



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF SEPTEMBER, 2020

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 16075-19

AGENCY DKT. NO. 2020-1113

**IN THE MATTER OF KODI POLLOCK,  
SOUTH WOODS STATE PRISON,  
DEPARTMENT OF CORRECTIONS.**

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**Michael Gallagher**, for appellant Kodi Pollock, PBA Local 105, pursuant to  
N.J.A.C. 1:1-5.4(a)(6)

**Kathleen L. Krieger**, for respondent Department of Corrections,  
pursuant to N.J.A.C. 1:1-5.4(a)(2)

Record Closed: April 22, 2021

Decided: July 19, 2021

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

**STATEMENT OF THE CASE**

Kodi Pollock (appellant or Pollock) appeals the South Woods State Prison, Department of Corrections (SWSP or respondent) sustained charges of violation of N.J.S.A. 4A:2.3(a) 12—Other Sufficient Cause—specifically, violation of Human

Resource Bulletin 84-17 (as amended, Safety and Security Precautions D.7 – violation of administrative procedures and/or regulations involving safety and security) and the imposition of a thirty-working-day-suspension.

### **PROCEDURAL HISTORY**

A Final Notice of Disciplinary Action (FNDA) was entered on October 10, 2019. Thereafter, the appellant timely appealed the determination, and the matter was transmitted to the Office of Administrative Law on November 13, 2019. An initial call was set up for March 12, 2020, however, appellant's representative was unable to be reached, due to the closure of the OAL as a result of Covid-19, and the matter was unable to be rescheduled until August 24, 2020, at which time hearing dates were set for January 12 and January 13, 2021.

On September 3, 2020, a Prehearing Order (PHO) was entered wherein the issue on appeal was set forth as well as discovery guidelines, exhibits and motion filing. No objections were filed by either party as to the issues to be determined or filing deadlines.

On November 5, 2020, a status call was held at which time the issues to be addressed at the hearing were discussed. Due to concerns raised by the appellant's representative regarding the relevancy of evidence which he believed the respondent intended to introduce, the parties were told to file an application to preclude the same.

On December 30, 2020, well over a month and a half later, the appellant filed a motion in limine seeking to bar testimony and evidence as it related to issues raised in the Preliminary Notice of Disciplinary Action (PNDA) but not established in the FNDA. By Order dated January 7, 2021, the motion was denied for being untimely and moot.

The hearing in this matter took place on January 12 and January 13, 2021, however the record remained open to allow the parties to obtain transcripts and submit closing briefs. Upon receipt of the parties' summation briefs, the record closed on April

22, 2021. Due to restrictions/limitations imposed as a result of the coronavirus and the temporary inability to access office/administrative resources, as well as the delay in receiving transcripts which caused a case backlog, an extension was filed to complete and send out the Initial Decision. See Order of Extension dated June 16, 2021.

### **STATEMENT OF FACTS**

**David Goffredi (Goffredi)**, an Investigator with the New Jersey Department Corrections, Special Investigation Division (SID), testified that he has worked for the Department of Corrections since 2007, when he started out as a corrections officer. He has been with South Woods State Prison since 2008. Among his job responsibilities in his current position, Goffredi stated that he handles background investigations, administrative affairs, and criminal investigations. He attended training at the New Jersey Division of Criminal Justice Academy and has also attended training courses on the New Jersey Criminal Code—search and seizure, use of force, interview techniques, and evidence collection to name a few.

On February 9, 2019, his department received information that an alleged sexual act took place in the laundry room located in the H1-2R section of the facility between an inmate (A.W.) and Officer (Pollock).<sup>1</sup> By guidelines, his department was required to immediately investigate any type of allegation of sexual assault or a “PREA” allegation.<sup>2</sup> Additionally, they are required to ensure that the alleged victim and suspect are separated and then investigate the allegation. Upon receipt of the allegation, he notified his supervisor and reported to SWSP to start an investigation. The Cumberland County Prosecutor’s Office, Office of Professional Standards (CCPO), was also notified. According to Goffredi, the prosecutor’s office advised his department to proceed with the preliminary investigation, but they were to hold off interviewing Pollock until further notice.

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<sup>1</sup> A.W. was incarcerated at SWSP from March 23, 2016, to February 10, 2019, in H1-2-R.

