



STATE OF NEW JERSEY

In the Matter of Michael Gorski,  
Mercer County, Department of  
Corrections

CSC DKT. NO. 2021-1701  
OAL DKT. NO. CSV 04707-21

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

ISSUED: NOVEMBER 2, 2022

The appeal of Michael Gorski, County Correctional Police Lieutenant, Mercer County, Department of Corrections, fine equal to a 15 working day suspension<sup>1</sup>, on charges, was heard by Administrative Law Judge David M. Fritch, who rendered his initial decision on September 23, 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, including a thorough review of the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of November 2, 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 fining the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Michael Gorski.

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

<sup>1</sup> The Commission notes that the ALJ indicated a "25 working day suspension" on page one of the initial decision, and thereafter, referred to a 15 working day suspension. The actual initial penalty imposed on the appellant by the appointing authority was a fine equal to a 15 working day suspension. As such, the reference on page one of the initial decision was a typographical error and, as indicated by the Commission in this decision, the actual penalty imposed and upheld is a fine equal to a 15 working day suspension.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF NOVEMBER, 2022

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Trenton, New Jersey 08625-0312

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 04707-21

AGENCY DKT. NO. 2021-1701

**IN THE MATTER OF MICHAEL  
GORSKI, MERCER COUNTY  
DEPARTMENT OF CORRECTIONS.**

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

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

Record Closed: August 9, 2022

Decided: September 23, 2022

BEFORE **DAVID M. FRITCH, ALJ**:

**STATEMENT OF THE CASE**

Police Corrections Lieutenant Michael Gorski (appellant) appeals the decision of his employer, Mercer County Department of Corrections (MCDOC), to impose a twenty-five-day working suspension for charges of incompetency/inefficiency or failure to perform duties and other sufficient cause—specifically Mercer County Public Safety Table of Offenses, Correction Officer (MCPSTOCO) Nos. B-1 (neglect of duty), B-4 (failure or excessive delay in carrying out an order), C-8 (intentional misstatement of material fact), C-9 (insubordination), and D-6 (violation of administrative procedure or

regulation involving safety or security). The appellant denies the allegations that form the factual basis for these charges.

### **PROCEDURAL HISTORY**

MCDOC issued a Preliminary Notice of Disciplinary Action (PNDA) dated July 8, 2019, notifying Lt. Gorski of the charges against him. (R-1.) After a departmental hearing held on November 17, 2019, MCDOC sustained the following charges which were incorporated into a Final Notice of Disciplinary Action (FNDA) dated April 20, 2021, with a proposed penalty of a fifteen working-day suspension: N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO Nos. B-1, neglect of duty, B-4, failure or excessive delay in carrying out an order, C-8, falsification or intentional misstatement of material fact, C-9, insubordination, and D-6, violation of administrative procedure or regulation involving safety and security. (Id.)

The appellant timely requested a hearing and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on May 25, 2021, to be heard as a contested case. N.J.S.A. 52-14B-1 to 15 and 14F-1 to 13. The matter was heard on June 20, 2022. The record remained open for the parties to provide post-hearing submissions. The appellant's closing was received on August 3, 2022, and the record closed on August 9, 2022, upon the receipt of the respondent's closing submission.

### **TESTIMONY AND FACTUAL DISCUSSION**

**Mark Lyszczak**, is a retired lieutenant with MCDOC, who worked at Mercer County Correctional Center (MCCC) for twenty-nine years before his retirement on January 1, 2022. He was working at MCCC as the shift commander on May 31, 2019, working the "C" shift, which was from 3:00 p.m. until 11:00 p.m. There are three shifts at MCCC, an "A" shift which goes from 3:00 p.m. to 7:00 a.m., a "B" shift which goes from 7:00 a.m. to 3:00 p.m., and a "C" shift which goes from 3:00 p.m. to 11:00 p.m.

When starting a shift, Lt. Lyszczak usually reported to MCCC about ten to fifteen minutes before his shift started to check with the prior shift commander for any issues he will have to address during his shift. Lt. Lyszczak did not recall who was the shift commander for the "B" shift that he relieved that day at MCCC or any conversations he may have had with the shift commander he was relieving that day.

During his shift, he received a call from Asa Paris, who is the Deputy Administrator (DA) of MCCC, at around 3:30 p.m. DA Paris asked if an inmate, identified as "M.P.," was still in MCCC's Receiving and Discharge (R&D) Unit. The R&D unit is the area where new inmates are brought into the facility and where inmates who are leaving the facility are discharged. When a new inmate is brought into MCCC's R&D Unit, where they are searched and "dressed in" with appropriate facility clothing. They are screened by medical personnel, fingerprinted, and put into the MCCC computer system before they are brought to other areas of the facility. If it is not too crowded, the new inmate may go to the medical unit for screening after R&D, or they may be moved into a housing unit at MCCC. Nurses doing medical screening of a new inmate in R&D may also recommend that the inmate be sent to "room 106" for a mental health evaluation. Mental health staff, however, are not present at MCCC twenty-four hours a day. Lt. Lyszczak believed the mental health staff were there until about 4:00 p.m. or 4:30 p.m. in the afternoon each day. "Room 106" describes a door at MCCC, which leads to a hallway where the mental health staff offices, along with some other offices, are located.

Lt. Lyszczak confirmed M.P. was in the R&D Unit, and DA Paris was surprised to learn this and wanted to know why M.P. had not been "dressed in" yet. DA Paris instructed Lt. Lyszczak to get inmate M.P. to "room 106" whether the inmate had been "dressed or not." Lt. Lyszczak did not question why DA Paris wanted inmate M.P. sent to room 106. Lt. Lyszczak ordered Officer Phillips to go to R&D and "dress" inmate M.P. so he could be brought to Room 106. Lt. Lyszczak also went to R&D and he and Officer Phillips escorted M.P. to Room 106.

