



STATE OF NEW JERSEY

In the Matter of Shannon Turner,  
Mercer County Correction Center

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2018-3108  
OAL DKT. NO. CSV 06937-18

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ISSUED: APRIL 6, 2022

The appeal of Shannon Turner, County Correctional Police Officer, Mercer County Correction Center, of her eight working day suspension, on charges, was heard by Administrative Law Judge Jacob S. Gertsman (ALJ), who rendered his initial decision on March 2, 2022. 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, including a thorough review of the exceptions and reply, the Civil Service Commission, at its meeting of April 6, 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 suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Shannon Turner.

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 6<sup>TH</sup> DAY OF APRIL, 2022

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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Director  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 06937-18

AGENCY DKT. NO. 2018-3108

**IN THE MATTER OF SHANNON D. TURNER,  
MERCER COUNTY CORRECTION CENTER.**

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**Stuart J. Alterman, Esq.**, for appellant (Alterman & Associates, LLC, attorneys)

**Michael Anthony Amantia**, Assistant County Counsel, for respondent (Paul R. Adezio,  
County Counsel)

Record Closed: December 2, 2021

Decided: March 2, 2022

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

**STATEMENT OF THE CASE**

Appellant Sharon Turner (Officer Turner or Turner) a County Corrections Officer at the Mercer County Correction Center (MCCC), appeals MCCC's decision to impose an eight-working-day suspension for violating: N.J.A.C. 4A:2-2.3(a) (6) Conduct unbecoming a public employee, (7) Neglect of Duty, and (12), other sufficient cause, and of MCCC's standard operating procedures (SOP) 960, 007 and 238. (R-7, R-8, R-9.)

## **PROCEDURAL HISTORY**

On February 5, 2018, MCCC issued a Preliminary Notice of Disciplinary Action (PNDA) notifying Officer Turner of the charges against her. (R-2.) Turner requested a departmental hearing, which was held on April 5, 2018. On April 18, 2018, MCCC issued a Final Notice of Disciplinary Action (FNDA), (R-1) which sustained charges of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7), and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), and for violations of SOPs 960, 007 and 238. An eight-working-day suspension was imposed as a penalty for the sustained violations.

The appellant timely requested a hearing, and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on May 14, 2018, as a contested case. N.J.S.A. 52-14B-1 to -15 and 14F-1 to -13. Hearing dates scheduled for January 23 and July 11, 2019, were adjourned at the request of appellant. Hearing dates scheduled for December 16, 2019, and May 12 and 21, 2020, were adjourned at the joint request of the parties. Hearing dates scheduled for January 25 and 26, 2021, were adjourned at the request of appellant. The matter was heard on May 4 and 6, 2021, by remote audio-video platform Zoom Video Communications (Zoom) due to the ongoing COVID-19 emergency. Following extensions requested by the parties, post-hearing briefs were submitted on December 2, 2021, and the record closed. An order was entered in this matter to allow an extension of time in which to file the Initial Decision.

## **FACTUAL DISCUSSION AND FINDINGS**

### **Testimony**

#### **For MCCC**

Sergeant George Mizensak (**Mizensak**) is a sergeant in Master Control at MCCC. His job responsibilities include scheduling, job assignments and making sure individual job

duties are followed. He described the basic Master Control as the “hub of the jail, so just make sure everyone is where they’re supposed to be.” T1 16:19-20

Mizsack identified his incident report that he was asked to prepare to memorialize the events of January 30, 2018. (R-3.) On that date, he was assigned to the “C Tour” covering the shift from 3:00 p.m. to 11:00 p.m.<sup>1</sup> He also identified the Seven-By-Seven Tour Report from January 30, 2018 (R-4) which is a running log of all the incidents happening throughout the jail covering the period of “C Tour.”

On January 30, 2018, a Code-3 was called on west wing right at 18:48 for an altercation between inmates. A Code-2, a medical code, was called on west wing left, in the same unit, at 18:50. The west wing is a female unit, however, the response to a code is not gender specific. “We’re blue. We all do the same job as far as responding to codes.” T1 26: 6-7 Mizsack described what transpires during the calling out under normal circumstances.

