoming a public employee; neglect of duty; and other sufficient cause; specifically, violation of Section III.D. of Department policy ADM.03; violation of Section III of Department policy ADM.13; and violation of Chapter 3 (Sections

3:2.1(a) and 3:6.4) and Chapter 5 (Section 5:1.1(b), (k) and (l)) of the Custody Staff Rules and Regulations Manual. See N.J.A.C. 4A:2-2.3(a)(2), (3), (4), (6), (7) and (12).

Insubordination encompasses an employee's failure or refusal to follow a directive, order or instruction of a supervisor. Eaddy v. Dep't of Transp., 208 N.J. Super. 156, 158–59 (App. Div.), certif. granted, 104 N.J. 392, order vacated, appeal dismissed, 105 N.J. 569 (1986); City of Newark v. Massey, 93 N.J. Super. 317, 322 (App. Div. 1967). See also Section 3:2.1 of the Custody Staff Rules and Regulations Manual (providing that insubordination includes the “[f]ailure or deliberate refusal to obey a lawful order, verbal or written, by the Director of Corrections, Deputy Director, Unit Manager(s) or other supervisory staff member(s) or any authorized person”). Neglect of duty is predicated on an employee's omission to perform, or failure to perform or discharge, a duty required by the employee's position and includes official misconduct or misdoing as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div.), aff'd on other grounds, 99 N.J. 1 (1985). Conduct unbecoming a public employee has been described as an “elastic” phrase that includes “conduct which adversely affects the morale or efficiency” of the public entity or “which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services.” In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); see Karins v. City of Atl. City, 152 N.J. 532 (1998). In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). Although the regulation does not define when absenteeism will rise to the level of chronic or excessive, it is generally understood that chronic conduct is conduct that continues over a long time or recurs frequently, Good v. N. State Prison, 97 N.J.A.R.2d (CSV) 529, 531, and “excessive” is defined as “exceeding a normal, usual, reasonable, or proper limit.” American Heritage Dictionary 638 (3rd ed. 1992). See also Department Policy ADM.13 (defining “chronic or excessive absenteeism” as “frequent and[/]or repetitive absences, or when an HCDOC&R employee has depleted all available sick leave balances”).

Regarding the July 30, 2019 PNDA, based upon the aforesaid **FINDINGS of FACT, I CONCLUDE** that the Department has shouldered its burden of proving, by a preponderance of the credible evidence, that appellant's failure to report to work or complete his tour of duty on the twenty days in April, May and June 2019 constitutes chronic or excessive absenteeism, neglect of duty, conduct unbecoming a public employee and a failure, along with an inability, to perform his job duties due to his absences from work. I further **CONCLUDE** that appellant's actions relating to his absences from work amount to other sufficient cause; namely, violation of Section III.D. of Department policy ADM.03 (regarding emergency vacations days); violation of Section III of Department policy ADM.13 (regarding ANP, chronic or excessive absenteeism and unauthorized absence); violation of Section IVC.3 of Department policy ADM.13 (regarding reporting off duty due to a family emergency); and violation of Section 3:6.4 of the Custody Staff Rules and Regulations Manual (regarding absenteeism). I **CONCLUDE** that the Department has also proved that appellant's failure to comply with the order requiring him to wear his class A uniform amounts to insubordination and violation of Section 3.2.1(a) of the Custody Staff Rules and Regulations Manual. Although the Department charges appellant with violation of Section 5:1.1(a), (b), (c), (d), (k) and (l) of the Custody Staff Rules and Regulations Manual, that section simply sets forth the type of behavior that may result in disciplinary action and is essentially duplicative of the above sustained charges, warranting the dismissal of that charge.

In judging whether an employee's absenteeism is chronic or excessive, relevant factors include, among others, the number of absences, the time span between the absences, and the negative impact on the workplace. See Harris v. Woodbine Developmental Ctr., CSV 4885-02, Initial Decision (February 11, 2003), adopted, Comm'r (March 27, 2003), <<http://njlaw.rutgers.edu/collections/oal/>>; Hendrix v. City of Asbury, CSV 10042-99, Initial Decision (April 10, 2001), adopted, Comm'r (June 8, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>; Morgan v. Union Cnty. Runnells Specialized Hosp., 97 N.J.A.R.2d (CSV) 295; Bellamy v. Twp. of Aberdeen, Dep't of Pub. Works, 96 N.J.A.R.2d (CSV) 770. It is further recognized that "numerous occurrences" of habitual tardiness or similar chronic conduct "over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty." West New York, 38 N.J. at 522. Equally recognized is that "excessive absenteeism is not

necessarily limited to instances of bad faith or lack of justification on the part of the employee who was frequently away from [his or] her job.” Terrell v. Newark Hous. Auth., 92 N.J.A.R.2d (CSV) 750, 752; see also Bellamy, 96 N.J.A.R.2d at 772.