<sup>2</sup> Prison Rape Elimination Act (PREA)

As part of his investigation, he reviewed Pollock's employment file, conducted interviews, and reviewed surveillance footage of section H1-2R and the facility's entrance. His findings were embodied in an investigative report.<sup>3</sup> In summarizing his findings Goffredi stated among other things:<sup>4</sup>

- Pollock had been with the South Woods State Prison since 2016 as a Corrections Officer. Since July 2017, she has been assigned to H1-2L and 1-2R and worked the weekend shift.
- Based upon witness interviews, the scope of the initial investigation expanded due to allegations of illegal contraband being brought into the facility by Pollock for A.W. There was also an allegation that Pollock had warned A.W. that SID was on its way to the unit on February 9, 2019.
- Surveillance films were reviewed for February 9, 2019, as well as thirty days prior.
- Surveillance films on January 20, January 25, January 27, and January 28, 2019, and February 3, 2019, found Pollock entering the lobby area of the facility and placing her duty belt and jacket in the plastic bin to be x-rayed. She then went through the metal detector and was either wanded or patted down. Water bottle(s) were observed in her back pocket as she prepared to enter the secure perimeter area. Pollock never removed the water bottles from her back pocket to get x-rayed upon entry into the facility. (R-7 – Folder A)
- The January 25, 2019, film of Pollock's entry into the facility, shows that Pollock had two bottles in her back right pocket which upon closer review, were not the standard authorized water bottle. The liquid was not clear and appeared to be mineral water.

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<sup>3</sup> Goffredi testified that reports are initially written in "word" and then transferred into the facility's Infoshare database. When he submitted his report to his supervisor on June 11, 2019, he did not realize that the synopsis of Pollock's interview was missing from the report. (J-2) Upon realization of what had occurred, a supplemental report was drafted which was identical to the first, but with the addition of Pollock's interview, was submitted to his supervisor for review and approval. (J-3)

<sup>4</sup> During parts of Goffredi's testimony, surveillance footage which he reviewed as part of his investigation was played as was Pollock's taped interview.

- During the interview, Pollock was asked how long she had been on the job and her training. When asked about her prior assignments before she was assigned to H1-2, she stated that she was assigned to the lobby area as a lobby officer. When asked about procedures surrounding a lobby officers duties, she stated that she could not recall all of the lobby officers duties and/or procedures.
- Pollock acknowledged that, upon entering the facility, all pockets were required to be emptied. She was also aware that officers were allowed to bring water into the facility but could not recall what if any other liquids were allowed. She believed it may just be water. She denied going through the metal detectors at the front entrance without emptying her pockets. When shown the surveillance footage of her going through the metal detector without emptying her back pockets, she acquiesced that she may have made a mistake by failing to do so. She did not recall bringing vitamin water into the facility.
- Surveillance film of the officers' bathroom located in H1-2 were reviewed for February 9, 2019. (R-7 – Folder D) Pollock was on duty on that date and within twenty minutes of her arrival, A.W. was observed cleaning the officer's bathroom. The bathroom is not large and contained a sink, toilet and cabinet. A.W. appeared to spend a lengthy period of time cleaning the small area. A.W. was observed on other dates, which were captured on surveillance film, cleaning the officers' bathroom when Pollock was on duty. A.W. was not assigned to clean the officers' bathroom, he was assigned to work in the pantry.
- Pollock was aware that A.W. was assigned to the pantry and that inmates typically do not have more than one job assignment.
- Surveillance films of H1-2-R on February 9, 2019, show Pollock exiting the desk area and touring the floor near the day room. At approximately 2:28 p.m., inmate D.R. entered the laundry room. At 2:44 p.m., inmate A.W. entered the laundry room area. At 3:05 p.m., Pollock entered the laundry room. When she entered

the laundry room, the lights were off, and the door was closed behind her. Pollock was not seen again for six minutes until 3:13 p.m., at which time she fully opened the laundry room door. Pollock remained in the doorway for a minute and then went back into the laundry room, closing the door behind her until 3:15 p.m. (R-7 – Folder E) A.W. subsequently exits the laundry room a minute or so after Pollock. It is unknown when D.R. left the laundry room.