We are paid eight hours, so our breaks, our lunches, our anything, we are to maintain our radios and we are responsible to report to any codes called. It could be anything from needing assistance from a supervisor or – all available officers are supposed to respond until dismissed by the area supervisor.

[T1 23:7-12]

He added that the code is broadcast over the radio by the unit officer and repeated several times by Master Control. The code is broadcast both inside and outside of the building. A radio check is performed toward the beginning of every shift where each radio is called from Master Control. Each officer responds to the call by hitting the “man down” button which sends the number of the radio to Master Control to match to the log sheet of the radio checks being documented. On that date the radio check was done at 15:21.

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<sup>1</sup> MCCC utilizes the twenty-four-hour clock therefore the shift covers 15:00 through 23:00.

There are some units that are not authorized to leave their positions that do not respond to codes. Those who must respond to codes are obligated to respond whether they are on duty or on a break. On January 30, 2018, Turner was working on C Tour and did not respond to either code. Mizesack testified that to the best of his knowledge, there was no indication that Turner's radio was not operable. After several calls went out for Turner without a response, Lieutenant Zegarski informed him that he was going to try to find her and then exited Master Control.

On cross-examination he noted that Turner was on an authorized break, as taking a break in her motor vehicle in the parking lot is permitted. Lieutenant Christopher Zegarski (Zegarski) did not go to the code because he was the shift commander that day. His report noted several conversations that he had in the past with Turner about responding to codes as needed. In those instances, she was late, and he had a discussion with her about coming in earlier to make the code. Those conversations were not memorialized, and Turner was not disciplined. He agreed that Turner was a loyal employee of MCCC, and he would rely on her to get a job done for the most part.

Mizesack agreed that at times there are issues with the radios working correctly, which is why they are checked every shift. If an officer's radio or the officer does not respond, they are instructed to come to Master Control to switch out the radio. He noted that Turner was able to answer that same radio later in the shift. However, he conceded that there are certain areas where the radios are spotty or do not perform as well as in other areas. There is one radio check per shift, and he was not able to answer if Turner's radio battery was fully charged when she began her shift.

**Zegarski** is the C Tour shift commander at MCCC, which is the senior ranking commanding officer from 15:00 to 23:00. He recalled preparing and identified his incident report for January 30, 2018, (R-6) when he was the C Tour Shift Commander and Turner was assigned to one of the relief positions.

On that date, multiple codes were called in the woman's wing, a Code-3 for a fight between inmates, and a Code-2 for medical assistance for inmates. When a code is

called, all responding officers and supervisors are directed to that area. The codes are announced via radio and a Bogen Box, which is a PA system with interior and exterior speakers.

All officers are issued a standard Motorola communication device, containing two speakers, which officers have on themselves at all times. When a code is called, an overall accountability is done depending on what is needed in the affected area. In this instance, female officers would be needed for a strip search of the individuals after the altercation.

Turner did not respond to the codes. Following her initial failure to respond, she was called on the radio by Zegarski, his Master Control officer and his sergeant, and via the Bogen Box, and there was no response. Following her lack of response, Zegarski

. . . called the outside security officer to see if he had a visual on whatever officers we were looking for, stated that they may be out in the parking lot, did not see them. Officer did state that they did see several officers go to their vehicle in the parking lot. The majority of those officers did respond and at that time I took it upon myself to exit the facility and check on the whereabouts of Officer Turner.

[T1 53: 21-25, 54:1-5]

He proceeded to the parking lot and located Turner in her vehicle and knocked on her window. Turner rolled down her window and he first made sure she was ok. He noted that she was on her cell phone and then notified Master Control and Mizesack that he located her. Zegarski recounted his conversation with Turner.

I asked her if she heard the outcall or the radio or the codes. I stated to her I have multiple codes going on inside the facility. Why did you not respond. She just looked at me and I told her I needed her to report into the building and I needed an incident report her reasoning why she did not report to these codes.

[T1 54: 25, 55:1-6]

Zegarski noted that he mistakenly used Turner's maiden name, Rush, on his incident report. (R-6.)