Lt. Lyszczak had no independent recollection of the events of May 31, 2019, but relied on a report he had written at the time which recorded the events of that date. (R-4.) Lt. Lyszczak was instructed to write a report of the events of that date by DA Paris. Lt. Lyszczak would not ordinarily write a report to document a phone call such as the one he received from DA Paris that day, but he did that day because he was ordered to do so by DA Paris. DA Paris did not give a reason for why he wanted Lt. Lyszczak to generate this report.

**Asa Paris**, is the DA of MCCC. In that role, he has multiple functions and he reports directly to the warden of MCCC. Officers at MCCC report to the custody commander at MCCC, who is a captain, but also report to him as needed. The conduct of officers at MCCC are governed by the facilities Standard Operating Procedures or “SOPs.” (See R-7.) DA Paris prepared his own report to document the activities of May 31, 2019, but he was not asked to do so by the warden or internal affairs investigators at MCCC. (R-2.)

DA Paris received a call from Lt. Gorski to inform him that inmate M.P. had arrived at MCCC. Inmates arrive at MCCC frequently, and DA Paris is not notified on the arrival of every inmate—he only receives notice like this where “circumstances warrant” a call. (Tr. at 97:2-10.) DA Paris had left a directive with Master Control at MCCC that he be notified when M.P. arrived at MCCC. Before M.P. was brought to MCCC, DA Paris was aware of their pending arrival and that M.P. was a danger to themselves requiring additional precautions to be taken with this particular inmate—although DA Paris did not recall where he received that information on M.P. Based upon what he knew, however, DA Paris had made the determination that inmate M.P. should be housed in the “Star PC” (SPC) unit of MCCC. (Tr. at 101:19-102:1.)

The SPC unit is a six-cell protective custody unit at MCCC. Protective custody is utilized to protect inmates from known threats from themselves or others. Inmates with mental health issues can be housed in these units for their own protection. When an inmate is brought into MCCC they are screened by medical staff who may recommend protective custody as an initial placement for an inmate as needed. Mental health staff

may also recommend an inmate be initially housed in protective custody. Internal Affairs is the unit that oversees the protective custody unit and is responsible for reviewing inmates who are preliminarily placed in that unit. DA Paris was aware that inmate M.P. was vulnerable and suicidal before they were brought to MCCC which is why he determined that inmate M.P. was going to be housed in the SPC unit. There were six cells in that unit, but DA Paris does not recall if there were any other inmates being housed in that unit at the time M.P. was brought to MCCC.

After Lt. Gorski's call, DA Paris gathered additional information about inmate M.P. and communicated via radio with Lt. Gorski to meet with him at MCCC. Around 2:00 p.m., he met with Lt. Gorski at MCCC and instructed him to process M.P. immediately and take her to mental health for screening. DA Paris also gave Lt. Gorski specific directions as to where inmate M.P. would be housed, ordering that she be held in the SPC area in cell number 6. (See R-2.)

Lt. Gorski confirmed that he understood DA Paris' orders. DA Paris wanted these orders carried out before the end of Lt. Gorski's shift, which ended around 3:15 p.m. DA Paris believed there was adequate time for Lt. Gorski to carry out his orders with respect to inmate M.P. before the end of Lt. Gorski's shift.

After meeting with Lt. Gorski, DA Paris confirmed with Ms. Burgess, who works in the mental health unit at MCCC, to expect inmate M.P. to be brought over from R&D. At approximately 2:30 p.m., DA Paris spoke to Lt. Gorski to get a tour report, and he asked Lt. Gorski for inmate M.P.'s institutional number. An institutional number is the number assigned to an inmate once they are processed into MCCC. When DA Paris called MCCC intake to get this institutional number from them, he was informed that M.P. had not been processed into MCCC yet. DA Paris called Lt. Gorski again to learn why had M.P. not been processed yet, but Lt. Gorski did not know why M.P. was still not processed into MCCC. DA Paris re-stated his orders to Lt. Gorski to have M.P. processed and taken to the mental health area before the end of his shift, and Lt. Gorski confirmed "yes, I know, you told me. It will be done." (Tr. at 55:15-22.)

Officers at MCCC like Lt. Gorski are not permitted to disregard orders. MCCC operates as a "para-military organization" with a structured rank system that governs the order and role of the facility. The expectation in an organization like MCCC is that orders will be followed. (Tr. at 55:23-57:2.)

DA Paris also reviewed security footage from MCCC taken on May 31, 2019. (R-3.) DA Paris confirmed that the time stamps on this footage is "relatively accurate" to within a few minutes. (Tr. at 60:20-61:3.) The third video on R-3 is video from the center core at MCCC. This is the area you enter after you pass through the secured sally-port<sup>1</sup> of the entrance to MCCC. DA Paris can be seen entering this area at approximately 2 p.m., and heading towards the "upper area" of MCCC where the medical department and room 106 are located. (Id.) DA Paris is wearing a military fatigues uniform in this footage because he was on military reserve service at the time. (Id.) At approximately 2:03 p.m., DA Paris is seen passing through this area again, this time heading towards the North East living unit at MCCC where the SPC unit is located. (Id.)

At 2:05, DA Paris and Lt. Gorski can be seen talking in the Center Core area at MCCC. (Id.) Although the video does not have any sound recorded, DA Paris explained that this is where he relayed his orders to Lt. Gorski regarding the processing of inmate M.P. This footage was after he and Lt. Gorski had already met up in the SPC area. Following their conversation, Lt. Gorski headed off towards the Master Control area of MCCC. (Id.)

