



STATE OF NEW JERSEY

In the Matter of Lewis Harvey,
Mercer County Correction Center

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2022-1798 through
2022-1806

OAL DKT. NOS. CSV 01529-22; CSV
01530-22; CSV 01531-22; CSV 01532-
22; CSV 01533-22; CSV 01534-22;
CSV 01535-22; and CSR 01472-22
(CONSOLIDATED)

ISSUED: AUGUST 24, 2022

The appeals of Lewis Harvey, County Correctional Police Officer, Mercer County Correction Center, eight suspensions of 13, 15, 20, 30, 30, 33, 45 and 45 working days, and removal, effective December 3, 2021, on charges, were heard by Administrative Law Judge Joan M. Burke (ALJ), who rendered her initial decision on July 5, 2022. No exceptions were filed.

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 August 24, 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 and removing the appellant was justified. The Commission therefore affirms those actions and dismisses the appeals of Lewis Harvey.

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 24TH DAY OF AUGUST, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 01472-22
AGENCY DKT. NO. N/A *2022-1806*

OAL DKT. NO. CSV 01529-22
AGENCY DKT. NO. 202~~0~~-1798

OAL DKT. NO. CSV 01530-22
AGENCY DKT. NO. 2022-1799

OAL DKT. NO. CSV 01531-22
AGENCY DKT. NO. 2022-1800

OAL DKT. NO. CSV 01532-22
AGENCY DKT. NO. 2022-1801

OAL DKT. NO. CSV 01533-22
AGENCY DKT. NO. 2022-1802

OAL DKT. NO. CSV 01534-22
AGENCY DKT. NO. 2022-1803

OAL DKT. NO. CSV 01535-22
AGENCY DKT. NO. 2022-1804

OAL DKT. NO. CSV 01536-22
AGENCY DKT. NO. 2022-1805

(CONSOLIDATED)

**IN THE MATTER OF LEWIS HARVEY,
MERCER COUNTY CORRECTION CENTER.**

Merrick Limsy, Esq., for appellant Lewis Harvey (Limsy Mitolo, Attorneys at Law, attorney)

Michael Amantia, Assistant County Counsel, for respondent Mercer County Correction Center (Paul R. Adezio, Mercer County Counsel, attorney)

Record Closed: May 20, 2022

Decided: July 5, 2022

BEFORE JOAN M. BURKE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Lewis Harvey appeals the decision of respondent Mercer County (County) terminating him effective December 3, 2021, from his position as a county correction police officer with the Mercer County Correction Center (Correction Center).

On June 16, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 3); A-11, sick leave verification (Step 1); and B-4, failure or excessive delay in carrying out an order which would not result in danger to persons or property (Step 1). The PNDA specified that appellant had exhausted his sick-leave time for the year when he called out on June 1, 2020, June 2, 2020, June 5, 2020, and June 6, 2020, and failed to submit the requisite documentation. The County sought a suspension of thirteen working days.

On July 21, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 4); A-11, sick leave verification (Step 2); and B-4, failure or excessive delay in carrying out an order which would not result in danger to persons or property (Step 2), SOP 132, Sick Leave Policy. The PNDA specified that appellant had exhausted his sick-leave time for the year when he called out on June 12, 2020, through June 14, 2020, and

failed to submit the requisite documentation. The County sought a suspension of thirty-three working days.

On July 21, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 5). The PNDA specified that appellant had exhausted his sick-leave time for the year when he called out on June 19, 2020. The County sought a suspension of thirty working days.

On July 22, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 7), SOP 132, Sick Leave Policy. The PNDA specified that appellant had exhausted his sick-leave time for the year when he called out on July 10, 2020. The County notified the appellant that it sought a penalty of removal. (R-24.) The County amended the July 22, 2020, PNDA to a Step 6 infraction with a penalty of forty-five working days' suspension. (R-62.)¹

On July 28, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 8), SOP 132, Sick Leave Policy. The PNDA specified that appellant had exhausted all but .74 hour of his sick-leave time for the year when he called out on July 20, 2021. The

¹ There was another PNDA dated June 30, 2020, which was dismissed.

County sought a penalty of removal. (R-30.) The County amended the July 28, 2021, PNDA to a Step 6 infraction with a penalty of forty-five working days. (R-63.)

On July 29, 2021, (PNDA amended August 3, 2021) the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-2, absent from work as scheduled without permission but with giving proper notice of intended absence (late call off) (Step 2); and A-4, chronic or excessive absenteeism from work without pay (Step 9), SOP 132, Sick Leave Policy. (R-34.) The PNDA specified that appellant had exhausted his sick-leave time for the year when he called out on July 24 and July 27, 2021. In addition, on July 28, 2021, the appellant called out less than two hours prior to the start of his shift. The County amended the July 29, 2021, PNDA to a Step 7 infraction with a penalty of removal (R-34.)

On August 20, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-6, unreasonable excuse for lateness of less than fifteen minutes (Step 5). (R-44.) The PNDA specified that appellant reported to work one minute late on August 10, 2021. The penalty sought was fifteen working days' suspension. (Ibid.)

On August 21, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-6, unreasonable excuse for lateness of less than fifteen minutes (Step 6). (R-47.) The PNDA specified that appellant reported to work five minutes late on August 11, 2021. The penalty sought was twenty working days' suspension. (Ibid.)

On August 22, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-6, unreasonable excuse for lateness of less than fifteen minutes (Step 7). (R-51.) The PNDA specified that appellant reported to work two minutes late on August 13, 2021. The penalty sought was thirty working days' suspension. (ibid.)