On cross-examination, Zegarski noted that he had almost twenty-nine years of service and has held the rank of lieutenant since 2006. He took report writing at the Correctional Academy in 1993 and has had refresher courses. His report recommended a charge that Turner willfully did not respond to the code.

He conceded that Turner was on an authorized break, and she was further authorized to take the break in her car in the outside parking lot. She was doing nothing wrong sitting in her car so long as she had her radio on and was monitoring transmissions. He agreed that there have been areas where the radios do not work, or the signal does not work at times. The radio could work one moment and not work moments later due to some electronic malfunction.

Zegarski did not agree that he was somewhat aggressive when he approached Turner, but he did knock on her window to get her attention. His approach to her was deliberate, but with urgency, and she had no response. Turner was instructed to write a report and then leave the grounds. Zegarski stated this was not a punishment as she was "under on overtime", and it was his prerogative as shift commander.

It was Turner's duty to respond to the code. However, as shift commander, he does not respond to codes. He added that there were between four and six other officers in the parking lot that did respond to the codes.

He denied that he was fixated on Turner. Female officers were needed to strip search after the code was taken care of and she was not present. When asked why she was not needed and sent home, Zegarski responded, "[i]f she could not respond to the code and make it on the initial codes fifteen-to-twenty minutes into the situation, no, I did not need her." T1 74:12-15



He has cut Turner "several breaks" prior to this incident and prefers to work out issues with his officers. He added that "[s]he did not indicate to me at the initial contact of her that her radio did not work." T1 87 17-19

**Captain Michael Kownacki (Kownacki)** is the captain of MCCC. His duties and responsibilities include helping the warden and deputy administrator manage the facility. Additionally, he is in charge of discipline, which includes the drafting of disciplinary charges.

Kownacki described SOPs as guidelines on procedures inside the facility. MCCC has multiple SOPs that affect the operation of the facility. SOP 960 (R-7) which covers the code system, was in effect in January 2018, and was published and provided to all the officers. The warden reviews the policies yearly.<sup>2</sup>

Paragraph B-1 states that all officers are supposed to respond to codes when they are called and paragraph B-4 states that all officers on a break must respond to any code. The SOP additionally defines a Code-2 as a medical code and requires that medical attention be made immediately available for an inmate. A Code-3 is defined as a fight or disturbance between inmates. Officers are alerted to an inmate disturbance that requires immediate assistance to quell the situation.

SOP 007 (R-8) covers break periods and states that all personnel remain in the institution during their scheduled tour of duty during all break periods. This provision of the SOP is relaxed allowing officers to leave the building to have a cigarette, go to their cars or use a cellphone, which is not permitted in the facility. Paragraph B-1 requires all staff on a break to respond to any code situation announced. SOP 238 (R-9) requires all officers to respond to code situations while on breaks.

Kownacki noted that Turner's disciplinary history (R-11) contains no offenses between a minor offense in 2006 and March 1, 2018, and that he drafted the charges in

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<sup>2</sup> SOP 007 (R-8) and 238 (R-9) are issued and provided to officers in the same manner.

the PNDA. (R-2.) He further identified the Commercial County Public Safety Table of Offenses for MCCC that was negotiated with the union. (R-10.)

On cross-examination, Kownacki stated that he has been employed by MCCC since June of 2000 and has been a captain since January 3, 2018. He conceded that this case was not assigned to an Internal Affairs investigator since "there was nothing to investigate." T1 110: 11 He noted that the charge in the PNDA for a violation of section B-2 is derived from the reports of Zegarski and Mizensak. He did not perform an investigation of whether Turner's radio was functioning properly at the time of the event and did not know where she was parked at the time of the codes being called.

### **For Appellant**

**Sergeant Jowana Phillips (Phillips)** is a correctional police sergeant at MCCC. She has been employed by MCCC for eight years and has been a sergeant since January 2021.

She has worked in various areas of the jail, both outside and inside, and is familiar with the radio system. She noted that radios die often and "[s]ometimes you don't know when they're dead because it doesn't tell you when it dies." T2 8:9-10 Additionally, "[i]f two people are attempting to transmit a message at the same time one will get cut off, so you're only hearing one message, so your's [sic] will probably get lost." T2 9:2-5 Sgt. Phillips noted that there are radio checks at the beginning of the shift, but the battery can die. Further, some batteries are older and won't carry a full charge.