The fourth video on R-3 was taken in the SPC area of MCCC. The entrance to this unit is at the beginning of the hallway as seen from the video footage. The unit has six cells lined up along the hallway with an officer's desk located at the end of the hallway by the camera. There is a shower area located to the right of the officer's desk. These are protective custody cells, and each cell has a chair outside the cell which can

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<sup>1</sup> A "sally port" is a secured entryway controlled by two doors or gates of which each must be closed before the other can open. YourDictionary.com, Sally Port, available at <https://www.yourdictionary.com/sally-port> (last visited June 22, 2022).



be utilized by officers to supervise inmates in these cells if the inmate is placed on a protective watch.

At 2:02 p.m., DA Paris can be seen with Lt. Gorski in this area standing outside a cell marked S-6. (Id.) DA Paris explained that he was giving instructions to Lt. Gorski at this time detailing his expectations for inmate M.P.'s processing and explaining that he wanted inmate M.P. placed in this particular cell. (Id.) DA Paris explained that he wanted M.P. in that particular cell because that is the cell closest to the officer's desk in that unit. Lt. Gorski did not question DA Paris' decision to place M.P. in protective custody at MCCC.

At about 3:20 p.m. on May 31, 2019, DA Paris received a call from Ms. Burgess at the mental health unit at MCCC informing him that M.P. had not arrived at the unit. DA Paris tried to call Lt. Gorski to find out what had happened, but his shift ended and he reached Lt. Lyszczak. DA Paris instructed Lt. Lyszczak to bring inmate M.P. to the mental health unit, whether M.P. had been processed into MCCC or not.

DA Paris ordered both Lt. Gorski and Lt. Lyszczak to write reports about this incident. (See R-4 and R-5.) DA Paris reviewed Lt. Gorski's report (R-5) regarding the incident on May 31, 2019. DA Paris noted that Lt. Gorski's report documents that he was not informed that M.P. had arrived in R&D at MCCC until 2:30 p.m. (Id.) The facility's logbook from Control Room 3, however, documents the Hamilton PD brought M.P. into MCCC at 1:35 p.m.<sup>2</sup> (R-6.) DA Paris further explained that this log documents that the Hamilton officers left MCCC at 1:50 p.m., indicating that inmate M.P. was accepted into MCCC custody by this time. (Id.) DA Paris found that this time discrepancy made Lt. Gorski's report factually inaccurate. Lt. Gorski's report documents that DA Paris gave Lt. Gorski instructions to process inmate M.P. and was to be housed in cell S-6 in protective custody after being seen by mental health but did not indicate that DA Paris ordered that this be completed before the end of Lt. Gorski's shift. (R-5.)

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<sup>2</sup> This timeline is further supported by DA Paris' testimony that he met with Lt. Gorski at MCCC after he was notified that inmate M.P. was brought to MCCC, and the surveillance video from MCCC (R-3) shows DA Paris and Lt. Gorski meeting, at MCCC, at approximately 2p.m. on May 31, 2019.

MCCC's SOP 1.04.4 requires all reports to be truthful and complete. (See R-7 at 6.) MCCC's SOP 1.02.2 further requires officers to comply with lawful verbal directives. (Id. at 3.) By failing to process inmate M.P. in a timely manner, Lt. Gorski disregarded DA Paris' direct orders. As a result, the mental health unit at MCCC had to stay longer than anticipated to process M.P. incurring additional overtime expenses for the facility. Lt. Gorski's report of the incident (R-5) contained incorrect information about the time M.P. was brought to MCCC and purposely omitted DA Paris' order to have M.P. processed by the end of Lt. Gorski's shift. (Id.) Based on these failures, DA Paris presented the information on the May 31, 2019, incident to the appropriate parties to institute disciplinary proceedings against Lt. Gorski, but DA Paris plays no direct role in the discipline of officers or the creation of the charges outlined in the Preliminary Notice of Disciplinary Action (PNDA). (R-1.) DA Paris knew he had to report the incident involving Lt. Gorski to the warden (see R-2), but he had no further expectations about what would happen to Lt. Gorski beyond that.

The logbook from Control Room 3 (R-6) documents that, after M.P. arrived at MCCC at approximately 1:30 p.m. on May 31, 2019, the facility began a "count" at approximately 2:00 p.m. that day. (Id.) Inmates at MCCC are counted twice per shift. During Lt. Gorski's shift, the inmates would be counted at 7 a.m. when the shifts change and again at 2:00 p.m. Some operations, like movement of inmates, stop during the count, however, the processing of new inmates does not stop during this time. Counts can take approximately twenty to twenty-five minutes to complete. The log from May 31, 2019, shows that the count that began at 2:00 p.m. was completed by 2:18 p.m.

**Lieutenant Michael E Gorski** has worked for the MCDOC since 1997, and is currently a Correctional Police Lieutenant with the MCDOC. Lt. Gorski was promoted to the rank of Lieutenant in 2006. Lt. Gorski is a shift commander at MCCC. In that role, he reports to the captain and the deputy administrator at MCCC and is responsible for the operations of the facility. On May 31, 2019, Lt. Gorski was working the "B" shift at MCCC as the shift commander. The "B" shift starts at 7:00 a.m. and ends at 3:00 p.m. When working as the shift commander, Lt. Gorski has officers that work the "floor" of

MCCC and report back to him in the central control at MCCC. He can communicate orders to these officers verbally or via telephone or, for more complex orders, he can meet with and brief his officers in the central control unit. Lt. Gorski can also receive emails and phone calls from the captain giving him orders and directions for his shift.

