



STATE OF NEW JERSEY

In the Matter of Gerald Murphy,
Camden County Correctional Facility

CSC DKT. NO. 2021-1948
OAL DKT. NO. CSR 05601-21

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: JANUARY 19, 2022

The appeal of Gerald Murphy, County Correctional Police Officer, Camden County Correctional Facility, removal effective January 14, 2021, on charges, was heard by Administrative Law Judge Jacob B. Gertsman (ALJ), who rendered his initial decision on December 9, 2021. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of January 19, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

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

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF JANUARY, 2022

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
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05601-21

AGENCY DKT. NO. N/A

2021-1948

**IN THE MATTER OF GERALD MURPHY,
CAMDEN COUNTY CORRECTIONAL
FACILITY.**

Frank C. Cioffi, Esq., for appellant Gerald Murphy (Sciarra & Catrambone, LLC,
attorneys)

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

Record Closed: November 1, 2021

Decided: December 9, 2021

BEFORE **JACOB S. GERTSMAN**, ALJ t/a:

STATEMENT OF THE CASE

Gerald Murphy (Officer Murphy or Appellant) a County Corrections Officer at the Camden County Department of Corrections (Respondent, CCDOC or County) appeals the CCDOC's decision to remove him from employment for violating: N.J.A.C. 4A:2-2.3(a) (1) Incompetency, Inefficiency, Failure to Perform Duties; (6) Conduct unbecoming an employee, (7) Neglect of Duty, and (12), other sufficient cause. Appellant has additionally been charged with violations of the CCDOC's Rules of Conduct 1.1 (Violations in General), 1.2 (Conduct Unbecoming an Employee), 1.3 (Neglect of Duty) and 1.9 (Possession and Use of Illegal Drugs) (R7); Camden County Department of Corrections General Order #073 Personal Conduct of Employees (R8); Camden County

Department of Corrections General Order #074 Professional Code of Conduct (R9); and Camden County Department of Corrections Internal Affairs Order #001. (R10)

PROCEDURAL HISTORY

Respondent issued a Final Notice of Disciplinary Action (FNDA), dated June 7, 2021, removing appellant from employment based upon the aforementioned charges.¹ Appellant appealed the FNDA to the Office of Administrative Law (OAL) on June 30, 2021, the matter was assigned to the undersigned, and evidentiary hearings were scheduled for September 9 and 10, 2021.

Prior to the commencement of the hearing, the parties agreed that there were no facts in dispute. Therefore, in lieu of a hearing, the parties agreed to file a joint stipulation of facts, post-hearing summations and reply briefs. The joint stipulation of facts was filed on September 23, 2021, post-hearing summations on October 25, 2021, and reply briefs on November 1, 2021. The record was then closed.

Appellant provided a limited waiver of the provisions of N.J.S.A. 40A:14-201 on September 16, 2021, to provide the undersigned forty-five, days from receipt of the final briefs to file the Initial Decision.

FACTUAL DISCUSSION AND FINDINGS

The following Joint Stipulation of Facts was duly submitted by the parties and are hereby **FOUND** as **FACT**²:

1. Officer Murphy was hired as a County Corrections Officer at the CCDOC on September 21, 2014.

¹ Two amended FNDAs were issued on June 10, 2021.

² The Joint Stipulation was modified by the undersigned for stylistic and consistency purposes.

2. On Tuesday, January 12, 2021, at 7:32 a.m., Officer Murphy was ordered to report to the Internal Affairs (IA) office and provide a urine sample for CCDOC's phase 2 of their random officer drug urinalysis testing. (R1) (R3)
3. Prior to supplying his sample, Officer Murphy's PBA Union representative approached Sgt. John Kamulda (Sgt. Kamulda) of the IA unit and informed him that Officer Murphy had an issue. Sgt. Kamulda then briefly spoke with Officer Murphy who stated, "I messed up. I just did a line of coke this weekend." (R1) (R3)
4. After Officer Murphy provided the urine sample, Sgt. Kamulda ordered Officer Murphy to provide a statement to IA. The statement was recorded.
5. During his IA Interview, Officer Murphy admitted to Sgt. Kamulda that he did a line of cocaine in the parking lot of the Highland Tavern in Gloucester City, New Jersey just a few days before on January 9, 2021. (R2)
6. During the IA interview, Officer Murphy also made the following admissions;
 - a. Officer Murphy admitted he snorted a line of cocaine with a dollar bill on the console of a car with his friend on Saturday, January 9, 2021, at 9:30 p.m. He said was his first time ever using any drugs. (R2)
 - b. Officer Murphy also stated, "being drunk – I did it and I, was – I was being retarded." (R2)
 - c. Officer Murphy admitted what he did was wrong. (R2)
 - d. Officer Murphy also admitted he knew the policies and procedures of the department. (R2)
 - e. Officer Murphy admitted he was held to higher standard as a law enforcement officer. (R2)
 - f. Officer Murphy admitted that drug use was illegal on three separate occasions during his Internal Affairs interview. (R2)