On cross-examination, she described the types of radios and noted that while there is no volume control on the microphone, there is one on the actual radio. It can be lowered but "if you lower it too much you won't – you have to cut it off." T2 13: 20-21 There is a click when it goes too far. Phillips does not remember if she was working on January 30, 2018, and has no recollection of that day.

On re-direct, she noted that if the battery is not picking up transmissions because the battery is dead or is not picking up the signal, it does not matter whether the volume is up or down. On re-cross, she stated that if you are outside the building, or in the parking lot, you cannot hear the Bogen system.

**Lieutenant Michael Gorski (Gorski)** is a lieutenant with the MCCC. He has been employed by MCCC for twenty-three and a half years, has been a lieutenant for sixteen years, and was a sergeant for four years and began his service as an officer.

Gorski is familiar with Turner and has supervised her. He described her as a "pretty good officer, real good" (T2 21:10) and stated that he did not have any issues with her responding to codes that he has been a part of.

Gorski is aware of the radio system and described how it worked. In his experience, the radios have gone out and the batteries have died on him several times. There are dead spots in the jail where the radios cannot transmit and cannot be heard, and there is nothing consistent with where the radios are spotty. Some of the batteries will not hold the charge or will die within thirty minutes or less and you would not know if the battery was dead. He added that the Bogen boxes cannot be heard outside.

On cross-examination, he conceded that there are outdoor speakers attached to the Bogen system but reiterated that a broadcast cannot be heard outside and that he has not heard them in a long time. He agreed that given these circumstances, he expects his officers to be vigilant and to make sure their radios are properly charged and functioning and that they need to continuously be checked. Gorski did not remember if he was working on January 30, 2018. On re-direct, he agreed that it was not feasible for every officer to constantly check their radio during a shift.

**Officer Donald Ryland (Ryland)** has been employed at MCCC since 1995 and has been president of Local 167 of the New Jersey State Police Benevolent Association (PBA) since 2004. He knows Turner enough to form an opinion of her ability as an officer

and described her as detail oriented, reliable and had no problems working with her. He has attended codes with her and to his knowledge, Turner never refused to go to a code.

As an employee and as the union president, Ryland has knowledge of the radio system at MCCC. He stated that the system “works, it functions, but there are times and moments when I have experienced that it goes down” and “it functions at the beginning of the shift and then it can have problems, you know, without notice it may go down and you are unaware of it going down.” T2 39: 9-11, 14-17 He added that there is nothing an officer can do to constantly check the radios. He recalled an incident involving Turner on January 30, 2018, but did not recall any widespread problems within the institution on that date.

On cross-examination, Ryland clarified that it would not be feasible for an officer to check the radios every five minutes, there are other checks an officer can do. He recalled that he was working the day shift on January 30, 2018, but not the evening shift. On redirect, Ryland noted that there is only one radio check at the beginning of the shift.

**Turner** has been a correctional police officer with MCCC since May 20, 1996. She described her duties in her time at the facility which included working with female inmates, medical, at the jail entrance, and laundry.

She is familiar with the radio system at MCCC and stated it “has not been the greatest” (T2 52:16) and described various problems with the system including difficulties transmitting and dead areas. She testified that “the system failed me” on January 30, 2018. T2 53:8 She was on Relief Three that day on overtime, which she explained as a relief officer giving breaks to other officers. Turner described the events leading to the charges in this matter.

. . . I was outside on my contractual break doing what we're allowed to do, and that was to be in my personal vehicle on my phone talking to my daughter that, you know, in a sense, I'm raising her from the jail kind of thing, so that's what I was doing. While in the midst of that Lieutenant Zegarski came and banged on my window.

[T2 53:25, 54: 1-7]

Zegarski banged on her passenger side window and when she rolled down the window, he informed her of the multiple codes called, and she did not respond.

So, literally, at that point, I was so startled I just had a blank stare, like just like I -- I -- I was just stuck. So within the midst of that I come -- gets out the car now to go run to the code because I'm thinking, you know, it's still happening or whatever the case may be or he still needed me, and then he tells me that -- to come inside and to write a report and then to scan out.