Lt. Gorski reviewed the details of the incident as set forth in the Preliminary Notice of Disciplinary Action (PNDA) filed against him on July 8, 2019. (R-1 at 2.) Lt. Gorski was working as the shift commander for the B shift at MCCC on May 31, 2019. At approximately 1:35 p.m., inmate M.P. was brought to MCCC as a commitment from a local police department. Lt. Gorski concedes that, at 2:00 p.m. and again at 2:30 p.m., he was instructed by DA Paris to process M.P. and have her taken to mental health and housed in SPC cell 6. (Tr. at 155:11-18.) SPC is a unit with six cells to house “protective custody, suicide watches, [and] special housing scenarios.” (Id. at 156:6-8.) On May 31, 2019, no inmates were currently being housed in that unit. Lt. Gorski does not remember how long the SPC unit was unoccupied, but believes it was “days” before May 31, 2019. The allegations in the PNDA, however, state that he was instructed to “immediately” process M.P. and to have her housed in SPC cell 6 “before the end of his shift.” (R-1 at 2.) Lt. Gorski contends that he was never ordered to carry out DA Paris’ orders “immediately” or to have the orders completed “before the end of his shift.” (Tr. at 157:3-6.)

Lt. Gorski spoke to DA Paris on May 31, 2019, when Lt. Gorski telephoned AP Paris to let him know that inmate M.P. had been brought to MCCC. Lt. Gorski was aware that MCCC administration wanted to be notified when Inmate M.P. arrived at MCCC, so he called DA Paris to let him know that Inmate M.P. had arrived. Lt. Gorski testified that he did not recall how he was aware that the administration wanted to know when Inmate M.P. was brought in but he knew to alert the administration which he did by calling DA Paris. Lt. Gorski’s report on the incident documents that he received a directive from Captain Kownacki to contact the “on-call” upon Inmate M.P.’s arrival which is why he called DA Paris to notify him. (R-5.) Lt. Gorski did not receive any further direction from DA Paris regarding inmate M.P. on that call.

After their telephone call, Lt. Gorski and DA Paris met in person at MCCC. At that time, DA Paris told Lt. Gorski to add mental health to the intake process for inmate M.P. before sending inmate M.P. to be housed in SPC cell 6. This was a deviation from the normal process for inmate intake at MCCC. DA Paris did not explain why he was ordering this treatment for inmate M.P., but Lt. Gorski did not care why DA Paris was giving these orders. Lt. Gorski takes orders from “three people” – the warden, captain, and DA and delegates those orders to his subordinates to carry them out. (Tr. at 162:8-14.) The description of the incident attached to the PNDA which charges Lt. Gorski (R-1 at 2) states that after receiving the orders from DA Paris, Lt. Gorski “repeated the directive and acknowledged understanding it,” Lt. Gorski testified that he did not repeat DA Paris’ orders back to him or otherwise verbally acknowledge understanding the orders. (Tr. at 163:7-18.)

When Lt. Gorski met with DA Paris in the SPC area of MCCC, that area was closed and was not housing prisoners at that time. Despite this, Lt. Gorski did not question DA Paris’ decision to house inmate M.P. in the SPC area. The SPC area houses inmates placed into protective custody, those with mental health issues, and inmates requiring close “Q15” watch supervision where the inmate is checked every fifteen minutes or those requiring constant supervision. (Id. at 37:12-17.) At the time DA Paris gave Lt. Gorski his orders regarding inmate M.P., Lt. Gorski did not attach an importance to the timing of M.P.’s processing. (Id. at 198:1-7.) He did not view DA Paris’ instructions as including the requirement that the processing and housing of M.P. had to be done immediately. (Id.) After receiving DA Paris’ instructions, Lt. Gorski instructed the sergeant in the R&D area to add mental health to inmate M.P.’s intake prior to sending M.P. to a housing unit. (Id. at 198:12-17.) He was not informed that the orders from DA Paris had not been carried out by his subordinates before he left at the end of his shift that day. (Id. at 168:9-12.)

Intake of a new inmate usually takes thirty to forty-five minutes but may be shorter if the inmate has been housed in MCCC previously. (Id. at 211:1-9.) Inmate intake starts when an inmate gets brought in. The inmate is then checked by medical staff prior to acceptance. The officers who bring an inmate into MCCC generally stay

until the inmate is cleared by medical and accepted into MCCC. The Control Room 3 logbook documents that inmate M.P. was brought into MCCC by the Hamilton Police Department at 1:35 p.m. (R-6.) The logbook shows that the Hamilton Police Department did not leave MCCC until 1:50 p.m. (id.), which indicates that inmate M.P. had been medically cleared for admission to MCCC by 1:50 p.m. on May 31, 2019.

Lt. Gorski further added that, after he spoke to DA Paris to report that inmate M.P. had arrived at MCCC, he did not get further orders via telephone from DA Paris regarding inmate M.P. He received orders to have inmate M.P. processed for mental health and housed in SPC cell 6 when he met with DA Paris at MCCC that day. When he later spoke to DA Paris via telephone around 2:30 p.m. that day, when DA Paris contacted him to get inmate M.P.'s inmate number, he had no further discussion with DA Paris about the orders for processing and housing inmate M.P. Lt. Gorski testified that he never told DA Paris "yes, you told me. It will be done" as reported in DA Paris' report (R-2 at 2) because they had no further discussion regarding DA Paris' orders at that time.

Lt. Gorski was instructed to produce a report of the incident of May 31, 2019, and he did so. (See R-5.) When he was told to write a report, Lt. Gorski was not told that he was under further investigation for his conduct on May 31, 2019. Had he known that he was under investigation for his actions that day, he would have put additional attention into the details of his report, such as the times he documented in the report. Lt. Gorski conceded that he wrote this report a few days after the incident, and he "kind of estimated or guessed" at the approximate times he put in the report. (Tr. at 175:69.)