- On this same date of February 9, 2019, at approximately 8:30 p.m., surveillance films reflect Pollock leaving the officer's podium, entering the officers' bathroom with her jacket, which she leaves in the bathroom, and then walking down the hallway. At 8:31 p.m., she was observed talking to two inmates down the hall however abruptly turned and walked back towards A.W.'s cell (#2032) which he shared with inmate D.P. The door to the cell was open. Pollock remained in the doorway until SID showed up on the unit floor seconds later, at which time she exits the cell. (R-7 – Folder F)
- A.W., D.R. and D.P. were among the inmates interviewed. D.P. informed SID investigators that immediately prior to SID's arrival on the unit floor on February 9, 2019, Pollock came to the cell door and warned A.W. that SID investigators were on their way and "to be careful."
- Pollock was interviewed two times. Both interviews were recorded. During the interview, Pollock admitted to being present in the laundry room on February 9, 2019, with two inmates, with the lights off. Pollock provided a lot of detail about what was going on in the laundry room. She stated that A.W. and D.R. were finishing up their laundry and that their conversation centered on what had happened with another inmate. Pollock denied that the door was fully closed and stated that she kept peeking out the window to see what was happening on the floor. She left the laundry room when she heard the phone ring. Pollock was aware that inmates usually get only one classification, and she knew that A.W. and D.R. were pantry workers—not laundry workers. She also believed that she would



have heard if something occurred in the dayroom which was located on the other side of the unit floor.

- Pollock admitted to “occasionally” leaving A.W.’s cell door open when he was in there, however if he was out for recreation, he was required to close his cell door. With regard to when SID was coming onto the unit floor, she did not recall hearing any communication over her radio nor did she recall informing A.W. of that fact.

Goffredi felt that Pollock’s responses varied—at times remembering events with great specificity such as the laundry room incident and what they talked about, yet at other times when asked about policy and procedures, she would claim that she could not recall. He made a credibility determination in this case and his conclusions were based upon the totality of the investigation. After he finalized his report, he provided it to Mr. Powell, the administrator. It was Mr. Powell who decided how the matter was to proceed and what disciplinary action would be taken.

On cross-examination, Goffredi was asked why it took three hours to get to SWSP when a PREA investigation must be immediately initiated upon the filing of a claim. In response Goffredi stated that it is unclear when the tip came in, however, there was a chain of command that had to be followed. In this case, his supervisors had to be notified as well as the CCPO who dictated how the investigation was to proceed. Once at the facility, additional information was obtained as to the specific allegations and then the surveillance films were viewed. They do not start an investigation by immediately removing custody officers off the floor. In this case, the CCPO told his department to conduct a preliminary investigation which is what they did, noting that every PREA investigation is different in how it is conducted.

He was also questioned about which films were reviewed upon arrival at the facility to which he responded the films of Pollock going into the laundry room. When asked what was observed, he stated that while there were windows on the door to the laundry room, he could not see what occurred when Pollock entered the room because the lights

were off. He went on to add that, contrary to Pollock's statement that she had her foot in the door and periodically opened and closed it to peek out, the door was closed and there was a pillar obstructing a direct view. Additionally, unlike the dayroom which has cameras, the laundry room does not.

When asked why SID took A.W. and D.P. into custody when they arrived on H1-2, he stated that they wanted to make sure that any information that they provided was separate, and because A.W. needed to be evaluated by medical and mental health personnel. The two inmates were subsequently transferred to other institutions which, according to Goffredi, was unusual.

Also questioned was his testimony about A.W. entering the officers' bathroom for extended periods of time and cleaning it. In response Goffredi stated that when A.W. was interviewed, he stated that Pollock would bring food in for him. For A.W. to be in the officers' bathroom cleaning it and remain in the officers' bathroom for an extended period of time, which appeared to be a pattern when Pollock arrived on shift, was suspicious. When asked, Goffredi acquiesced that when the bathroom was searched, no evidence of any food, wrappers, or drugs were found. He also acquiesced that cleaning bathrooms is a job that inmates perform and if someone interrupts them while they are cleaning by stopping and talking to them, the cleaning would take longer.

Goffredi was also questioned about his review of, and testimony surrounding, the surveillance films of the lobby entrance. More specifically, he was questioned about the fact that the water bottles were in plain view, yet the officers who patted her down or scanned the wand over Pollock, did not seize the water bottles. In response, he stated that he cannot attest to what the lobby officers saw or did not see. Regarding the colored vitamin water that Pollock brought in, this was confirmed on the surveillance film when she was standing at the officer's podium and pulled the bottle from the drawer.

In discussing the events later in the day of February 9, 2019, immediately prior to the arrival of SID on the unit floor, Goffredi agreed that Pollock was starting the tour of

the unit when she placed her jacket in the officers' bathroom. Such action was normal protocol. He also concurred that she did, in fact, start walking down the corridor of the unit. It was his belief however, that SID's arrival was announced over the radio which was when Pollock turned and went directly to cell A.W.'s cell and warned him that SID was coming onto the unit floor. This belief was fostered by not only the surveillance films but the statement of D.P who claimed that Pollock had cautioned A.W. "to be careful" immediately prior to their arrival. He did not know for a fact if their arrival had been transmitted over the radio, which was customary, or if in fact Pollock had made the alleged statement. In either event, she was at the cell door upon their arrival.