[T2 54: 14-21]

Turner then wrote the report and scanned out as instructed. She identified her incident report (R-5) and noted that she used her maiden name Rush, rather than her married name, Turner.<sup>3</sup> Officer Turner testified that her report stated:

That on the above date and time I, C/O Rush, was told to wright [sic] a report on why I did not go to the Code-3 and go home. I, C/O Turner, did not -- did not hear the code being called and was outside on my break and did -- and did not know.

[T2 57:1-5]

Turner added that at the time the codes were called, she was in a permitted parking lot for the officers to park. She did not see other officers sitting in their vehicles on break and did not see officers running by her car responding in response to an urgent situation. Further, if other officers were running into the building, she would have been alerted and

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<sup>3</sup> The appellant became Shannon Turner on November 15, 2014.

she would have gotten out of the car and ran behind them. She had never decided that she was not responding to a code.

Turner testified that on January 30, 2018, her radio “died on me. Without me knowing it died.” T2 61:16 This has happened in the past and she described the system as not 100 percent reliable. Radios are not assigned to a particular officer and batteries are not assigned to a particular radio. Her radio worked properly at the beginning of her shift (A-3), and she added that there is no requirement for an officer to check their radio during the shift either constantly or intermittently. When asked how, in her experience as of January 30, 2018, she would know when her radio was not working, she responded “[u]ntil you try to use it.” T2 69:23 While Turner was seated in her car on her authorized break, she did not hear any transmissions or the Bogen Boxes going off outside. If she had heard the radio or the Bogen Box, she would have responded.

Turner received a commendation certificate from MCCC for “outstanding efforts and thoroughness, attention to detail in coordination in conducting searches of an inmate male on May 5, 2020, which yielded a substantial amount of suspected CDS [controlled dangerous substances].” T2 72:1-5(A-2.)

On cross-examination, she reiterated that Zegarski knew her at one time as Officer Rush. She added that the reasons for going outside the building during a break included eating, calling her daughter and to get some relief. Officers are not permitted to bring cell phones into the facility and the phones inside the facility are only to be used for business purposes.

She denied ever turning down the volume on her radio when she called her daughter and noted that in the past, her daughter has laughed at what comes across the radio. Her report (R-5) was written soon after she followed Zegarski into the building, “a good ten, fifteen minutes at most” (T2 81: 10-11) and it did not indicate that her radio was not working, only that she did not hear it.

She clarified that officers alert other officers in the parking lot of a code being called when someone is stagnant. For the most part, officers in the parking lot respond simultaneously. An officer is not required to report to superiors that they are leaving the building or taking a break. She reiterated that she did not hear the Bogen system when the codes were called.

On redirect, Turner was asked what she meant in her report when she wrote that she did not hear the code being called, was outside on a break, and did not know. She responded:

What I meant was for the simple fact that the radio didn't transmit, so that means it didn't work and that's how I didn't hear it, and due to the fact that I was outside the Bogen Box was only heard inside so I didn't know because I was outside on my break, so both transmissions did fail, like they didn't do what they should have done.

[T2 86: 21-25, 87: 1-2]

Her communication with Zegarski at the time of the incident was rough. She scanned out and went home after she wrote her report, which is not a normal occurrence and she thought this was going to be her punishment. Turner disagreed with Zegarski's testimony about how he approached her and how he spoke to her in the building. She added that she is on alert during her breaks and does not turn the volume on her radio down or off. On re-cross, she agreed that an eight-hour shift at MCCC is a difficult task.

### **DISCUSSION AND FINDINGS**

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 or 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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply

be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

The testimony presented on behalf of MCCC by Mizensak, Zegarski, and Kownacki on the pertinent issues relating to the incident on January 30, 2018, that codes were called, and Turner did not respond, was largely unchallenged. The testimony on behalf of the appellant by Phillips, Gorski and Ryland, concerning their professional views of Turner was similarly unchallenged. Further, Turner did not dispute the pertinent facts regarding the charges in the FNDA, that she was on an authorized break, two codes were called, and she did not respond. Accordingly, I **FIND** this testimony credible.