Lt. Gorski did not review the Control Room 3 logbook (R-6) prior to preparing his report on the incident. (R-5.) The logbook records that inmate M.P. was brought to MCCC by the Hamilton Police Department at 1:35 p.m. on May 31, 2019. (R-6.) The logbook also documents that an inmate count was started at 2:00 p.m. that day. (See Id.) Inmate counts take precedence over other activity generally. Processing new inmates into the facility is usually stopped during an inmate count because the computer

utilized to process new inmates into the facility is the same one used to do the inmate count. According to the logbook, the inmate count that afternoon ended at 2:18 p.m.

While Lt. Gorski does not often get such specific orders for processing a particular inmate as he received on May 31, 2019, he stated that “we are [ ] in the business of taking orders and following orders” and when, as a Shift Commander, he is tasked with orders, he assumes responsibility to delegate those orders “without question.” (Tr. at 189:1-6.) Lt. Gorski summarized:

It’s not for me to question my orders given, it’s just me to get them done, and I delegate them to the appropriate authorities with the expectation of that happening so it – it’s just – it’s just what we do. It’s what I do, I follow orders, I delegate orders, and I take my job very, very serious[ly], I have since day one.

[Id. at 189:7-12.]

### **FACTUAL FINDINGS**

The appellant acknowledges that he received specific orders from his superior, DA Paris, regarding the intake of inmate M.P. The appellant does not challenge the propriety of the orders he received from DA Paris to have inmate M.P. sent for a mental health evaluation in room 106 and to have inmate M.P. subsequently housed in protective custody in cell number 6 in the SPC unit at MCCC. It is also undisputed that inmate M.P. was brought into MCCC at approximately 1:35 p.m. on May 31, 2019. (See R-6.) Lt. Gorski was aware of inmate M.P.’s arrival at MCCC and he notified DA Paris to let him know that inmate M.P. had been brought in.

At approximately 2:00 p.m. on May 31, 2019, DA Paris met with the appellant to convey orders for inmate M.P. to be brought to room 106 for a mental health evaluation, and to be housed in protective custody in cell 6 in the SPC unit at MCCC. (See R-3.) Although the appellant denies that he repeated the orders back to DA Paris or otherwise verbally acknowledged that he received them contrary to DA Paris’ account of their meeting at MCCC that day (compare Tr. at 181:4-21 to Tr. at 55:12-22), the appellant

nonetheless does not deny receiving or understanding the orders he received from DA Paris that day.

Based upon the testimony and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following **FACTS**:

1. On May 31, 2019, Lt. Gorski was working as the shift commander for "B Shift" at MCCC.
2. Working the "B Shift" at MCCC, Lt. Gorski was on duty from 7:00 a.m. until 3:00 p.m. on May 31, 2019.
3. As the shift commander, Lt. Gorski was responsible for the operations of MCCC from 7:00 a.m. until 3:00 p.m. on May 31, 2019.
4. At approximately 1:30 p.m. on May 31, 2019, inmate M.P. was brought to MCCC by the Hamilton Police Department. (See R-6.)
5. Pursuant to orders from the administration at MCCC, Lt. Gorski knew that the administration of MCCC wanted to be notified when inmate M.P. was brought into MCCC.
6. After inmate M.P. was brought to MCCC, pursuant to the orders from the administration requiring notice of inmate M.P.'s arrival, Lt. Gorski telephoned DA Paris to notify him that inmate M.P. had arrived at MCCC. Like all inmates brought into MCCC, Inmate M.P. was maintained in the R&D Unit at MCCC pending her completion of the intake process before being housed at MCCC.
7. At approximately 2:00 p.m. on May 31, 2019, DA Paris met with Lt. Gorski at MCCC.
  - a. DA Paris came to MCCC directly from his military service with the National Guard, and was still attired in his National Guard uniform when he traveled to MCCC to give directions to Lt. Gorski regarding inmate M.P. (See R-3.)

8. During his meeting with Lt. Gorski at MCCC at approximately 2:00 p.m. on May 31, 2019, DA Paris gave Lt. Gorski specific orders regarding Inmate M.P. Those orders were for Inmate M.P. to be brought for a mental health evaluation in "Room 106" at MCCC and for Inmate M.P. be placed in housing in cell six of the SPC protective custody unit at MCCC.

9. After meeting with Lt. Gorski, DA Paris confirmed with Ms. Burgess, who works in the Mental Health Unit at MCCC, to expect inmate M.P. to be brought over from R&D.

10. At approximately 2:30 p.m., DA Paris contacted Lt. Gorski via telephone to follow up and obtain Inmate M.P.'s inmate number. At that time, Inmate M.P. had not been "dressed in" or completed the intake process at MCCC yet, had not been brought for a mental health evaluation or placed in housing in cell six of the SPC protective custody unit at MCCC. At that time, Inmate M.P. was still maintained in the R&D unit at MCCC.

11. Lt. Gorski's shift at MCCC on May 31, 2019, ended at 3:00 p.m.

12. Lt. Lyszczak was the shift commander for the "C Shift" at MCCC on May 31, 2019, and relieved Lt. Gorski as shift commander following the end of Lt. Gorski's shift.

13. The "C Shift" at MCCC runs from 3:00 p.m. until 11:00 p.m.

14. At approximately 3:30 p.m. on May 31, 2019, DA Paris telephoned Lt. Lyszczak and asked if Inmate M.P. was still in the R&D Unit at MCCC.

15. Lt. Lyszczak confirmed for DA Paris that, as of approximately 3:30 p.m. on May 31, 2019, Inmate M.P. was still in the R&D Unit at MCCC. (See R-4.)

16. DA Paris ordered Lt. Lyszczak to have Inmate M.P. brought to Room 106 at MCCC for a mental health screening.

17. Following his telephone call with DA Paris, Lt. Lyszczak went to the R&D Unit to ensure Inmate M.P. got "dressed in" to MCCC. Lt. Lyszczak ordered Officer Phillips to bring Inmate M.P. to Room 106 and Lt. Lyszczak also went to the R&D Unit where he and Officer Phillips escorted Inmate M.P. to Room 106 for a mental health screening.