Appellant attended the departmental hearing on October 26, 2021, and Final Notices of Disciplinary Action (FNDAs) were issued by the Correction Center on December 20, 2021, sustaining the charges on the June 16, 2020, PNDA, July 21, 2020, PNDA, July 21, 2020, PNDA, July 22, 2020, PNDA, July 28, 2021, PNDA, July 28, 2021, PNDA, August 20, 2021, PNDA, August 21, 2021, PNDA, and August 22, 2021, PNDA. The FNDAs suspended the appellant for a cumulative term of 218 days and removed appellant based upon charges of chronic or excessive absenteeism or lateness, conduct unbecoming a public employee, chronic or excessive absenteeism from work without pay, and other sufficient cause, specifically, violation of the MCCC Table of Offenses and Penalties, to include: chronic or excessive absenteeism from work without pay, sick-leave verification, failure or excessive delay in carrying out an order which would not result in danger to persons or property, absent from work as scheduled without permission but with giving proper notice of intended absence, unreasonable absence from work as scheduled without permission, unreasonable excuse for lateness of less than fifteen minutes. The appellant filed a timely appeal of the removal and requested a hearing before the Office of Administrative Law (OAL), where the appeal was filed/perfected on February 22, 2022, as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was held in the matter on May 13, 2022, by Zoom due to the COVID-19 emergency. The record was held open for the parties to submit closing briefs. Post-hearing submissions were received on behalf of appellant and respondent, and on May 20, 2022, the record closed.

FACTUAL DISCUSSION AND FINDINGS

Based upon the testimony of the witness and examination of the documentary evidence, I **FIND** that the following **FACTS** are undisputed:

1. The appellant was employed as a county correction police officer at the Mercer County Correction Center. (R-1.)
2. On June 1, and June 2, 2020, and on June 5, and June 6, 2020, the appellant called out sick. (R-1.) The appellant had exhausted all of his sick time for the 2020 calendar year. (R-10.)
3. On June 6, 2020, the appellant was required to submit a doctor's note for his sick leave. None was submitted. (R-9.)
4. On June 1, 2020, June 2, 2020, June 5, 2020, and June 6, 2020, appellant's shift was filled by payment of overtime to another officer who covered for him on each of these days. (R-1; R-5; R-7; R-9.)
5. On June 12, 2020, through June 14, 2020, the appellant called out sick, without any available sick time. (R-19.)
6. On June 12, 2020, June 13, 2020, and June 14, 2020, appellant's shift was filled by payment of overtime to another officer who covered the shift on each of these days. (R-14; R-16; R-18.)
7. On June 19, 2020, the appellant called out sick, without any available sick time. (R-23.)
8. On June 19, 2020, appellant's shift was filled by payment of overtime to another officer who covered the shift. (R-22.)

9. On July 10, 2020, the appellant called out sick, without any available sick time. (R-27.)
10. On July 10, 2020, appellant's shift was filled by payment of overtime to another officer who covered the shift. (R-22.)
11. On July 20, 2021, the appellant called out sick, with only .74 hours of available sick time. (R-27.) He was docked for 7.26 hours. (R-30; R-31.)
12. A doctor's note was required for the June 20, 2021, call out, but none was produced. (R-32.)
13. On July 24, 2021, and July 27, 2021, the appellant called out sick, with no available sick time. (R-37; R-40.)
14. On July 24, 2021, and July 27, 2021, appellant's shift was filled by payment of overtime to another officer who covered the shift on each of these days. (R-36; R-39.)
15. On July 28, 2021, appellant's shift was to begin at 7:00 a.m.; appellant called out sick at 5:36 a.m. (R-34.) Appellant had no available sick time. (R-43.)
16. On July 28, 2021, appellant's shift was covered by another officer who was paid overtime to do so. (R-42.)
17. On August 10, 2021, appellant reported late to work. This constituted a Step 5 violation.² (R-44.)
18. On August 11, 2021, appellant was late for his scheduled tour of duty. This infraction constitutes a Step 6 violation. (R-47.)

² Appellant was late previous to this infraction. (R-46.)

19. On August 13, 2021, appellant was late for his scheduled tour of duty. This constitutes a Step 7 violation of unreasonable excuse for lateness of less than fifteen minutes. (R-51.)
20. On November 29, 2018, appellant entered into a Last-Chance Agreement with the respondent, based on unreasonable excuse of lateness of less than fifteen minutes and chronic or excessive absenteeism. (R-54.)
21. Appellant has over fifty instances of discipline, most of which result from lateness or chronic absenteeism, going back as far as 2003. (R-56.)
22. Based on the MCCC Table of Offenses and Penalties, a seventh infraction of lateness calls for removal. (R-57.)
23. The appellant was issued nine PNDAs as follows:
 - June 16, 2020, PNDA, ten-working-day suspension (R-1)
 - July 21, 2020, twenty-three-working-day suspension (R-12)
 - July 21, 2020, thirty-working-day suspension (R-20)
 - July 22, 2020, forty-five-working-day suspension (R-24)
 - July 28, 2021, removal (R-30)
 - July 28, 2021, amended August 3, 2021—removal (R-34)
 - August 20, 2021, fifteen-working-day suspension (R-44)
 - August 21, 2021, twenty-working-day suspension (R-47)
 - August 22, 2021, thirty-working-day suspension (R-51)
24. Appellant attended the departmental hearing on October 26, 2021, and FNDAs were issued by the Correction Center on December 20, 2021, sustaining the charges on the June 16, 2020, PNDA, July 21, 2020, PNDA, July 21, 2020, PNDA, July 22, 2020, PNDA, July 28, 2021, PNDA, July 28, 2021, PNDA, August 20, 2021, PNDA, August 21, 2021, PNDA, and August 22, 2021, PNDA.

25. The FNDAs issued on December 20, 2021 (R-59; R-60; R-61; R-62; R-63; R-64; R-65; R-66; R-67) resulted in the appellant being charged with the following violations:

N.J.A.C. 4A:2-2.3(a)(4), chronic or extensive absenteeism or lateness

N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee

N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties:

1. A-4, chronic or excessive absenteeism from work without pay, Step 3, Step 5, Step 7, Step 8, Step 9
2. A-11, sick leave verification, Step 1, Step 2
3. A-2, absent from work as scheduled with permission but without giving proper notice of intended absence, Step 1, Step 2
4. A-6, unreasonable excuse for lateness of less than fifteen minutes, Step 5, Step 6, Step 7
5. B-4, failure or excessive delay in carrying out an order which would not result in danger to persons or property, Step 2.