- g. Officer Murphy also admitted that this was the first and only time he used cocaine due to having some personal issues. (R2)
 - h. Officer Murphy admitted that his statement to IA was truthful. (R2)
 - i. Officer Murphy did not lie to Internal Affairs during his interview. (R2)
- 7. When Officer Murphy left after his IA interview, he was relieved of his duty and told to return to work the next morning to be "Loudermilled" and never showed up. The next day, IA went to serve him at his house, but he refused to answer the door. He called his attorney who then called counsel for CCDOC and agreed to accept service on his behalf. (R1)
- 8. The next day, on January 13, 2021, Officer Murphy admitted himself into an in-patient facility located in Florida.
- 9. Officer Murphy never stated to CCDOC that he had any substance abuse problem until after he was selected for random urinalysis, was interviewed by IA, and made his admissions the morning of January 12, 2021. Officer Murphy was not asked if he had a substance abuse problem during his IA Interview.
- 10. Officer Murphy never requested any treatment or assistance from his employer prior to his being selected for a random urinalysis or during his IA interview on January 12, 2021.
- 11. Subsequently, the County received a request from Officer Murphy for paid leave under the Family Medical Leave Act. (FMLA)
- 12. The County granted Officer Murphy's FMLA request.
- 13. On March 29, 2021, Sgt. Kamulda received the toxicology results for Officer Murphy's urine sample. (R5)
- 14. Officer Murphy's toxicology report revealed negative results for all drugs including cocaine. (R5)

15. Warden Karen Taylor is the final decision maker as to penalty.
16. The County is seeking Officer Murphy's removal due to his admissions to IA including that he used an illegal drug, cocaine, on January 9, 2021.
17. An appeal was received by the Office of Administrative on June 30, 2021.
18. The parties stipulate to the PNDA and FNDA Exhibits contained in R6. (a-f)

POSITIONS OF THE PARTIES

Appellant argues that the CDDOC "own policy requires personnel to report off-duty misconduct much in the same manner Officer Murphy reported his own misconduct here" and "[i]n offering his admission on January 12, 2021, Officer Murphy was complying with the general orders of the County." Therefore, "the County has failed to demonstrate by a preponderance of the evidence that Officer Murphy's admission requires that he be removed from his position." (Appellant Brief at 10) Regarding the penalty, the decision to terminate Officer Murphy is "egregious and disproportionate to the alleged misconduct." Id. at 11

Respondent contends that Muphy's admission to using cocaine warrants termination as "[t]he negative test results are not dispositive in this disciplinary determination, given Appellant Murphy's own repeated admissions to the illegal activity in question." (Respondent Brief at 3-4) Further, Officer Murphy's use of cocaine constitutes "conduct unbecoming" and his conduct "requires immediate dismissal because his conduct jeopardizes the safety and security of the jail and violates public trust." (Id. at 7, 9) Respondent argues that the egregiousness of the offense "warrants immediate termination, without progressivity." (Id. at 10)

LEGAL ANALYSIS

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

Appellants status as a corrections officer, subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1980). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The appellant has been charged with violations of N.J.A.C. 4A:2-2.3(a): (1) Incompetency, Inefficiency, Failure to Perform Duties; (6) Conduct unbecoming an employee; (7) Neglect of Duty; and (12), other sufficient cause. Appellant has additionally been charged with violations of the CCDOC's Rules of Conduct 1.1 (Violations in General), 1.2 (Conduct Unbecoming an Employee), 1.3 (Neglect of Duty) and 1.9 (Possession and Use of Illegal Drugs) (R7); Camden County Department of Corrections General Order #073 Personal Conduct of Employees (R8); Camden County