Succinctly stated, the record demonstrates that appellant was chronically and excessively absent from work during the period of April 26 to June 19, 2019; appellant did not report to work on nineteen days, he left work on another occasion, and appellant had exhausted all of his sick time by at least June 14, 2019. The Department policies unambiguously instruct that an officer must provide proper documentation upon returning to duty to substantiate an emergency vacation day or when an officer reports off duty due to a family emergency. Appellant failed to comply with these requirements by submitting valid proof of an emergency on the days in issue. The documentation that appellant submitted from his expired leave papers did not address an emergency on the specific dates in issue and it was authored by the doctor in March 2019, who, according to the form, had not treated the wife since January 2019. Although appellant argues that “the County failed to provide notification to [him] that he required supplemental paperwork,” the Department policies provide adequate notice to appellant regarding his responsibility to submit proper documentation substantiating the emergency in order to remove the ANP. Geoghegan further explained that appellant could have accessed the Corrections Officers Scheduling System to ascertain whether his requested days were approved. The Department policies also put appellant on specific notice that the failure to submit adequate documentation to support an emergency vacation day and an unauthorized absence will result in disciplinary action. See R-5 at III.D.2; R-6 at III. Although I have no reason to doubt the medical condition of appellant's wife, the record falls short of demonstrating that appellant took diligent and meaningful steps to pursue potential leaves of absences that might be available to assist with his asserted situation. The record is bereft of evidence that appellant contacted DeSalvo to review potential leave options after her April 1, 2019 memorandum, which explicitly informed appellant that his failure to return to work on April 26, 2019 will result in appellant being subject to discipline. Indeed, after receiving Lieutenant Martins' memorandum on June 6, 2019, the record is devoid of evidence that appellant applied for a furlough leave or sought guidance regarding using

his accrued vacation days to qualify for a personal leave, and he did not apply for donated leave until September 19, 2019.⁶

Plainly, an employer has a legitimate right to expect that its employees will attend work as scheduled. See Svarnas v. AT&T Comm'ns, 326 N.J. Super. 59, 78 (App. Div. 1999). (“[R]easonably regular, reliable, and predictable attendance is a necessary element of most jobs. An employee who does not come to work cannot perform any of [his or] her job functions, essential or otherwise.”) Appellant’s absences from work caused a disruption in the workplace and created a hardship to the Department in that other correction officers had to absorb appellant’s job duties, which also creates potential safety issues at the jail. Appellant’s repeated failure to work his assigned shifts is conduct that adversely affects the morale of other governmental employee correction officers who had to undertake appellant’s work and adversely affects the efficient operations of the jail. Appellant’s failure to perform his mandated duties due to his absences from work constitutes neglect of his duties as a correction officer, conduct unbecoming a public employee and a failure and inability to perform his job duties.

It is further undisputed that appellant was ordered to wear his class A uniform, appellant is required by policy to possess such a uniform, and appellant failed to wear his class A uniform in compliance with the direct and lawful order given to him by his supervisor. Our courts have recognized the importance of maintaining strict discipline in paramilitary settings such as police departments and correctional facilities. See Henry, 81 N.J. at 579; Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); Massey, 93 N.J. Super. 317. In this type of setting, the “[r]efusal to obey orders . . . cannot be tolerated.” Rivell, 115 N.J. Super. at 72. Appellant’s failure to obey the supervisor’s order regarding wearing his class A uniform constitutes insubordination.

Regarding the September 12, 2019 PNDA, based upon the aforesaid **FINDINGS of FACT**, I **CONCLUDE** that the Department has shouldered its burden of proving, by a preponderance of the credible evidence, that appellant’s failure to report to work on the

⁶ Appellant’s request for donated leave was ultimately denied based on his prior suspension for chronic or excessive absenteeism.

four days in July and August 2016 constitutes a failure and an inability to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause; namely, violation of Section III.D. of Department policy ADM.03 (regarding emergency vacations days) violation of Section III of Department policy ADM.13 (regarding ANP, chronic or excessive absenteeism and unauthorized absence); and violation of 3:6.4 of the Custody Staff Rules and Regulations Manual (regarding absenteeism). For the reasons previously set forth, I **CONCLUDE** that the charge relating to violation of Section 5:1.1(a), (b), (c), (d), (k) and (l) of the Custody Staff Rules and Regulations should be dismissed. Although the Department also charges appellant with insubordination, and violation of Sections 3:2.1(a) of the Custody Staff Rules and Regulations (regarding insubordination), I **CONCLUDE** that the facts more appropriately fit the above sustained charges, warranting dismissal of the insubordination charges.