26. The appellant was removed from his position on December 3, 2021. (R-64.)

TESTIMONY

Captain Michael Kownacki (Captain Kownacki) testified on behalf of respondent. Captain Kownacki is employed by the County and is captain for the Correction Center. Captain Kownacki's duties include assisting the warden and deputy

administrator and issuing discipline. The discipline that he is engaged in issuing relates to attendance, performance, and safety and security violations. Captain Kownacki testified about the standard operating procedures (SOP) on sick-leave policy, more specifically, SOP 132. (R-11.) SOP 132 is the Correction Center's Sick Leave Policy ("the policy"), which outlines the procedure to follow when calling out sick. Pursuant to the policy, it is permissible to call out with certain time restraints, depending on availability for others to cover, and depending on whether the person calling out has time available to do so. This also relates to leaving early. In the case of an emergency, the policy is flexible. However, an employee is not permitted to call out two hours or less prior to the start of a shift. The employee must have accrued sick time when calling out. In general, the employees receive fifteen sick days per year.

Captain Kownacki testified as to the following disciplinary action that was taken by the Correction Center against the appellant:

1. On June 16, 2020, appellant was issued a PNDA for not calling out or showing up for his shift at the Correction Center on June 1, 2020. (R-3.) The PNDA also included calling out sick on June 2, 2020, June 5, 2020, and June 6, 2020. (R-5; R-7; R-9.) At the time, the appellant had exhausted all of his sick time. (R-10.) According to Captain Kownacki, when an employee calls out sick, it interrupts the daily operation of the Correction Center, as well as the budget, since overtime is paid to officers to cover the shift. On June 6, 2020, the appellant was required to produce a doctor's note; however, none was produced. (R-1.) Appellant was docked thirty-two hours of pay. (Ibid.) According to the time and attendance calendar, the appellant had exhausted all of his sick time for 2020 by June 1, 2020. (R-10.) Violations are done in steps based upon the concept of progressive discipline. Appellant was charged with A-4, chronic or excessive absenteeism from work without pay, as a Step 3 violation, and A-11, sick leave verification, as a Step 1 violation. (R-1.)

2. On July 21, 2020, the appellant was issued a PNDA for A-4, chronic or excessive absenteeism from work without pay, Step 4. (R-12.) Appellant called out June 12, June 13, and June 14, 2020. (Ibid.) The appellant was required to submit a doctor's note when he called out on June 13, 2020, because there was a shortage of staff to work his shift. (R-16.) The appellant did not produce the doctor's note. (R-12.) Appellant was docked twenty-four hours' pay. (Ibid.) The time and attendance calendar showed that the appellant had no accrued sick time. (R-19.)
3. On July 21, 2020, the appellant was issued a second PNDA for A-4, chronic or excessive absenteeism from work without pay, Step 5. (R-20.) Appellant called out for personal sick time on June 19, 2020. (Ibid.) Appellant's shift was covered by paying overtime to another correction officer. (R-22.) Appellant was docked eight hours' pay. (Ibid.) The time and attendance calendar showed that the appellant had no accrued sick time. (R-23.)
4. On July 22, 2020, the appellant was issued a PNDA for A-4, chronic or excessive absenteeism from work without pay, Step 7. (R-24.) Appellant called out on July 10, 2020, without any available sick time. (R-27.) Listed on the "Attendance & Overtime Record" was "F/S," which Captain Kownacki testified meant "Family Sick." (R-28.) Appellant was docked eight hours' pay. (R-24.)

Captain Kownacki testified that it came to his attention that the appellant had disputed the sick time for which he was docked in February and March 2020 and had produced a doctor's note to reclaim his time in July 2020. (R-28.) Captain Kownacki testified that he was not the one who handled this dispute, but Alejandra M. Silver, the human resources coordinator. (Ibid.) As Captain Kownacki understood it, the appellant had submitted a letter stating that he had bronchitis and pneumonia in February and March 2020 and was requesting back his time. (Ibid.) However, the appellant did not submit any medical records to support the sick time he took in February and March 2020. Captain Kownacki testified that based on the record, appellant was not entitled

to reimbursement of accrued sick time under Executive Order 103³ issued by Governor Phil Murphy. (R-29.)

5. On July 28, 2021, the appellant was issued a PNDA for A-4, chronic or excessive absenteeism from work without pay, Step 8. (R-30.) Appellant called out on July 20, 2021, with only .74 hours of sick time for calendar year 2021. (R-31; R-32.) Appellant was docked 7.26 hours' pay. Captain Kownacki testified that because it was over a year since the appellant had violated the policy, instead of the Step 8 infraction, he should have been charged with a Step 6 infraction. (SOP 132.)
6. On July 29, 2021, the appellant was issued a PNDA for violating N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; violating N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and violating N.J.A.C. 4A:2-2.3(a)(12), and other sufficient cause: A-2, absent from work as scheduled without permission but with giving proper notice of intended absence, Step 2; and A-4, chronic or excessive absenteeism from work without pay, Step 9. (R-34.) Appellant called out sick on July 24 and July 27, 2021, without any available sick time. (R-36; R-39.) In addition, on July 28, 2021, the appellant's shift began at 7:00 a.m., but he called out sick at 5:36 a.m. that day. (R-34.) As per the SOP 132, essential personnel must call off two hours prior to their start time. (R-34.) The appellant had exhausted all of his sick time by July 21, 2021. (R-43.)
7. On August 20, 2021 the appellant was issued a PNDA charging him with violating N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause: the MCCC

³ As per the Office of Personnel, under the "first set of Time and Attendance provisions adopted on March 12, 2020, by County Executive Brian M. Hughes, following Governor Phil Murphy's Executive Order 103, eligible employees would not be required to use accumulated sick leave time if they are (1) diagnosed with COVID, (2) are directed by a medical professional to isolate or self-quarantine due to suspicion of exposure, or (3) are undergoing a period of self-quarantine or isolation pursuant to public health recommendations, as long as medical documentation is provided to the Office of Personnel within three (3) days of the initial absence. If medical documentation is not provided within the allotted time frame or if the employee does not meet one of the above criteria listed above, employees will be required to utilize accrued leave time to cover their absence." (See R-29.)