**Brian Labronne, (Labronne)**, a major with SWSP, testified that he has been with the Department of Corrections for the past sixteen years. Over the years, he has held various positions starting as an officer and working his way up through the ranks until his current position of major in 2020. Within a couple of months of his last promotion, he transferred back to SWSP which is where he is currently stationed.

As part of his job responsibilities, he handles disciplinary matters, conducts daily tours of the facility, addresses discrepancies noted in the Internal Management Procedures (IMP), annually reviews and updates IMPs, and handles special projects citing to the policies and procedures that had to be put in place to address Covid-19 testing and vaccinations. His most important responsibility is to ensure that SWSP is running as safely and securely as possible. This was not only his responsibility but that of every officer within the facility. (J-6at 3)

On this last point, Labronne stated that only authorized persons, such as employees and contractors, are allowed into the facility and, even then, only after they follow the proper security measures. According to Labronne, the policies and procedures in place are meant to prevent contraband from being brought into the facility. He defined contraband to be anything that is not authorized to be brought into the institution as defined by IMP SWSP.CUS #486. (J-5) Failure to follow proper procedures puts the safety of its personnel and residents at risk and jeopardizes the facility's operations.

He is familiar with H1-5R and staffing ratio. The inmate to staff ratio is one officer for one hundred twenty-four inmates. Additionally, there is an officer located at the central point of the unit who observes activities on both the right and left sides of the unit and controls all of the cell doors. There are sixty-two cells on each side, each cell housing two inmates.

Labronne is familiar with Pollock and the investigation that commenced as a result of a PREA allegation. While the initial charges were deemed unsubstantiated, other policy violations were found during the course of the investigation. He reviewed the IMPs that were allegedly violated, Law Enforcement Personnel Rules and Regulations as well as the SID report and collateral documentation that had been generated.

In describing the process that is followed when an employee and/or contractor enters the facility, Labronne stated everyone entering the facility is required to come in through the main lobby where a lobby officer is located. All pockets must be emptied and all outerwear (jackets, vests, belts, etc.) must be placed in plastic bins to be scanned. The individual entering then walks through a metal detector and is either patted down or wanded. (J-5 at 8) Upon completion of those steps, the individual can then enter into the secured part of the facility after presenting their identification and passing through two secured doors. Once past the secured doors, there is a main corridor, offices, and the housing units. Employees are expected to know the policies and procedures upon entering the facility.

According to Labronne, there is a limited number of items that are authorized to be brought into the facility. It would be impossible to itemize all items that would constitute "contraband." Among the enumerated items are two plastic water bottles (twenty-four ounces or smaller, factory sealed only). (J-5, at 11) Colored water, as are other darks liquids, are impermissible due to the inability to see what is inside of the bottle.

Labronne went on to state that a housing officer's attention at all times must be on the unit to maintain security. It is not uncommon to have a fight or assault between

inmates. Therefore, they are to remain alert and on guard against the unexpected. (R-2, at 6) As such, the housing officer should not leave the unit without being properly relieved. (R-2, at5) Additionally, they are required to monitor inmate activity in the unit and activity rooms such as the dayrooms. At all times, the housing officer is to ensure that the cell doors remain secured unless an inmate is entering or exiting the cell. (R-2 at 6)

Based upon his review of the SID report and the surveillance footage, he found that when Pollock entered the laundry room for ten minutes with the door closed, she placed herself in a bad position. Not only could she not see what was happening on the unit floor, she could not hear what was happening either. So, if a fight had broken out, she would not have seen or immediately heard it. This was also a violation of the requirement to constantly monitor and be alert as to what was happening on the unit floor.