Turning to the issue of the radio system and Bogen Box,. Mizensak, Zegarski, Phillips, Gorski, and Turner all agreed that there are reliability issues with the radio system within the MCCC facility. However, none of the witnesses, including Turner, presented any testimony related how the radios or the Bogen Box failed to operate properly on January 30, 2018. In fact, Phillips and Gorski could not recall if they were present at MCCC on that date.

Turner's report, which memorialized the incident, stated in full:

On the above date, I C/O Rush was told to wright [sic] a report on why I did not go to a Code 3 and go home. I C/O Turner did not hear the code being called and was outside on break and did not know.

[R-5.]

This report makes no mention of any issues with her radio or the Bogen Box. At the hearing, Turner sought to expand on her report.

What I meant was for the simple fact that the radio didn't transmit, so that means it didn't work and that's how I didn't hear it, and due to the fact that I was outside the Bogen Box was only heard inside so I didn't know because I was outside on my break, so both



transmissions did fail, like they didn't do what they should have done.

[T2 86: 21-25, 87: 1-2]

Here, Turner attempts, in May 2021, to expand on her contemporaneous report, written within ten to fifteen minutes of the incident (T2 81: 10-11) on January 30, 2018, to claim that the radio did not transmit, and the Bogen Box was not heard in the parking lot. This self-interested testimony is unsupported by any documentary evidence or corroborating testimony. In fact, the record lacks testimony from any witness, other than anecdotal testimony from the witnesses regarding general issues with the radio system and Bogen Box, or any documentary evidence, to support Turner's testimony that her radio malfunctioned, and the Bogen Box went unheard, when the codes were called on January 30, 2018. Put simply, her account of the events of that day is unpersuasive.

Accordingly, as the record lacks any substantiation of Turner's unpersuasive testimony, I am unable to make any findings regarding whether her radio malfunctioned, or that the Bogen Box could not be heard, when the codes were called on January 30, 2021. Further, as they are not germane to this matter, I make no findings regarding the alleged general issues with the radio system and the Bogen Box.

Accordingly, I **FIND** the following facts:

1. On January 30, 2018, a Code-3, referring to an altercation between inmates, was called in West Wing right, at 18:48. (R-4.)
2. A Code-2, a medical code, was called in West Wing left, at 18:50. Ibid.
3. The West Wing of MCCC is the female unit but the codes are not gender specific.

4. Turner was on an authorized break in her vehicle in the parking lot outside of the MCCC facility when the codes were called.
5. Turner did not respond to the codes.
6. Following Turner's initial failure to respond, additional efforts were made to call her on the radio by Zegarski, his master control officer and his sergeant, and via the Bogen Box. She did not respond.
7. When Zegarski subsequently located Turner in her car in the parking lot, he observed her on her cell phone.
8. Zegarski asked Turner why she did not respond to the codes. He then ordered Turner to write an incident report as to why she failed to respond and to clock out.
9. Turner's report stated that she did not hear the code being called. The report made no mention of any issue with her radio or that the Bogen Box was not heard in the parking lot. (R-5)
10. Turner's radio was checked and was operable at the beginning of her shift at 15:21. (A-3)
11. SOP 960(B)(4) states "All Officers on break MUST respond to any Code announced." (R-7)
12. SOP 007 (B)(1) states "All Custody Staff on a break period shall respond to any Code situation announced." (R-8)
13. SOP 238 section four states "All Corrections Officers will respond to all Code situations while on breaks." (R-9)

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including "conduct unbecoming a public employee," "neglect of duty," and "other sufficient cause." N.J.A.C. 4A:2-2.3(a)(6), (7), and (12).

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. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); 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). An appeal requires the OAL to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

Here, the FNDA reflects that Turner was charged with conduct unbecoming a public employee, neglect of duty, other sufficient cause, and for violations of SOPs 960, 007 and

238, for her failure to respond to a Code -3 and Code-2, called in the MCCC on January 30, 2018.

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. "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. Atl. City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555, quoting In re Zeber, 156 A.2d 821, 825 (1959). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955).