Table of Offenses, A-6, unreasonable excuse for lateness of less than fifteen (15) minutes, which constitutes a Step 5 infraction. (R-44.) According to Captain Kownacki, lateness is governed by the SOP 136, titled "Lateness." It set forth that the "Kronos Timekeeping System is the official time keeping system for the Mercer County Correction Center. Employees who scan in after the start of their assigned shift will be considered late." (R-55.) On August 10, 2021, as reported on the iSeries Timekeeper, the appellant clocked in at 7:01 a.m. The appellant's start time is 7:00 a.m. Captain Kownacki testified that it is important that officers be lined up at 7:00 a.m. to be briefed by their supervising officer. When officers fail to line up at the designated time to begin their shift, some officers have to be held over, and this can result in poor morale and interrupt the operation of the Correction Center, and could become a cost and budgetary issue.

8. On August 21, 2021, the appellant was issued a PNDA charging him with violating N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause: the MCCC Table of Offenses, A-6, unreasonable excuse for lateness of less than fifteen (15) minutes, which constitutes a Step 6 infraction. (R-47.) Pursuant to the iSeries Timekeeper, the appellant clocked in on August 11, 2021, at 7:05 a.m. (R-48.) There was no reason given by the appellant for his lateness. (ibid.)
9. On August 22, 2021, the appellant was issued a PNDA charging him with violating N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause: the MCCC Table of Offenses, A-6, unreasonable excuse for lateness of less than fifteen (15) minutes, which constitutes a Step 7 infraction. (R-51.) Pursuant to the iSeries Timekeeper, the appellant clocked in on August 13, 2021, at 7:01 a.m. (R-52.) There was no Attendance & Overtime Record completed for this lateness. As per Captain Kownacki, there is a provision in SOP 132 that

states that failure to complete a late slip does not excuse the lateness. (R-55.)

10. On December 26, 2018, an FNDA was issued to the appellant to address issues of chronic or excessive absenteeism. (R-54.) The appellant at that time entered into a “Last-Chance Agreement” with the Correction Center. (Ibid.)

Captain Kownacki testified that appellant’s violations and charges are based on the Mercer County Public Safety Table of Offenses and Penalties—Correction Center (Table). (R-57.) This applies only to correction officers and superior officers. This informs the violation of “other sufficient cause.” In reading the Table, across the top are listed the infractions, and the offenses are listed below. (R-57.) The offenses listed under “Attendance” on the Table go from A-1 to A-11, with the required number of days’ suspension listed under the number of infraction. (Ibid.) For example, if it is an A-6 offense, which states, “Unreasonable excuse for lateness of 15 minutes or less,” and it was the seventh infraction, the employee would be suspended for thirty days. (R-57.) Captain Kownacki testified that he takes seriously the issuing of a PNDA, as the steps in penalty are increased.

On cross-examination, Captain Kownacki testified that the appellant has worked for the Correction Center for seventeen years. He is a good employee and “does a great job when he is there.” He admitted that during 2020 and 2021 COVID-19 was a big issue across the state and coverage was very difficult, with employees coming down with COVID-19. Captain Kownacki confirmed knowing that the appellant was sick in the beginning of 2020, but had no knowledge of the appellant having COVID in 2020 or 2021 and was not aware that the appellant was out on disability. Captain Kownacki admitted that appellant had vacation time in July 2021 when he was docked 7.26 hours and charged with a Step 6 violation. (R-30.) However, Captain Kownacki stated that the appellant needed to request use of vacation time twenty-four hours prior to the requested date, as vacation time is awarded on a “first-come, first-served basis.”

Additionally, it would only be awarded if it did not result in having to pay overtime to another officer for coverage.

The appellant did not testify, and there were no other witnesses for the appellant. In the appellant's post-hearing brief, he argued that the penalties sought in this matter are not legal because the "the employer's system of discipline does not follow the legal standard of progressive discipline and was applied arbitrarily. (Appellant's Brief at 4.) He argues that he was out on worker's compensation from January 21 through February 14, because he did test positive for COVID. (Id. at 5.⁴) Appellant further argues that it was not explained by the respondent why "it was acceptable to have multiple absences on one charge and single absences on another charge." (Ibid.) Appellant posits that the "arbitrary number of absences used by the employer to count as an infraction allows the employer to manipulate multiple absences, thereby moving the employee . . . through the disciplinary steps as it wishes rather than adhering to a subjective disciplinary process." (Id. at 6.)

Respondent argues that the proposed penalties of suspension and removal are justified based on the appellant's conduct. (Respondent's May 19, 2022, Brief at 10.) In addition, respondent argues that appellant demonstrates an "attitude of indifference amounting to neglect of duty." (Ibid.)

ADDITIONAL FINDINGS

The appellant challenges only the penalty imposed.

LEGAL DISCUSSION

The first issue is whether the respondent has proven the charges by a preponderance of the credible evidence, or whether the appellant's absences were

⁴ The tribunal notes that there was no testimony on this or any supporting documentation to this effect—only what is written in appellant's post-hearing brief.

inappropriately charged together and the incidents of lateness were minimal and did not warrant major discipline. The second issue is whether the 218-working-day suspension and penalty of removal were justified and reasonable if a charge or charges are sustained.

The Civil Service Act and regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:2-1.1 to 4A:2-6.2. The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955).

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated at N.J.A.C. 4A:2-2.3. The specific charges in this matter are that appellant is guilty of chronic or excessive absenteeism in violation of N.J.A.C. 4A:2-2.3(a)(4), conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Appellant is also charged with violation of Mercer County Correction Center Table of Offenses and Penalties (MCCC Table of Offenses):

A-2 Absent from work as scheduled with permission but without giving proper notice of intended absence

A-4 Chronic or excessive absenteeism from work without pay

A-11 Sick-leave verification

A-6 Unreasonable excuse for lateness of less than fifteen minutes

B-4 Failure or excessive delay in carrying out an order which would not result in dangers to persons or property

[R-12.]