He also noted that during her interview, Pollock admitted that she would leave inmates' doors open for easier access to the floor. This too was in violation of IMP SWSP.CUS #100, because at all times, cell doors were to remain secured. Labronne went on to explain how the cell doors opened and were secured and how inmates were required to manually close the cell door. It was the officers' responsibility to ensure that the cell doors were in fact secured. Labronne used a fight as an example of why it was important to ensure that all cell doors were secured. If there was a fight between two inmates, officers did not want other inmates joining in on the fray. Another example of why it was important that the doors were secured was to preclude inmates from going into areas of the unit that they are not allowed to be in, such as another inmate's cell. (R-2, at 10)

According to Labronne, the fact that A.W. and D.R. were in the laundry was also a violation of the IMPs. (R-2, at 11). Only inmates that have been classified to be in the laundry room can be there. Both A.W. and D.R. were classified to be in the pantry, not the laundry. (R-3 and R-4) Nor was A.W. classified to be in the officers' bathroom cleaning. That is a job for tier sanitization. Inmates typically only have one job

classification.<sup>5</sup> He went on to state that an inmate's job classification was important for several reasons, one of which was the fact each classification had a different pay rate. Laundry, for example, was one of the higher paying jobs. Another problem was the fact that the laundry area was small, therefore, you do not want other inmates in a location where they do not belong because it could cause problems. The lights being off was another violation of the IMP. Without exception, at all times lights are to remain on when inmates are in the laundry. This is to maintain the safety and integrity of the area. (R-2, at 12)

Labronne also felt, after review of the investigative report and findings, that Pollock was in violation of the Law Enforcement Rules and Regulations. (J-7, at 3). He based this determination on the fact that Pollock went into the laundry room where the lights were off, with two inmates who were not classified to be in there, and remained in the closed room for several minutes. While all of that was occurring, she was not devoting her full attention to the unit floor which was her primary responsibility. He also based this on the fact that Pollock had, on multiple occasions, gone through the entry checkpoint without emptying her pockets. According to Labronne, Pollock violated not only the IMPs but the Law Enforcement Rules and Regulations. (J-8)

He went on to state that when an officer violates the administrative procedures that are put in place to protect the safety and welfare of all within the facility, depending on the severity of the infraction(s), the disciplinary action could range from an Official Written Reprimand (OWR) to removal on the first offense. (J-11)

On cross-examination Labronne was asked where in the regulations it stated that vitamin water was prohibited. In response he acknowledged that it was not specifically prohibited, however, it would be impossible to name all items deemed to be contraband. The IMP only itemizes what is allowed into the facility rather than what is not. Additionally, as he had previously testified, no colored liquids were allowed in the facility which could potentially conceal objects or contain liquids other than water.

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<sup>5</sup> Labronne testified that sometimes an inmate can be a "tier runner" which entails the inmate, in addition to having a job classification, may run an errand to pick up paper or other supply from another location.

He was also asked how Pollock violated IMP SWSP. CUS #486 if the water bottles in question were on her person as required under IMP SWSP.CUS#486, Page 12. In response he stated that Pollock failed to empty her pockets upon entry as required by IMP SWSP.CUS#486. Instead, she circumvented the process by leaving them in her pocket as she went through the x-ray machine. When questioned whether she was instructed to empty her pockets as set forth in IMP SWSP.CUS#486, and why the guard who frisked her failed to have her remove the water bottles which were in plain sight, he stated that he could not say whether she was told to empty her pockets or whether the guard saw the bottles. Having said that, Pollock was aware of what the protocols were and failed to follow them.

Labronne was also questioned about prior disciplinary actions of other officers at SWSP, specifically whether any SID investigation revealed violations of leaving cell doors open, lights off in the laundry, or allowing inmates to perform jobs that were outside of their classification. In response he stated that he had not, since he returned to SWSP in 2020, seen such violations uncovered in a SID investigation. He went on to add that while it was his responsibility to handle discipline for officers at the facility, he did not conduct the Pollock investigation nor was he involved in the determining the proposed penalty.

### **FACTUAL DISCUSSION**

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).

I found the testimony of both Goffredi and Labronne to be extremely credible. Goffredi went through his investigative process and the basis for his findings. I found his explanation as to how he arrived at his conclusions to make sense and that it was based upon the totality of his investigation.

I likewise found Labronne to be a credible witness. He went through the policies and procedures that were in place at the facility as it related to the sustained charges in the FNDA, and provided the backdrop on the purpose/rationale behind the policies in question.

With the above in mind, and having considered the testimonial and documentary evidence offered by the parties, I **FIND as FACT** the following:

Pollock was hired by SWSP in 2016 as a Correctional Police Officer. One of her assignments when she first started at the facility was that of a lobby officer. Since July 2017 however, she worked the weekend shift in H1-2L and 1-2R. The unit that she worked on housed 124 inmates.