18. Lt. Gorski wrote a report regarding the events of May 31, 2019 on June 5, 2019. (R-5.)

a. In his report, Lt. Gorski documented that he learned from Sgt. Victor that Inmate M.P. had arrived at MCCC at approximately 2:30 p.m. and contacted DA Paris to make him aware of Inmate M.P.'s arrival. (Id.)

b. The report further details that DA Paris "instructed me that inmate [M.P.] was to be housed in Star PC Cell S-6 after being seen by medical and mental Health. [sic.]" (Id.)

c. The report concludes that "Sgt. Victor was contacted and advised that inmate [M.P.] was too been [sic.] housed in Cell S-6 in star PC after being seen by medical and mental health." (Id.)

These factual findings are supported by a residuum of legal and competent evidence in the record.

### **LEGAL ANALYSIS AND DISCUSSION**

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless 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 in N.J.A.C. 4A:2-2.3.

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).

**The alleged failures of the respondent to follow the Attorney General guidelines for internal affairs investigations do not merit a dismissal of the pending charges.**

The appellant raised, for the first time in closing argument, a claim that the charges against the appellant should be dismissed "solely on the multiple violations of the New Jersey Attorney General guidelines concerning IA [(Internal Affairs)] investigations." (App. Closing at 22.) The appellant cites to the Attorney General's (AG) Guidelines for IA Policy and Procedures. (App. Closing at Ex. A.) The New Jersey Legislature adopted N.J.S.A. 40A:14-181, which provides that every law enforcement agency in the State must "adopt and implement guidelines . . . consistent with the [AG] guidelines." O'Rourke v. City of Lambertville, 405 N.J. Super. 8, 19 (App. Div. 2008).

The appellant contends that, pursuant to the AG's guidelines, both DA Paris and Lt. Gorski should have been interviewed by IA, and DA Paris' orders to Lts. Gorski and Lyszczak to prepare reports were inconsistent with the AG's IA guidelines. (App. Closing at 19.) The appellant further contends that MCDOC's failure to provide Lt. Gorski with a "Target Letter"<sup>3</sup> prior to requiring him to author a report of the May 31, 2019, incident, MCDOC's failure to conduct recorded interviews of witnesses and those individuals

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<sup>3</sup> Pursuant to AG IA guidelines, "once a complaint has been received, the subject officer shall be notified in writing that a report has been made and that an investigation will commence." (App. Closing at Ex. A at § 5.1.14.)

involved in the incident, and DA Paris' conducting his own investigation deprived Lt. Gorski of adequate due process. (Id. at 21.) Because of the failure to comply with the AG guidelines, the appellant contends that "the only proper remedy is a complete dismissal of the charges." (Id. at 22.)

The appellant's submission of the Attorney General Guidelines as part of their closing arguments and their arguments based upon these guidelines is untimely as closing arguments are not a proper venue for introducing additional evidence. See R. 1:7. Regardless of the untimeliness of the appellant's arguments on this point, however, the arguments themselves are unavailing. A police agency that fails to follow the AG guidelines does not automatically forfeit any ability to discipline, or even remove an officer who is found to have violated applicable standards. The proper emphasis is on whether the failure to follow the specific requirements set forth in those standards prevented the officer from receiving the benefit of a fair investigation and a fair hearing. O'Rourke v. City of Lambertville, 405 N.J.Super. 8, 21-22 (App. Div. 2008). See also McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388, 395-97 (App. Div. 2008) (absence of AG guidelines does not prevent police department from removing an officer based on misconduct, and finding the standard to be applied was whether the accused was deprived of a fair investigation and a fair hearing); In re King, 2013 N.J.Super. Unpub. LEXIS 2664 (November 1, 2013) (finding "although [Long Branch Police Department] did not adopt AG guidelines, it conducted a thorough investigation and afforded [appellant] a fair hearing; consequently no relief is warranted").

Proceedings before an administrative law judge (ALJ) are conducted de novo, considering all evidence anew and making findings that are not premised on the findings of the local hearing officer. In re Morrison, 216 N.J.Super. 143, 151 (App.Div. 1987). Some, but not all procedural irregularities and even bias in the initial hearing procedures may be cured by a subsequent hearing before an ALJ. Id. (finding "no reason to believe that any prejudice which might have existed at the local level affected the proceedings before the ALJ"). See also Ensslin v. Twp. of No. Bergen, 275 N.J.Super. 352, 361 (App. Div. 1994) (stating that "procedural irregularities at the

departmental level are considered 'cured' by a subsequent plenary hearing at the agency level"), certif. denied 142 N.J. 446 (1995).

The appellant contends the failure of MCDOC to adhere to the AG's guidelines for IA investigations "deprived him of adequate due process." (App. Closing at 21.) "Fundamentally, due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. The minimum requirements of due process, therefore, are notice and the opportunity to be heard." Doe v. Poritz, 142 N.J. 1, 189 (1995) (citing US v. Raffoul, 826 F.2d 218, 222 (3d Cir. 1987), Gross v. Lopez, 419 U.S. 565 (1975)). The appellant had the benefit of written notice of the charges against him (see R-1 and R-11) and the opportunity to call witnesses on his behalf and to question those witnesses brought against him at a hearing. The appellant has failed to present any factual basis to find that Lt. Gorski has not had a full measure of due process in challenging the charges against him during the de novo hearing at the OAL.