In an appeal such as this from a disciplinary action that resulted in the termination of employment, the appointing authority has the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); In re Polk, 90 N.J. 550 (1982); 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. Evidence is said to preponderate “if it establishes ‘the reasonable probability of the fact.’” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of the credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Under N.J.A.C. 4A:2-2.3(a)(4), an employee may be subject to discipline for chronic or excessive absenteeism. While there is no precise number that constitutes “chronic,” it is generally understood that chronic conduct is conduct that continues over a long time or recurs frequently. Good v. N. State Prison, 97 N.J.A.R.2d (CSV) 529, 531. Courts have consistently held that excessive absenteeism need not be accommodated, and that attendance is an essential function of most jobs. See, e.g., Muller v. Exxon Rsch. & Eng’g Co., 345 N.J. Super. 595, 605–06 (App. Div. 2001); Svarnas v. AT&T Commc’ns, 326 N.J. Super. 59, 78 (App. Div. 1999) (“[a]n employee who does not come to work cannot perform any of her job functions, essential or otherwise”).

In general, employers cannot be expected to find a way to accommodate the unpredictable nature of an employee's sporadic and unscheduled absences. Svarnas, 326 N.J. Super. at 77. As noted by the New Jersey Supreme Court, "[j]ust cause for dismissal can be found in habitual tardiness or similar chronic conduct." Bock, 38 N.J. at 522. While a single instance may not be sufficient, "numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty." Ibid. As the Appellate Division summarized, "[w]e do not expect heroics, but 'being there,' i.e. appearing for work on a regular and timely basis is not asking too much" of an employee. State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 333 (App. Div. 1998).

It is undisputed that appellant called out sick from work between June 1, 2020, and July 28, 2021, approximately thirteen times after exhausting all of his sick time, or showed up late at least five times. It is important to note, the appellant receives fifteen six days each year. (Appellant's Brief, May 19, 2022.)

The appellant does not dispute the attendance record, he disputes the "excessive discipline that was issued." In addition, the appellant argues that the "arbitrary number of absences used by the employer to count as an infraction allows the employer to manipulate multiple absences, thereby moving the employee . . . through the disciplinary steps as it wishes rather than adhering to a subjective disciplinary process." (Appellant's Brief at 6.) I do not find merit in this argument. An employee who does not show up for work does not satisfy the essential functions of their employment and cannot perform their workplace duties. Svarnas, 326 N.J. Super. at 78. As the Civil Service Commission has previously noted:

[E]xcessive absenteeism is not necessarily limited to instances of bad faith or lack of justification on the part of the employee who was frequently away from her job. After reasonable consideration is given to an employee by an appointing authority, the employer is left with a serious personnel problem, and a point is reached where the absenteeism must be weighed against the public right to efficient and economic service. An employer is entitled to be

free of excessive disruption and inefficiency due to an inordinate amount of employee absence.

[Terrell v. Newark Housing Auth., 92 N.J.A.R.2d (CSV) 750, 752.]

See also Bellamy v. Twp. of Aberdeen, Dep't of Pub. Works, 96 N.J.A.R.2d (CSV) 770 (excessive employee absences, even with good cause, impair the work of the political subdivision employer and may justify an employee's removal); Luckey v. Dep't of Pub. Works, Borough of Lindenwold, 96 N.J.A.R.2d (CSV) 266 (sustaining removal of civil service employee for excessive absences even though employee was "debilitated by an occasional illness, and by a continuing addiction to substance abuse" related to absences); LaBour v. Housing Auth. of Paterson, 95 N.J.A.R.2d (CSV) 682 (sustaining removal of civil service employee for excessive absences related to medical and substance-abuse problems); Weil v. Atl. Cnty. Dep't of Pub. Safety, 97 N.J.A.R.2d (CSV) 413 (removal appropriate for excessive unauthorized absences even if those absences are related to medical condition). The respondent, like any governmental entity, "has the right to expect that its employees will report to work and perform the duties and functions assigned to them." Weil, 97 N.J.A.R.2d (CSV) 413. To permit employees to fail to report to work when they are required to do so "would create chaos in carrying out essential governmental functions and would greatly harm public officials in their attempts to carry out their duties and responsibilities." Ibid.

In judging whether an employee's absenteeism is chronic or excessive, relevant factors include, among others, the number of absences, the time span between the absences, and the negative impact on the workplace. See Harris v. Woodbine Developmental Ctr., 2003 N.J. AGEN LEXIS 61 (February 11, 2003), adopted, 2003 N.J. AGEN LEXIS 1281 (March 27, 2003); Hendrix v. City of Asbury, 2001 N.J. AGEN LEXIS 188 (April 10, 2001), adopted, 2001 N.J. AGEN LEXIS 883 (June 8, 2001); Morgan v. Union Cnty. Runnells Specialized Hosp., 97 N.J.A.R.2d (CSV) 295.

The appellant's employer had a right to expect that he would be present at work as scheduled, willing and able to perform the job for which he had been employed. The respondent is not obligated to continue to employ a person who either cannot or will not

perform his job duties on a regular basis. Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(4) (chronic or excessive absenteeism), and that such charge must be **SUSTAINED**.

The appellant was also charged with conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that 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). Such misconduct need not 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 Civ. Serv., 17 N.J. 419, 429 (1955)).

The appellant's attendance record demonstrates a pattern of chronic/excessive absenteeism. Such an attendance record evidences "an attitude of indifference amounting to neglect of duty." Bock, 38 N.J. at 522. I **CONCLUDE**, therefore, that the appellant's conduct did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and the respondent has met its burden of proof to sustain this charge. This charge must, therefore, be **SUSTAINED**.

The appellant has further been charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause—specifically, violation of several types of offenses on the MCCC Table of Offenses and Penalties. They are as follows:

1. Violation of A-2, absent from work as scheduled with permission but without giving proper notice of intended absence (late call-off). (R-34.)