The lobby area is where all individuals (employees/contractors) must pass through before entering the secured areas of the facility. When an individual enters the facility, all pockets must be emptied and all outerwear (jackets, vests, belts, etc.) must be placed in plastic bins to be scanned. The individual entering then walks through a metal detector and is either patted down or wanded.



Employees at all times are expected to know SWSP policies and procedures, including all policies and procedures when entering the secured facility.

IMP SWSP.CUS #486 sets forth the policies and procedures for entry into the facility. No contraband is allowed in the facility. Contraband is defined as:

1. Any item, article or material found in the possession of, or under the control of an inmate which is not authorized for retention or receipt;
2. Any item, article or material found within the facility or on its grounds which has not been issued by the correctional facility or authorized as permissible for retention or receipt;
3. Any item, article or material found in the possession of, or under the control of, staff or visitors within the facility or on its grounds which is not authorize for receipt, retention or importation;
4. Any item, article or material which is authorized for receipt, retention or importation by inmates, staff or visitors but which is found to be in an excessive amount, or which has been altered from its original form. An amount shall be considered to be excessive if it exceeds stated correctional facility limits or exceeds reasonable safety, security, sanitation or space considerations; or
5. Any item, which may be harmful or presents a threat to the security and orderly operation of the correctional facility, shall be considered contraband.

Authorized items are enumerated under Section "C" of the IMP SWSP.CUS #486. Under the policy, an employee entering the facility may bring in (2) plastic bottles of water (24 oz or smaller, factory sealed).

On January 20, 2019, January 25, 2019, January 27, 2019, January 28, 2019, and February 3, 2019, Pollock failed to completely empty her pockets upon entering the facility—specifically by failing to remove water bottles from her back pocket. On one occasion, January 25, 2019, Pollock brought in two bottles of colored vitamin water. All incidents were contrary to IMP SWSP.CUS #486.

Inmates are typically given only one job classification with each classification having a different pay scale. Laundry for instance has a higher pay scale than other classifications. Bathrooms are cleaned by inmates classified in sanitization and inmates in food service are classified in pantry.

On February 9, 2019, and on other dates, A.W. was observed cleaning the officers' bathroom on the unit when Pollock was working. Pollock was aware of A.W.'s classification.

On the same date of February 9, 2019, during Pollock's shift, A.W. and D.R., went into the laundry room. During her interview, Pollock stated that the two inmates were doing their laundry. D.R., as with A.W., was classified in pantry, not laundry. This was contrary to IMP SWSP.CUS#100.

Pollock entered the laundry room on February 9, 2019, when A.W. and D.R. were in the room. The lights were off when she entered the room and remained off as the door closed behind her. Pollock remained behind closed doors in the dark laundry room with D.R. and A.W. for approximately ten minutes in total. She did not have her foot in the door, did not periodically open and close the door, nor could she be seen looking out the window of the laundry room door. Other inmates were out and roaming around the floor throughout this time period. With the door closed and lights out, Pollock had little to no visibility of the entire floor, including the dayroom, nor could she properly hear what was happening on the floor.

On this same date of February 9, 2019, after a notification went out that SID was coming on the floor, Pollock immediately went to A.W.'s cell. The cell door was open, and three inmates were in the cell—A.W., D.P. and another unidentified inmate. Only A.W. and D.P. were assigned to the cell. During her interview, Pollock admitted to "occasionally" allowing A.W. to leave his cell door open when he was in the cell, however if he was out for recreation, he was required to close his cell door. With regard to SID's arrival, Pollock during her interview stated that she did not recall hearing any communication about SID over her radio, nor did she recall informing A.W. of that fact.

Surveillance films reveal that Pollock was taking a tour of the unit and had just approached other inmates down the hall. While Pollock claimed during her interview that

she came across A.W.'s having his door open with an unauthorized inmate in the cell, it is notable that as soon as the radio transmission came across that SID was coming to the unit, Pollock immediately walked away from the inmates whom she had just approached and went directly to A.W.'s cell.

IMP SWSP.CUS#100 Section IVA sets forth the general responsibilities of the Housing Unit Floor Officer. In relevant part it states:

A. General Duties

1. Attention must be on your housing unit to maintain security. Remain and maintain our focus on the unit floor as much as possible. Do not go in the LCP or leave the unit without being properly relieved or you will be considered off post. You are required to remain on your housing unit unless properly relieved. . .
7. Door Security – When no one is entering or exiting a cell; the door to that cell will be closed and secured at all times. All doors with locking devices will remain locked except when in actual use, including, but not limited to cell doors, sally port doors and pantry doors, etc.
8. Monitor inmate activity in the unit activity rooms (dayrooms) and in the unit courtyard.
9. Custody staff shall always remain alert and guard against the unexpected.