Regarding the November 18, 2019 PNDA, based upon the aforesaid **FINDINGS of FACT**, I **CONCLUDE** that the Department has shouldered its burden of proving, by a preponderance of the credible evidence, that appellant's failure to report to work on September 3 and 12, 2019 constitutes an inability to perform duties; chronic or excessive absenteeism; conduct unbecoming a public employee; neglect of duty; and other sufficient cause; specifically, violation of Section III.D. of Department policy ADM.03 (regarding emergency vacations days); violation of Section III of Department policy ADM.13 (regarding ANP, chronic or excessive absenteeism and unauthorized absence); and violation of 3:6.4 of the Custody Staff Rules and Regulations Manual (regarding absenteeism). For the reasons previously set forth, I **CONCLUDE** that the charge relating to violation of Section 5:1.1(b), (k) and (l) of the Custody Staff Rules and Regulations should be dismissed as well as to charges alleging insubordination and violation of Sections 3:2.1(a) of the Custody Staff Rules and Regulations (regarding insubordination).

The only remaining issue concerns the penalty that should be imposed. It is beyond debate that appellant's past disciplinary record may be considered for guidance in determining the appropriate penalty, and the principle of progressive discipline is applied in this state. See Bock, 38 N.J. at 522. Although an employee's past record may not be considered for purposes of proving the present charge, past misconduct can be a factor in determining the appropriate penalty for the current misconduct. In re Herrmann,

192 N.J. 19, 29 (2007); In re Carter, 191 N.J. 474, 484 (2007); Bock, 38 N.J. at 522–23. The underlying purpose of progressive discipline is to provide an employee with notice of his or her deficiencies and the opportunity to correct those deficiencies. In re Thomas, CSV 11069-97, Final Decision (November 17, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>.

Appellant's disciplinary record includes a ten-day suspension for one count of chronic or excessive absenteeism pursuant to a settlement agreement executed in August 2018, and a five-day suspension in August 2004, which, according to appellant, resulted from his lateness. (See R-9; R-12.) In other words, appellant was given ample notice of the need to improve his attendance and appellant's current infractions are not an aberration in an otherwise unblemished career. However, I am not persuaded that the nature of discipline that had been imposed in this case, totaling 180 days, is warranted based upon the totality of the circumstances. Regarding the July 30, 2019 PNDA, I **CONCLUDE** that a thirty-day suspension is reasonable and appropriate based upon the nature of appellant's derelictions which involved absences from work on twenty days in April, May and June 2019, along with insubordinate behavior. Regarding the September 12, 2019 PNDA, which involved absences on only four days in July and August, and the November 18, 2019 PNDA, which involved absences on only two days (September 3 and 12, 2019), I **CONCLUDE** that a total suspension of sixty days (or thirty days for each) is reasonable, appropriate, consistent with progressive discipline, and sufficient to impress upon appellant the need to improve his attendance. In this regard, it is not clear why appellant's absence on September 3, 2019 was not included in the September 12, 2019 PNDA, and appellant's absence on September 12, 2019 occurred on the same day that the second PNDA was issued. In short, enhanced discipline should not be imposed simply because a separate PNDA was issued, and the limited number of appellant's absences charged in the September and November 2019 PNDAs (i.e., six days) does not warrant the severe penalties imposed.

ORDER

I **ORDER** that, regarding appellant's appeal from the FNDA dated April 16, 2020, relating to the July 30, 2019 PNDA, the charges of failure to perform duties;

insubordination; inability to perform duties; chronic or excessive absenteeism; conduct unbecoming a public employee; neglect of duty; violation of Section III.D. of Department policy ADM.03; violation of Sections III and IVC.3 of Department policy ADM.13; and violation of Sections 3.2.1(a) and 3:6.4 of the Custody Staff Rules and Regulations Manual be and hereby are **SUSTAINED**, and the charge of violation of Section 5:1.1(a), (b), (c), (d), (k) and (l) of the Custody Staff Rules and Regulations be and hereby is **DISMISSED**. I further **ORDER** that, based upon the aforesaid sustained charges, appellant be and hereby is suspended for thirty days.