The record shows that the appellant on July 28, 2021, called off at 5:36 a.m. He was to start his tour of duty at 7:00 a.m. Pursuant to the Mercer County Correction Center Standard Operating Procedure (MCCC SOP) 132, Sick Leave Policy, "Essential employees are critical to the mission of the Department of Public Safety." (R-11.) In addition, "to ensure the sick leave privileges are not abused all essential personnel: Correction Officers, Sergeants and Lieutenants shall be subject to this policy." (*Ibid.*) Furthermore, essential personnel must call off two hours prior to their start time. (*Ibid.*) Appellant, who is considered essential personnel, did not call out two hours prior to the start of his shift. I therefore **CONCLUDE** that the respondent has met its burden of proof and this charge must be **SUSTAINED**.

2. Violation of A-4, chronic or excessive absenteeism from work without pay.

Pursuant to MCCC SOP 132, "employees will be subject to Abuse of Sick leave disciplinary action on the first absence and any subsequent absences when allotted time is exhausted." (R-11.) Between June 1, 2020, and July 27, 2021, the appellant was docked ninety-five hours, or approximately twelve days, because he had exhausted all of his allotted sick time. I therefore **CONCLUDE** that the respondent has met its burden of proof, and this charge is **SUSTAINED**.

3. Violation of A-11, sick leave verification.

Under MCCC SOP 132:

On any shift in which the Shift Commander, after exhausting overtime and mandatory overtime resources to fill that shift, determines that the total number of Officers and/or Supervisors for that shift is less than the minimum set forth for that shift in SOP 570 and 571, the Shift Commander by advance order of the Warden shall order and advise any Superior and/or Officer who calls off sick for that shift that he

- or she shall be required to produce a sick leave note/verification for such call off within 72 hours

[R-11.]

Here, on June 6, 2020, and June 13, 2020, the appellant called off sick, and because the County was short-staffed the appellant was required to submit documentation for his absence. The appellant on both occasions failed to do so. I therefore **CONCLUDE** that the respondent has met its burden of proof and this charge is **SUSTAINED**.

4. Violation of A-6, unreasonable excuse for lateness of less than fifteen minutes.

Pursuant to MCCC SOP 136, Lateness, "all lateness regardless of degree, will be considered for disciplinary action." (R-55.) In addition:

[f]or each occurrence of lateness, the employee will receive a copy of the late slip that will serve as a warning notice. Beginning with the third lateness, the employee will be subject to the progressive disciplinary action as initiated by the Captain.

[R-55.]

On August 10, 2021, the appellant was late, and this constituted a Step 5 violation; on August 11, 2021, the appellant was late, and this constituted a Step 6 violation; and on August 13, 2021, the appellant was late, and this resulted in a Step 7 removal. Appellant had no good reason for these late arrivals. There was no testimony as to why he was late. Appellant did not challenge the lateness, only that he was charged for being late, which resulted in a removal. I therefore **CONCLUDE** that the respondent has met its burden of proof and this charge is **SUSTAINED**.

5. Violation of B-4, failure or excessive delay in carrying out an order which would not result in danger to persons or property. (R-12.)

There was no testimony or evidence that supported this charge, and I do not find that the appellant violated this offense. I therefore **CONCLUDE** that the respondent has not met its burden of proof, and therefore this charge should be **DISMISSED**.

PENALTY

The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Board must utilize the evaluation process set forth in Bock, 38 N.J. 500, and consider the employee's reasonably recent history of promotions, commendations, and the like (if any), as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30–33 (2007).

"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). An employee's poor disciplinary record can "support an appointing authority's decision to rid itself of a problematic employee based on charges that, but for the past record, ordinarily would have resulted in a lesser sanction." In re Stallworth, 208 N.J. 182, 196 (2011) (quoting In re Herrmann, 192 N.J. at 32).

While the proposed sanction of removal in this matter is harsh, this sanction must be viewed in light of the appellant's prior history of discipline. It is undisputed that

the appellant was subject to discipline for chronic/excessive absenteeism in the period June 2020 to July 2021 at least six times. Each of these prior disciplinary actions employed escalating penalties for the appellant's conduct, ranging from a thirteen-working-day suspension (R-1) to dismissal (R-34). The appellant's most recent discipline (prior to these incidents) for unreasonable excuse for lateness of less than fifteen minutes and chronic or excessive absenteeism was in an FNDA dated December 26, 2018, which listed PNDAs dated August 23, 2017, amended April 26, 2018, July 10, 2018, and October 15, 2018. (R-54.) In lieu of penalty for these PNDAs, an agreement was made for the appellant to receive a thirty-day suspension. (*Ibid.*) A further aggravating factor present in this matter is that the settlement agreement the appellant executed with the respondent to resolve the FNDA of December 26, 2018, contained the express acknowledgement that the appellant understood that it was a "LAST CHANCE AGREEMENT." (R-54.) The agreement stated, "However, if Appellant commits any further infraction resulting in Unreasonable excuse of lateness of less than fifteen minutes on the Mercer County Table of Offenses the County would seek termination for those departmental charges." (*Ibid.*) A last-chance agreement (LCA) such as this can be used as a significant factor, along with the appellant's prior disciplinary history, in determining the appropriate penalty in an appeal. These agreements are construed in favor of the appointing authority because to do otherwise would "discourage their use by making their terms meaningless." Watson v. E. Orange, 175 N.J. 442, 445-46 (2003) (citing Golson-El v. Runyon, 812 F.Supp. 558, 561 (E.D.Pa.)). In Watson, the New Jersey Supreme Court found that where an employee "simply did not perform as contemplated by the parties" in a clearly written and executed LCA, the employee's discharge was warranted. *Ibid.*

Here, the appellant was a party to a clearly written and executed LCA in 2018, in which he understood, or should have understood, the import and benefit of such a "last chance," and his chronic absenteeism is problematic. And while the LCA does not apply to the current charges, chronic lateness and absenteeism seems to be habitual throughout the appellant's work history with the County. Appellant was hired in 2003. Over his seventeen years of service to the County, he has been disciplined more than fifty-eight times. (R-56.) He has a significant history of discipline for lateness,

absenteeism, conduct unbecoming, insubordination, and violation of rules and procedure. (*Ibid.*) In the current matter, there are nine PNDAs, all of which in large part are based on chronic or excessive absence or lateness. Such an attendance record is not the type of attendance performance contemplated by employers or expected of employees.