With respect to the lack of a "Target Letter," the very term "Target Letter" derives from New Jersey's adherence to the "target doctrine" which provides that "a 'target' of a grand jury proceeding must be advised that he is a target and of his right not to incriminate himself." State v. Vinegra, 73 N.J. 484, 488 (1977). It is not clearly established, on the record presented, whether Lt. Gorski was a "target" of an investigation at the time he was asked to write this report. See State v. DeCola, 33 N.J. 335, 342 (1959) (defining "target" as "person whose criminal liability is the object of a grand jury inquiry"). The basis of the appellant's claim is the AG guideline for IA investigations that "once a complaint has been received, the subject officer shall be notified in writing that a report has been made and that an investigation will commence." (App. Closing at Ex. A at § 5.1.14.) Lt. Gorski's report was dated June 5, 2022. (R-5.) DA Paris' report was dated a day later on June 6, 2022. (R-2.) DA Paris testified that when he wrote his report to present to the appropriate parties, he had no knowledge or expectations of what would happen to Lt. Gorski at that time beyond the submission of his own report. (Tr. at 94:20-95:4.) DA Paris neither recommended nor played any role in the determination of whether or not an IA investigation would be commenced based on Lt. Gorski's conduct on May 31, 2019. (Id. at 95:2-96:10.) That determination was

made by the warden of MCCC based on the information submitted. (Id. at 95:15-96:2.) Given the timing of these reports, it is unclear on the record presented whether or not “a report has been made and an investigation will commence” (App. Closing at Ex. A at § 5.1.14) to prompt the necessity for a written notice under the AG’s guidelines at the time Lt. Gorski wrote his report on June 5, 2022. (R-5.) Further, even if there was an actionable failure to notify Lt. Gorski that he was the target of an IA investigation prior to his drafting a report on the May 31, 2019, incident, the proper remedy for violations of a privilege against self-incrimination is not dismissal of the charges, but rather suppression of the improperly obtained self-incriminating testimony or statement and its fruits should a prosecuting authority seek to utilize it at trial. Vinegra, 73 N.J. at 487-88.

The appellant, however, is not seeking to suppress the use of Lt. Gorski’s written statement on the grounds that the resulting statement (R-5) was self-incriminatory. The appellant asserts rather that the failure to issue Lt. Gorski a warning that he was the target of an investigation for his conduct on May 31, 2019, led him to take less care than he may have otherwise taken in completing his report of the incident (R-5) and that he would have been more careful to ensure the report’s accuracy if he had known that the subject of the report was going to be the focus of disciplinary action. While he admits that he “kind of estimated or guessed” at the approximate times he put in that report (Tr. at 175:69), he stated that he would have paid additional attention in recording these details had he known the incident was going to be the subject of an investigation.

The relevance of Lt. Gorski’s report (R-5) to these proceedings is not that it is self-incriminating, but rather that the report, as filed, is factually inaccurate. Among the charges filed against Lt. Gorski was a count under N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO No. C-8, falsification or intentional misstatement of material fact for the contents of his written report of the May 31, 2019, incident. (R-5.) This regulation addresses “intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation, or other proceeding.” (R-9 at 3.) The Standard Operating Procedures (SOP) for MCCC require “[r]eports submitted by all employees, verbal or written, shall be truthful and complete” and expressly prohibit employees from “knowingly enter[ing],

or cause to be enter[ed], any inaccurate, false, or improper information” in a report. (R-7 at § 1.04.4.) Lt. Gorski had an affirmative obligation to be truthful and accurate in his report regardless of whether or not he was the target of an investigation for the conduct he was reporting on. Even in the context of criminal prosecutions, it is clearly recognized that, while the Fifth Amendment may grant a privilege to remain silent, it “does not endow the person who testifies with a license to commit perjury.” Glickstein v. United States, 222 U.S. 139, 142 (1911). A right against self-incrimination, if properly established, may provide a right to be silent, it does not otherwise abridge any obligation Lt. Gorski had to be truthful and complete in any reports he filed with his employer. Accordingly, any claims of violations of Lt. Gorski's Fifth Amendment rights would not justify the dismissal of any subsequent disciplinary charges levied against Lt. Gorski for failing to meet his obligation to be accurate and complete in any reports he filed as part of his employment with MCDOC.

For these reasons, I **CONCLUDE** that the allegations of due process violations set forth by the appellant in his closing argument (see App. Closing at 15-22) do not justify the dismissal of the charges brought against Lt. Gorski.

### **CHARGES**

The first charge against Lt. Gorski is incompetency, inefficiency or failure to perform duties. N.J.A.C. 4A:2-2.3(a)(1). In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

The appellant's status as a corrections officer subjects him to a higher standard of conduct than ordinary public employees since corrections officers, like police, are held to a high standard of professional conduct because when a corrections officer fails 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).]

Despite the receipt of orders from DA Paris at approximately 2:00 p.m. on May 31, 2019, it is undisputed that inmate M.P. had not been "dressed in" to MCCC, taken for a mental health evaluation, and housed in the protective custody SPC unit by 2:30 p.m. when DA Paris checked in with the appellant by telephone (Tr. at 197:2-10) or even by approximately 3:35 p.m. when DA Paris spoke to Lt. Lyszczak to inquire why inmate M.P. was still in MCCC's R&D unit and had not been brought for a mental health evaluation or housed in the protective custody SPC unit. (Id. at 18:2-6.) Contradicting the testimony of DA Paris, the appellant denies that the orders he received from DA Paris included the requirement for him to act "immediately" or to have these orders carried out before the end of his shift at 3:00 p.m. that day. (Compare Id. at 52:7-11 to Id. at 160:6-13.)