Turner's status as a county correctional officer subjects her to a higher standard of conduct than ordinary public employees because when corrections officers fail in their duties, they may imperil others. Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). 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. 317 (App. Div. 1967). Strict discipline of corrections officers is necessary for the safety and security of other corrections officers and the inmates in their charge. Henry, 81 N.J. at 578. As the Appellate Division explained, this higher standard of conduct and behavior is necessary because:

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become "tinderboxes."

[Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).]

There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). 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.), certif. granted, 97N.J. 588 (1984), aff'd on other grounds, 99 N.J. 1 (1985).

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined as all other offense 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), <https://njlaw.rutgers.edu/collections/oal/>.

In the instant matter, it is not in dispute that on January 30, 2018, while on an authorized break, Turner failed to respond to both the Code-3 called at 18:48 and the Code-2 called at 18:50. Her actions are clear violations of SOP 960(B)(4) which states that "All Officers on break MUST respond to any Code announced" (R-7); SOP 007 (B)(1) which states "All Custody Staff on a break period shall respond to any Code situation announced" (R-8); and SOP 238 section four which states "All Corrections Officers will respond to all Code situations while on breaks." (R-9)

Appellant contends that her conduct "was excused and negated by the established faulty equipment which made it impossible for her to receive the notification of the codes." (Appellant Brief at 31.) The sole basis to support this argument is appellant's unpersuasive testimony. As the record is devoid of any further testimony or documentary evidence to establish that the equipment was in fact faulty on January 30, 2018, when the codes were called, this argument fails.

Conversely, MCCC argues that Turner "neglected her duty by failing to devote attention to tasks which could result in danger to persons and property. Codes are emergency situations. The SOPs repeatedly contain language that require all officers, even those on break time, to respond to codes. That speaks to the presumption that a code situation has the potential for danger to person and/or property." (MCCC Brief at 10.) I agree.

Appellant had an affirmative duty to comply with the SOPs and therefore respond to the codes when called, even on her authorized breaks outside the facility in the parking lot. It is not in dispute that she failed in that duty. Further, while Turner was not required to constantly check that her radio was operational during her shift, her knowledge of her obligations under the SOPs, and of the general reliability problems with the radio system, would lead to the reasonable expectation that she should check her radio to ensure that her radio was working prior to leaving the facility for her break. Her own testimony reflects that she failed to do so, and that her radio "died on me. Without knowing it died." T2 61:16

Accordingly, based on the foregoing, 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 a public employee, (7) Neglect of Duty, and (12), other sufficient cause, and of MCCC's standard operating procedures (SOP) 960, 007 and 238. (R-7, R-8, R-9) I thus **CONCLUDE** that those charges are **SUSTAINED** and warrant the imposition of discipline upon appellant.

### PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), the New Jersey Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations, and the like on one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. at 523-24.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 205 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The question to be resolved is whether the discipline imposed in this case is appropriate.

Here, appellant is subject to major discipline for violations of N.J.A.C. 4A:2-2.3(a) (6) Conduct unbecoming a public employee, (7) Neglect of Duty, and (12), other sufficient cause, and of MCCC's standard operating procedures (SOP) 960, 007 and 238. Major

discipline for such infractions may include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a). Respondent has imposed an eight-working-day suspension.

Appellant argues that “even if the policy under which the charges have been brought contemplates a penalty, the eight (8) day suspension imposed below is unsupported by the principles of progressive discipline. Petitioner’s disciplinary record is exemplary.” (Appellant Brief at 36.) Turner’s disciplinary history contains no offenses between a minor offense in 2006 and March 1, 2018. (R-11.) Further, she has been described as a loyal employee who can be relied upon. However, respondent contends that “the evidence presented at this hearing supports the eight (8) day suspension.” (MCCC Brief at 12)

As a corrections officer, appellant is subject to a higher standard of behavior than other civil service employees, meaning that infractions may lead to major discipline for corrections officers that may not warrant severe discipline for some other civil service positions. In the Matter of Teaira Clark, County of Hudson, OAL Dkt. No. CSV-11305-06, Initial Decision (November 8, 2007), adopted, Merit Systems Board (December 21, 2007), <http://lawlibrary.rutgers.edu/oal/search.html>. Because corrections officers, like police, are part of a “quasi-military organization,” they are “held to the highest standards.” Sharon Peterson v. East Jersey State Prison, CSV 03927-02 and CSV 5336-02, Initial Decision (December 11, 2003), adopted, Merit Systems Board (February 17, 2004) <http://njlaw.rutgers.edu/collections/oal/search.htm> (emphasis added). Turner’s actions constituted a failure of her professional duty in an emergency situation that put her fellow corrections officers and the inmates in their charge at great risk of harm. While corrections officers are held to a high standard, appellant’s actions on January 30, 2018, failed to live up to that high standard.