I therefore **CONCLUDE** that the County has met its burden by a preponderance of the evidence, and suspension of 218 days and appellant's removal from his position as a county correction officer are warranted based on the following:

On June 16, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 3); and A-11, sick leave verification (Step 1). The County has not met its burden on the charge of failure or excessive delay in carrying out an order which would not result in danger to persons or property (Step 1). This charge is therefore **DISMISSED**. The County has satisfied its burden as to the other charges, and I therefore **CONCLUDE** that a suspension of ten working days is appropriate.

On July 21, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 4); A-11, sick leave verification (Step 2); and B-4, failure or excessive delay in carrying out an order which would not result in danger to persons or property (Step 2). The County has not met its burden on the charge of failure or excessive delay in carrying out an order which would not result in danger to persons or property (Step 2). This charge is therefore **DISMISSED**. The County has satisfied its burden as to the other charges,

and I therefore **CONCLUDE** that a suspension of twenty-three working days is appropriate.

On July 21, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 5). The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that a suspension of thirty working days is appropriate.

On July 22, 2020, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 7), SOP 132, Sick Leave Policy. The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that a suspension of forty-five working days is appropriate.

On July 28, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-4, chronic or excessive absenteeism from work without pay (Step 8), SOP 132, Sick Leave Policy. The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that a suspension of forty-five working days is appropriate.

On July 29, 2021, (PNDA amended August 3, 2021) the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-2, absent from work as scheduled without

permission but with giving proper notice of intended absence (late call off) (Step 2); and A-4, chronic or excessive absenteeism from work without pay (Step 9), SOP 132, Sick Leave Policy. The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that removal is appropriate.

On August 20, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-6, unreasonable excuse for lateness of less than fifteen minutes (Step 5). The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that a suspension of fifteen working days is appropriate.

On August 21, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-6, unreasonable excuse for lateness of less than fifteen minutes (Step 6). The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that a suspension of twenty working days is appropriate.

On August 22, 2021, the appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties, A-6, unreasonable excuse for lateness of less than fifteen minutes (Step 7). The County has satisfied its burden as to these charges, and I therefore **CONCLUDE** that a suspension of thirty working days is appropriate.

Based upon consideration of the totality of the evidence, with due consideration of appellant's prior disciplinary record, I **CONCLUDE** that sufficient cause was established by the respondent that warrants appellant's suspension and removal from his position with the County as a county correction police officer.

ORDER

It is **ORDERED** that the action of the respondent in suspending the appellant for 218 days and removing the appellant from his position as a county correction police officer was justified and warranted. It is **ORDERED** that the charges of chronic or excessive absenteeism, conduct unbecoming a public employee, and other sufficient cause are **AFFIRMED**. The charges of violation of Mercer County Correction Center Table of Offenses and Penalties, specifically, absent from work as scheduled with permission but without giving proper notice of intended absence, chronic or excessive absenteeism from work without pay, sick leave verification, and unreasonable excuse for lateness of less than fifteen minutes are **AFFIRMED**. The charges of failure or excessive delay in carrying out an order which would not result in danger to persons or property are **DISMISSED**. 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.

APPENDIX

WITNESSES

For Appellant:

None

For Respondent:

Captain Michael Kownacki, Mercer County Correction Center

EXHIBITS

For Appellant:

Appellant's Brief, May 19, 2022

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action, June 16, 2020
- R-2 I Series Timekeeper, May 22, 2020, to June 5, 2020
- R-3 Mercer County Correction Center Attendance & Overtime Record, June 1, 2020
- R-4 I Series Timekeeper, May 22, 2020, to June 5, 2020
- R-5 Mercer County Correction Center Attendance & Overtime Record, June 2, 2020
- R-6 I Series Timekeeper, May 22, 2020, to June 5, 2020
- R-7 Mercer County Correction Center Attendance & Overtime Record, June 4, 2020
- R-8 I Series Timekeeper, June 5, 2020, to June 19, 2020
- R-9 Mercer County Correction Center Attendance & Overtime Record, June 6, 2020

- R-10 Mercer County Correction Center Time Attendance
- R-11 Mercer County Correction Center Standards and Operating Procedures
- R-12 Preliminary Notice of Disciplinary Action, July 21, 2020
- R-13 I Series Timekeeper, June 5, 2020, to June 19, 2020
- R-14 Mercer County Correction Center Attendance & Overtime Record, June 12, 2020
- R-15 I Series Timekeeper, June 5, 2020, to June 19, 2020
- R-16 Mercer County Correction Center Attendance & Overtime Record, June 13, 2020
- R-17 I Series Timekeeper, June 5, 2020, to June 19, 2020
- R-18 Mercer County Correction Center Attendance & Overtime Record, June 14, 2020
- R-19 Mercer County Correction Center Time Attendance
- R-20 Preliminary Notice of Disciplinary Action, July 21, 2020
- R-21 I Series Timekeeper, June 5, 2020, to June 19, 2020
- R-22 Mercer County Correction Center Attendance & Overtime Record, June 19, 2020
- R-23 Mercer County Correction Center Time Attendance
- R-24 Preliminary Notice of Disciplinary Action, July 22, 2020
- R-25 I Series Timekeeper, July 3, 2020, to July 17, 2020
- R-26 Mercer County Correction Center Attendance & Overtime Record, July 10, 2020
- R-27 Mercer County Correction Center Time Attendance
- R-28 Request for Reimbursement of Sick/Personal Days, July 30, 2020
- R-29 Letter from County of Mercer, Office of Personnel, August 12, 2020
- R-30 Preliminary Notice of Disciplinary Action, July 28, 2021
- R-31 I Series Timekeeper, July 16, 2021, to July 30, 2021
- R-32 Mercer County Correction Center Attendance & Overtime Record, July 20, 2021
- R-33 Mercer County Correction Center Time Attendance
- R-34 Preliminary Notice of Disciplinary Action, July 29, 2021
- R-35 I Series Timekeeper, July 16, 2021, to July 30, 2021