F. Inmate Supervision

2. Inmates are not permitted to enter another inmate's cell and are not permitted on any tier that they are not assigned to without authorization. There is to be no loitering on the flats, tiers, tier landings or other area of any housing unit. Inmates will be locked in their cells unless they have an authorized reason to be out of them.

During her interview, Pollock stated that she went into the laundry room to see how much longer A.W. and D.R. were going to be with their laundry. According to Pollock they said that they were just finishing up. She also stated that while she was in the room, they briefly discussed another inmate who had gotten into trouble the day prior. Pollock

appeared to have selective memory during her interview with internal affairs. At times she could state with great specificity conversations or events but when shown a surveillance film or asked specific questions, such as the length of time she was in the laundry room, the name of the inmate who they were discussing in the laundry room, or whether SID's arrival was announced over the radio and if she had warned A.W. of their arrival, her response became evasive and the answer "I don't recall." Notably, when Pollock exited the laundry room, so did A.W. who was empty handed.

### LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline, including removal and/or resignation not in good standing. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

At the same time, the Act protects classified employees from partisanship, favoritism, arbitrary dismissal, and other onerous sanctions. See Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), adopted, Comm'n. (September 3, 2014), <https://njlaw.rutgers.edu/collections/oal/>; "The evidence presented and the

credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Ibid. Depending upon the incident complained of and the employee's past record, major discipline may include suspension or removal. See West New York v. Bock, 38 N.J. 500, 523-24 (1962) (describing use of progressive discipline). If the current charges against Pollock are sustained, the appropriate penalty will be determined with due consideration of his disciplinary record.

The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such "as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958) (citations omitted). Preponderance may also be described as the greater weight of credible evidence in the case, the evidence which carries the greater convincing power. State v. Lewis, 67 N.J. 47, 49 (1975).

In the instant matter, the sustained charges against appellant were violation of N.J.S.A. 4A:2.3(a) 12—Other Sufficient Cause—specifically, violation of Human Resource Bulletin 84-17, as amended, Safety and Security Precautions D 7—violation of administrative procedures and/or regulations involving safety and security.

Appellant asserts that the respondent failed to provide substance to the allegations. Using the water bottles as an example, appellant asserts that she did not hide the water bottles, she just failed to present them for inspection and the lobby staff, as required, failed to challenge her to present them. With regard to the laundry room, it is her position that there was plenty of ambient lighting as well as natural sunlight in the room for her to see.

Appellant also contends that the respondent failed to carry its burden of proof on the charge of HR D7 in all other respects, specifically as it relates to allegations of sexual misconduct, bringing contraband into the facility in the form of food, drinks and drugs, and undue familiarity.

It is appellant's position that not only did the respondent fail to meet its burden but assuming arguendo that it had, the disciplinary action sought—thirty-day-suspension—was excessive.

The respondent contends that the appellant flagrantly and repeatedly violated the SWSP procedures and regulations which compromised the safety and security of the SWSP. This was evidenced by the surveillance films and the totality of the IA investigation which included multiple interviews including that of the appellant herself.

### **Other Sufficient Cause**

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offenses caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "[r]espondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 09122-99, Initial Decision (February 22, 2006), adopted, Merit System Bd., (April 5, 2006), <https://njlaw.rutgers.edu/collections/oal/>.

Here, more than enough evidence was presented to support the sustained charges in this matter. It is undisputed that on multiple occasions, the appellant failed to empty her pockets and brought in items that were not cleared to be brought in. Also undisputed is the fact that the appellant appears to provide privileges to A.W. that he would not otherwise be entitled to. Indeed, he appears to be the common denominator in this case. Despite his job classification he, on multiple occasions, is seen cleaning the officers'

bathroom—to what end remains a question. Appellant by her own admission would leave A.W.'s cell door open, and clearly, as evidenced by the surveillance films and Pollock's own admission, allowed A.W. and another inmate, unfettered access to the laundry room. When SID arrived at the facility and was coming onto the floor, it is interesting that appellant made a beeline to A.W.'s cell. On this last note, while there was a lot of speculation as to why she did that, I **FIND** that insufficient evidence was presented in this matter as to whether the appellant went to A.W.'s cell to warn him.