Department of Corrections General Order #074 Professional Code of Conduct (R9); and Camden County Department of Corrections Internal Affairs Order #001. (R10)

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

In the present matter, the record reflects that on Tuesday, January 12, 2021, at 7:32 a.m., Officer Murphy was ordered to report to the IA office and provide a urine sample for CCDOC’s phase 2 of their random officer drug urinalysis testing. (R1) (R3) Officer Murphy did not make his admission Sgt. Kamulda that “I messed up. I just did a line of coke this weekend” until after that order was given. (R1) (R3)

Appellant argues that his “honesty and transparency should be applauded by the County rather than disciplined with the harshest penalty an officer can be served with” (Appellant Brief at 15) and that his admission complied with Camden County Department of Corrections General Order #073, (R8) which states:

Employees will immediately provide written notification to the appointing authority of any knowledge of criminal activity that has the potential to threaten public safety, the safety of staff or offenders, or the security of the correctional facility.

Appellant's arguments fail as he plainly did not comply with the policy. The conduct that he admitted to occurred on Saturday, January 9, 2021, at 9:30 p.m. (R2) and he only admitted to his use of cocaine, an illegal substance, when ordered to provide a urine sample three days later, on January 12, 2021. In his IA interview, Officer Murphy not only acknowledged his conduct, but on three separate occasions he admitted that drug use was illegal. (*Ibid.*) Further, he admitted that he knew what he did was wrong, knew the policies and procedures of the department, and that he was held to higher standard as a law enforcement officer. (*Ibid.*) Put simply, appellant did not self-report his illegal conduct in compliance with the policy, he made his admission when faced with the possibility his illegal conduct would be discovered through the drug urinalysis testing.

Appellant additionally argues that the CCDOC "fails to apply mitigating factors such as the negative test, the self-reporting by Officer Murphy, and Officer Murphy's subsequent treatment and rehabilitation." (Respondent Brief at 13) Here, appellant's negative test is not a mitigating factor as is not in dispute that he admitted he used cocaine, an illegal substance, and that he did not lie in his IA interview. Further, Officer Murphy's treatment and rehabilitation did not occur until after his admission, and he did not notify the CCDOC that he had the problem until after he made his admission. In sum, appellant's use of cocaine was not only illegal, but also a violation of the CCDOC's Rules of Conduct 1.1, 1.2, 1.9. (R7).

Accordingly, I **CONCLUDE** that the respondent has met its burden of proof in establishing violations of N.J.A.C. 4A:2-2.3(a): (6) Conduct unbecoming an employee; (12), other sufficient cause; CCDOC's Rules of Conduct 1.1, 1.2, 1.9 (R7) Camden County Department of Corrections General Order #073 Personal Conduct of Employees; Camden County Department of Corrections General Order #074 Professional Code of Conduct (R9); and Camden County Department of Corrections Internal Affairs Order #001.(R10). I thus **CONCLUDE** that those charges are **SUSTAINED** and warrant the imposition of discipline upon appellant.

However, I **CONCLUDE** that respondent has presented no argument, and the record does not support, that appellant violated N.J.A.C. 4A:2-2.3(a): (1) Incompetency,

Inefficiency, Failure to Perform Duties; (7) Neglect of Duty; CCDOC's Rules of Conduct 1.3 (Neglect of Duty). I thus **CONCLUDE** that respondent has not met its burden of proof and that those charges must be **DISMISSED**.

PENALTY

Once it has been determined that a civil service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523-524. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007.) "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Id. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

Sworn law enforcement officers are recognized as a "special" kind of public employee. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Their primary duty is to enforce and uphold the law, exercise

tact, restraint, and good judgment, and to represent law and order to the citizenry. Id. Hence, law enforcement employees must present an image of personal integrity and dependability to garner the respect of the public. Id.

Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

Here, respondent has brought and sustained charges of violations of N.J.A.C. 4A:2-2.3(a): (6) Conduct unbecoming an employee; (12), other sufficient cause; CCDOC's Rules of Conduct 1.1, 1.2, 1.9 (R7) Camden County Department of Corrections General Order #073 Personal Conduct of Employees; Camden County Department of Corrections General Order #074 Professional Code of Conduct (R9); and Camden County Department of Corrections Internal Affairs Order #001. (R10)

The facts in this matter are not in dispute. On January 9, 2021, Officer Murphy did a line of cocaine in the parking lot of the Highland Tavern in Gloucester City, New Jersey. He informed Sgt. Kamulda that "I messed up. I just did a line of coke this weekend" on Tuesday, January 12, 2021, only after he was ordered to provide a urine sample for CCDOC's phase 2 of their random officer drug urinalysis testing.

While appellant argues that Officer Murphy's negative test should mitigate the penalty imposed, the fact remains that there is no dispute that he used cocaine, an illegal drug. He knew it was illegal, knew the policies and procedures of the Department, and knew he was held to higher standard as a law enforcement officer. Further, while appellant's disciplinary record only reflects four reprimands from 2016 through 2019 (R-11), illegal drug use by someone in a safety sensitive position is a serious offense and the penalty should reflect the same. Accordingly, I **CONCLUDE** that the sustained charges are sufficiently egregious to warrant the termination of appellant from his position as a corrections officer.

ORDER

The respondent has proven by a preponderance of the credible evidence the following charges against the appellant: N.J.A.C. 4A:2-2.3(a): (6) Conduct unbecoming an employee; (12), other sufficient cause; CCDOC's Rules of Conduct 1.1, 1.2, 1.9 (R7) Camden County Department of Corrections General Order #073 Personal Conduct of Employees; Camden County Department of Corrections General Order #074 Professional Code of Conduct (R9); and Camden County Department of Corrections Internal Affairs Order #001. (R10) Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**.

The respondent has failed to prove by a preponderance of the credible evidence the following charges against the appellant: N.J.A.C. 4A:2-2.3(a): (1) Incompetency, Inefficiency, Failure to Perform Duties; (7) Neglect of Duty; CCDOC's Rules of Conduct 1.3 (Neglect of Duty). Accordingly, I **ORDER** that these charges be and are hereby **DISMISSED**.

Therefore, it is hereby **ORDERED** that the appeal of Gerald Murphy is **DENIED**. It is further **ORDERED** that the termination of his employment is **UPHELD**.

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

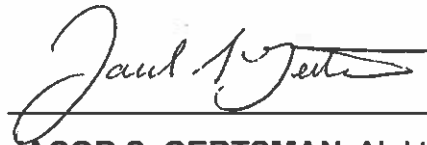
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise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

December 9, 2021

DATE



JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

December 9, 2021

Date Mailed to Parties:

December 9, 2021

JSG/sm

APPENDIXLIST OF EXHIBITS IN EVIDENCE

For Appellant:

A-1 Attorney General's Law Enforcement Drug Testing Policy

For Respondent:

R-1 Internal Affairs report by Sergeant John Kamulda

R-2 Internal Affairs Interview with C/O Murphy, dated 01/12/2021

R-3 General Incident Report authored by Sergeant John Kamulda, dated 01/12/2021

R-4 Memorandum Not Permitting C/O Gerald Murphy inside the correctional facility, dated 01/13/2021

R-5 Internal Affairs Memorandum to File authored by Sergeant John Kamulda, dated 03/29/2021

R-6 Preliminary Notice of Disciplinary Action (31-A), dated 01/14/2021

Preliminary Notice of Disciplinary Action (31-A) amended, dated 05/06/2021

Final Notice of Disciplinary Action (31-B), dated 06/07/2021

Final Notice of Disciplinary Action (31-C), dated 06/07/2021

Final Notice of Disciplinary Action (31-B), amended dated 06/10/2021

Final Notice of Disciplinary Action (31-C), amended dated 06/10/2021

R-7 Camden County Department of Corrections Rules of Conduct

R-8 Camden County Department of Corrections General Order #073 Personal Conduct of Employees

R-9 Camden County Department of Corrections General Order #074 Professional Code of Conduct.

R-10 Camden County Department of Corrections Internal Affairs Order #001

R-11 C/O Gerald Murphy Chronology of Discipline