I **ORDER** that, regarding appellant's appeal from the FNDA dated April 16, 2020, relating to the September 12, 2019 PNDA, the charges of failure to perform duties; inability to perform duties; conduct unbecoming a public employee; neglect of duty; violation of Section III.D. of Department policy ADM.03; violation of Section III of Department policy ADM.13; and violation of Section 3:6.4 of the Custody Staff Rules and Regulations Manual be and hereby are **SUSTAINED**, and the charges of insubordination and violation of Sections 3:2.1(a) and 5:1.1(a), (b), (c), (d), (k) and (l) of the Custody Staff Rules and Regulations be and hereby are **DISMISSED**. I further **ORDER** that, based upon the aforesaid sustained charges, appellant be and hereby is suspended for thirty days.

I **ORDER** that, regarding appellant's appeal from the FNDA dated April 16, 2020, relating to the November 18, 2019 PNDA, the charges of inability to perform duties; chronic or excessive absenteeism; conduct unbecoming a public employee; neglect of duty; violation of Section III.D. of Department policy ADM.03; violation of Section III of Department policy ADM.13; and violation of Section 3:6.4 of the Custody Staff Rules and Regulations Manual be and hereby are **SUSTAINED**, and the charges of insubordination and violation of Sections 3:2.1(a) and 5:1.1 (b), (k) and (l) of the Custody Staff Rules and Regulations be and hereby are **DISMISSED**. I further **ORDER** that, based upon the aforesaid sustained charges, appellant be and hereby is suspended for thirty days.

I further **ORDER** that back pay and other benefits be issued to appellant as may be dictated by N.J.A.C. 4A:2-2.10.

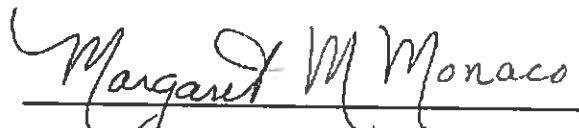
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

July 19, 2021

DATE


MARGARET M. MONACO, ALJ

Date Received at Agency:

Date Mailed to Parties:

jb

APPENDIX

List of Witnesses

For Appellant:

Jane Cruz

Juan Cruz

For Respondent:

Captain John Geoghegan

Jennifer DeSalvo

List of Exhibits in Evidence

Joint:

- J-1 Leave request documentation
- J-2 Letters to Dr. David Medunick dated February 28, 2019, and letters to Juan Cruz dated March 4, 2019
- J-3 Leave request documentation
- J-4 Preliminary Notice of Disciplinary Action dated July 30, 2019
- J-5 Final Notice of Disciplinary Action dated April 16, 2020
- J-6 Preliminary Notice of Disciplinary Action dated September 12, 2019
- J-7 Final Notice of Disciplinary Action dated April 16, 2020
- J-8 Preliminary Notice of Disciplinary Action dated November 18, 2019
- J-9 Final Notice of Disciplinary Action dated April 16, 2020

For Appellant:

- A-1 Memorandum from Officer Cruz to Captain Geoghegan dated May 10, 2019

For Respondent:

- R-1 No Exhibit Admitted
- R-2 April 2019 calendar and View Activity Reports
- R-3 May 2019 calendar and View Activity Reports

- R-4 June 2019 calendar and View Activity Reports
- R-5 Department of Corrections and Rehabilitation ADM.03, Requesting Days Off Policy
- R-6 Department of Corrections and Rehabilitation ADM.13 Absenteeism and Attendance Control Policy
- R-7 Custody Staff Rules and Regulations Manual, Chapter 3
- R-8 Custody Staff Rules and Regulations Manual, Chapter 5
- R-9 Settlement Agreement and Release
- R-10 Memorandum from Officer Cruz to Captain Geoghegan dated May 31, 2019
- R-11 Training documentation
- R-12 Employee Profile
- R-13 Attendance Record for Calendar Year 2019
- R-14 July 2019 calendar and View Activity Reports
- R-15 August 2019 calendar and View Activity Reports
- R-16 September 2019 calendar and View Activity Reports
- R-17 Memorandum from Lieutenant Marc Martins to Officer Cruz dated June 6, 2019
- R-18 Letter from Jennifer DeSalvo to Juan Cruz dated October 2, 2019