- R-36 Mercer County Correction Center Attendance & Overtime Record, July 24, 2021
- R-37 Mercer County Correction Center Time Attendance
- R-38 I Series Timekeeper, July 16, 2021, to July 30, 2021
- R-39 Mercer County Correction Center Attendance & Overtime Record, July 27, 2021
- R-40 Mercer County Correction Center Time Attendance
- R-41 iSeries Timekeeper Mercer County, July 16, 2021, to July 30, 2021
- R-42 Mercer County Correction Center Attendance & Overtime Record, July 28, 2021
- R-43 Mercer County Correction Center Time Attendance
- R-44 Preliminary Notice of Disciplinary Action, August 20, 2021
- R-45 iSeries Timekeeper Mercer County, July 30, 2021, to August 13, 2021
- R-46 Mercer County Correction Center Time Attendance
- R-47 Preliminary Notice of Disciplinary Action, August 21, 2021
- R-48 iSeries Timekeeper Mercer County, July 30, 2021, to August 13, 2021
- R-49 Mercer County Correction Center Attendance & Overtime Record, August 11, 2021
- R-50 Mercer County Correction Center Time Attendance
- R-51 Preliminary Notice of Disciplinary Action, August 22, 2021
- R-52 iSeries Timekeeper Mercer County, July 30, 2021, to August 13, 2021
- R-53 Mercer County Correction Center Time Attendance
- R-54 Final Notice of Disciplinary Action, December 26, 2018; Settlement Agreement and General Release, Last Chance Agreement, November 29, 2018
- R-55 Mercer County Correction Center Standards and Operating Procedures
- R-56 Mercer County, Disciplinary Information:
 - 10/14/20 Chronic Excessive Absence—5 days suspension
 - 09-21-20 Chronic Excessive Absence—written reprimand
 - 01-27-19 Lateness—30 days suspension
 - 12-20-18 Absence without Proper Notification—1 day suspension
 - 08-09-18 Chronic Excessive Absence—written reprimand

12-06-17 Chronic Excessive Absence—7 days suspension
12-06-17 Conduct Unbecoming an Employee—7 days suspension
11-27-17 Chronic Excessive Absence—6 days suspension
11-27-17 Lateness—6 days suspension
11-27-17 Conduct Unbecoming an Employee—6 days suspension
11-20-17 Chronic Excessive Absence—1 day suspension
11-20-17 Lateness—1 day suspension
11-20-17 Conduct Unbecoming an Employee—1 day suspension
06-16-17 Absence without Proper Notification—written reprimand
06-16-17 Chronic Excessive Absence—written reprimand
12-21-16 Lateness—3 days suspension
12-20-16 Lateness—1 day suspension
12-12-20 Lateness—written reprimand
12-23-15 Absence without Proper Notification—written reprimand
12-22-15 Chronic Excessive Absence—written reprimand
08-19-15 Lateness—2 days suspension
04-06-15 Unreasonable Excuse Late—written reprimand
03-31-15 Absence without Proper Notification—written reprimand
09-16-14 Lateness—2 days suspension
09-09-14 Lateness—5 days suspension
04-01-14 Chronic Excessive Absence—written reprimand
02-11-14 Absence without Proper Notification—4 days suspension
12-20-13 Absence without Proper Notification—written reprimand
12-20-13 Absence without Proper Notification—4 days suspension
11-19-13 Lateness—10 days suspension
11-05-13 Lateness—10 days suspension
10-29-13 Lateness—5 days suspension
10-22-13 Lateness—5 days suspension
10-15-13 Lateness—5 days suspension
04-02-13 Absence without Proper Notification—1 day suspension
08-07-12 Insubordination—5 days suspension
04-07-12 Lateness—fine \$913.39, 3 days, \$304.46 PE

- 02-07-12 Lateness—written reprimand
- 05-27-11 Absence without Proper Notification—written reprimand
- 05-22-11 Violation of Rule, Regulation and Policy—5 days suspension
- 10-24-09 Chronic Excessive Absence—fine \$1,948.45, \$278.35 per pay
- 10-24-09 Lateness—fine \$1,948.45, 10 days, \$278.35 per pay
- 10-24-09 Conduct Unbecoming an Employee—fine \$1,948.45, 10 days, \$278.35 per pay
- 12-20-08 Sleeping on Duty—fine, \$2,783.53 per OAL Decision
- 12-20-08 Conduct Unbecoming an Employee—fine \$2,783.53, per OAL Decision
- 12-20-08 Violation of Rule, Regulation and Policy—fine \$2,783.53 per OAL Decision
- 12-20-08 Violation Administrative Procedures—fine \$2,783.53 per OAL Decision
- 07-16-08 Chronic Excessive Absence—6 days suspension
- 07-16-08 Conduct Unbecoming an Employee—6 days suspension
- 05-01-08 Chronic Excessive Absence—3 days suspension
- 11-09-07 Chronic Excessive Absence—written reprimand
- 09-20-05 Neglect of Duty—6 days loss of comp time
- 09-20-05 Conduct Unbecoming an Employee—6 days comp time to be used in lieu ...
- 06-30-05 Unsatisfactory Attendance—written reprimand
- 06-26-04 Violation of Rule, Regulation and Policy—2 days suspension, vacation time
- 04-24-03 Violation of Rule, Regulation and Policy—12 days vacation time used
- 04-24-03 Violation Administrative Procedures—12 days vacation time used
- R-57 Mercer County Tables of Offenses and Penalties, Correction Center
- R-58 Not in Evidence
- R-59 Final Notice of Disciplinary Action, December 20, 2021

- R-60 Final Notice of Disciplinary Action, December 20, 2021
- R-61 Final Notice of Disciplinary Action, December 20, 2021
- R-62 Final Notice of Disciplinary Action, December 20, 2021
- R-63 Final Notice of Disciplinary Action, December 20, 2021
- R-64 Final Notice of Disciplinary Action, December 20, 2021
- R-65 Final Notice of Disciplinary Action, December 20, 2021
- R-66 Final Notice of Disciplinary Action, December 20, 2021
- R-67 Final Notice of Disciplinary Action, December 20, 2021