What is particularly disturbing however, is the appellant's blatant disregard of the facility's safety and security protocols when she went behind a closed door, with two inmates—one of which was A.W.— with the lights out for approximately ten minutes. Appellant's actions left the other 122 inmates without oversight and supervision. Her actions not only compromised herself and put the inmates in the room at risk, but directly impacted the safety and security of SWSP, its staff and the inmates that are in the facility's care and custody.

For all of the foregoing reasons, I **CONCLUDE** that respondent has proven by a preponderance of credible evidence, that appellant's actions were in violation of N.J.S.A. 4A:2.3(a) 12 (Other Sufficient Cause), specifically, violation of Human Resource Bulletin 84-17, as amended, Safety and Security Precautions D 7 (violation of administrative procedures and/or regulations involving safety and security).

### **PENALTY**

The Civil Service Commission's review of penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. West New York v. Bock, 38 N.J. at

523-24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

The concept of progressive discipline is related to an employee's past record. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

In Bock, at 523, the New Jersey Supreme Court stated that a public employee's prior disciplinary record may be referred to, where appropriate, in assessing the reasonableness of a penalty for a current offense. However, exceptions to the application of "progressive discipline" have been made where certain acts are "so egregious in nature and/or so detrimental to the public welfare that immediate termination is warranted, notwithstanding a good disciplinary history." Curtiss v. East Jersey State Prison, CSV 12007-96, Initial Decision (Dec. 17, 1997), aff'd., Merit System Bd. (Jan. 27, 1998) <http://njlaw.rutgers.edu/collections/oal/>. In addition, law enforcement officers are held to a higher standard than a civilian public employee. See Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certify. Den. 47 N.J. 80 (1966).

Here, appellant has little to no disciplinary history. The range of discipline for violation of D-7 can be as little as an OWR to removal. (J-11) In this case, the respondent seeks the penalty of a thirty-working-day-suspension based upon the flagrant and repeated violations of the SWSP policies and procedures as it related to the safety and security of the facility and its occupants, both staff and inmates.

In looking at the totality of appellant's conduct—in particular her actions in secreting herself in the laundry room, with the door closed and lights out, with two inmates—I find her conduct to be irresponsible, unprofessional and extremely egregious. Her actions reflected a continuous course of conduct that was in direct violation of the



SWSP policies and procedures and placed in jeopardy, the safety and welfare of her colleagues, the inmates and integrity of the institution as a whole.

With the above in mind, I **CONCLUDE** that the respondent's imposition of a thirty-day-suspension to be, quite frankly, lenient under the circumstances, however, give deference to the respondent as to its appropriateness, and hereby **SUSTAIN** the same.

**ORDER**

I hereby **ORDER** that the charges in the Final Notice of Disciplinary Action against Kodi Pollock be **AFFIRMED**.

It is further **ORDERED** that the imposition of a thirty-day suspension be **AFFIRMED**.

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

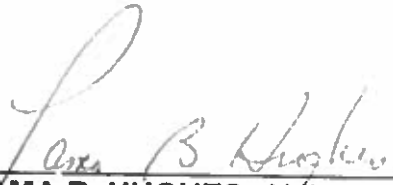
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise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

July 19, 2021

DATE

  
TAMA B. HUGHES, ALJ

Date Received at Agency:

July 19, 2021

Date Mailed to Parties:

July 19, 2021

TBH/dw

**APPENDIX**

**WITNESSES**

For Appellant:

None

For Respondent:

David Goffredi

Brian Labronne

**EXHIBITS**

Joint Exhibits

- J-1 FNDA/PNDA
- J-2 NJDOC Confidential SID Investigation Report by Special Investigator David Goffredi\*
- J-3 Confidential Supplemental SID Investigation by Special Investigator David Goffredi
- J-4 Not in Evidence
- J-5 Level III IMP SWSP. CUS. #486
- J-6 Not in Evidence
- J-7 Law Enforcement Personnel Rules and Regulations
- J-8 Officer Pollock New Hire Orientation Checklist
- J-9 Not in Evidence
- J-10 NJDOC Work History – Officer Kodi Pollock

J-11 NJDOC HRB 84-17

\*Entered into evidence over appellant's objection.

For Appellant:

None

For Respondent:

- R-1 Not in Evidence
- R-2 Level III IMP SWSP Cus.#100
- R-3 Inmate A.W. SBI# 000584187C – Job Description
- R-4 Inmate D.R. SBI # 000310202B – Job Description
- R-5 Not in Evidence
- R-6 SID Interview of Kodi Pollock
- R-7 Institutional Video Surveillance – Folders A – F