Based upon a consideration of the totality of the evidence, and with due consideration of appellant’s prior disciplinary record, I **CONCLUDE** that the penalty of an eight-day suspension is appropriate and consistent with the policy of progressive discipline.



**ORDER**

The respondent has proven by a preponderance of the credible evidence the following charges against Turner: Violations of N.J.A.C. 4A:2-2.3(a) (6) Conduct unbecoming a public employee, (7) Neglect of Duty, and (12), other sufficient cause, and of SOPs 960, 007 and 238, for her failure to respond to codes on January 30, 2018. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**.

I **ORDER** that the penalty of an eight-working-day suspension is hereby **AFFIRMED**. The appellant's appeal is **DISMISSED**.

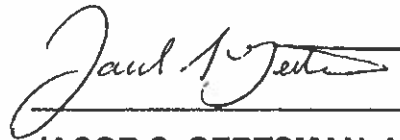
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

March 2, 2022

DATE



JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

March 2, 2022

Date Mailed to Parties:

March 2, 2022

JSG/sm

**APPENDIX**

**WITNESSES**

**For Appellant:**

Officer Jowanna Phillips  
Lieutenant Michael Gorski  
Officer Donald Ryland, PBA Local 167 President  
Officer Shannon Turner

**For Respondent:**

Officer George Miszak  
Lieutenant Christopher Zegarsky  
Captain Michael Kownacki

**EXHIBITS**

**For Appellant:**

- A-1 Letter from Jeffrey S. Ziegelheim, Esq., Alterman & Associates, LLC, to Kristina Chubenko, Assistant County Counsel, County of Mercer, Office of County Counsel, regarding discovery dated February 27, 2018
- A-2 Mercer County Corrections Center, Official Commendation, Officer Shannon Turner, dated July 8, 2020
- A-3 Email from Stuart Alterman to Cristin Morris, Radio Check Sheet, January 30, 2018, dated May 5, 2021

**For Respondent:**

- R-1 Final Notice of Disciplinary Action, Civil Service Commission, State of New Jersey, dated April 19, 2018
- R-2 Preliminary Notice of Disciplinary Action, Civil Service Commission, State of New Jersey, dated February 5, 2018
- R-3 County of Mercer, Department of Public Care and Safety, Division of Corrections, Report to Warden by Sgt. Mizensak, dated January 30, 2018
- R-4 Mercer County Correction Center, Master Control 7 – 7 Log of Incident/Event, Tuesday, C-Tour, dated January 30, 2018
- R-5 County of Mercer, Department of Public Care and Safety, Division of Corrections, Report to Warden by Officer Shannon Turner, dated January 30, 2018
- R-6 County of Mercer, Department of Public Care and Safety, Division of Corrections, Report to Warden by Lieutenant Christopher Zegarsky, dated January 30, 2018
- R-7 Standards and Operating Procedures, Mercer County Correction Center, Department of Public Safety, SOP 960: Code System, Reference: SOP 846, 847, dated March 26, 2012
- R-8 Mercer County Correction Center, Department of Public Safety, Standards and Operating Procedures, SOP 007 Custody Break Periods, dated September 9, 2016
- R-9 Mercer County Correction Center, Department of Public Safety, Standards and Operating Procedures, SOP 238 Post Orders-Correction Officer (General), dated December 6, 2010
- R-10 Mercer County Public Safety Table of Offenses and Penalties-Correction Center, dated August 1, 2013
- R-11 Mercer County New Jersey User Defined Miscellaneous Information, Disciplinary History of Officer Shannon Turner, dated from July 9, 1998, through April 18, 2006, dated March 1, 2018