The appellant contends that the only way for the respondent to carry its burden on this, or any of the charges, is to find "[DA] Paris wholly credible and [Lt.] Gorski entirely non-credible." (App. Closing at 29.) Regardless of whether DA Paris specifically instructed the appellant to carry out his orders to have inmate M.P. sent to mental health for an evaluation and housed in the protective custody SPC unit "immediately" or before the end of the appellant's shift as DA Paris contends or if DA Paris' orders were silent on the timeliness requirements of his order as Lt. Gorski contends, the circumstances surrounding the orders issued certainly support a finding

that timeliness was a requirement of DA Paris' orders that day. Lt. Gorski testified that he was aware that the administration at MCCC had concerns about inmate M.P. and wanted to be alerted when inmate M.P. was brought to MCCC. After Lt. Gorski notified DA Paris that inmate M.P. was at MCCC, DA Paris personally reported to MCCC to give Lt. Gorski his orders about what to do with inmate M.P. that day. When DA Paris travelled to MCCC to personally give the orders to Lt. Gorski around 2 p.m. that day, he was still attired in his military uniform from reserve duty, providing further visual reinforcement to Lt. Gorski to the apparent importance and urgency of the orders regarding inmate M.P. as DA Paris directly left his military duty to personally deliver orders to Lt. Gorski regarding inmate M.P. DA Paris further called Lt. Gorski around 2:30 that afternoon to check on inmate M.P.'s institutional number. While inmate M.P. had not been "dressed in" to MCCC yet, that phone call further makes clear that DA Paris' expectations were that his orders regarding inmate M.P. were to be carried out in a timely manner.

Lt. Gorski testified that, after getting the orders from DA Paris, he delegated DA Paris' orders to his sergeants and believed that these orders were carried out prior to the end of his shift that day. (*Id.* at 168:5-8.) Lt. Gorski's written report further details that he passed along these orders to Sgt. Victor. (R-5.) Lt. Gorski testified that it takes approximately thirty to forty-five minutes to have a newly received inmate checked into MCCC. Inmate M.P. arrived at MCCC at approximately 1:30 p.m. and DA Paris gave Lt. Gorski orders regarding inmate M.P.'s processing into MCCC around 2:00 p.m. When DA Paris called Lt. Gorski at approximately 2:30 p.m. to follow up on inmate M.P.'s status, inmate M.P. had still not been "dressed in" to MCCC. This should have put Lt. Gorski on notice that whatever orders he delegated to his sergeants regarding inmate M.P.'s intake and processing were not being carried out in a timely manner as inmate M.P. remained in the R&D unit an hour after being brought into MCCC and a half hour after DA Paris personally delivered his orders to Lt. Gorski regarding inmate M.P.'s processing into MCCC. Despite this, Lt. Gorski did not take any further actions to ensure that inmate M.P. was given a mental health evaluation and housed in the protective custody unit at MCCC before the end of his shift at 3:00 p.m.



The nature of the orders given by DA Paris to Lt. Gorski further lend a sense that timeliness is important to their completion. While DA Paris did not explain to Lt. Gorski why he wanted inmate M.P. to be evaluated by mental health at MCCC and housed in a specific cell within the protective housing unit, Lt. Gorski did not ask for explanation of those orders. What Lt. Gorski did know, however, was that DA Paris, his superior in the chain-of-command at MCCC, wanted inmate M.P. to be placed into a protective custody unit at MCCC, a unit which Lt. Gorski described was designated to house inmates under “protective custody, suicide watches, [and] special housing scenarios.” (Tr. at 156:6-8.) After being informed that there was an inmate brought into MCCC who MCCC’s administration felt was a risk to herself or others significant enough to require specific special handling and housing in a protective custody unit as the orders given regarding inmate M.P. clearly conveyed to Lt. Gorski, it would seem contradictory to those orders to permit inmate M.P. to continue to languish in the intake area of MCCC from the time inmate M.P. arrived at MCCC at approximately 1:30 p.m. until approximately 3:30 p.m. when Lt. Lyszczak, after a telephone call from DA Paris, went to R&D to bring inmate M.P. for a mental health evaluation pursuant to DA Paris’ orders.

DA Paris relied on Lt. Gorski, his subordinate, to carry out his orders regarding inmate M.P. Relying on subordinates in a chain of command such as that at MCCC is critical to the functioning of an institution such as MCCC. (Tr. at 56:10-20.) As Lt. Gorski noted, when he gives orders to his subordinates:

I’m the Shift Commander and they got to follow my orders, just like I follow my boss’ orders without question and I expect the same from my subordinates and I always welcome them to – they can question me much later but after it’s done, they got to follow the order first.

[Tr. at 212:1-6.]

For these reasons, I **FIND** that timeliness was a component of the orders that DA Paris personally gave to Lt. Gorski at approximately 2:00 p.m. on May 31, 2019, and I **CONCLUDE** that, by not carrying out those orders to have inmate M.P. taken for a mental health evaluation and housed in cell 6 in the MCCC protective custody SPC unit

in a timely manner before the end of Lt. Gorski's shift at 3:00 p.m., the respondent has met their burden to demonstrate that Lt. Gorski's failure to carry out these orders given to him by DA Paris in a timely manner rises to a level of incompetency, inefficiency, and failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1).

Lt. Gorski was also charged with multiple counts of violating N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO Nos. B-1, neglect of duty, B-4, failure or excessive delay in carrying out an order, C-9, insubordination, and D-6, violation of administrative procedure or regulation involving safety and security for his failure to carry out DA Paris' orders regarding inmate M.P. in a timely manner. While not specifically defined by the regulations, charges of neglect of duty generally means that a person is not performing his or her job. The person may have failed to perform an act that the job requires or may have been negligent in the discharge of a duty. See Maurice Jackson v. Mercer County Corrections Ctr., CSV 03296-18, Initial Decision (June 26, 2019), adopted, Civil Service Comm'n (July 31, 2019) <http://lawlibrary.rutgers.edu/oal/search.html>. MCPSTOCO regulations define insubordination as, in part, "intentional disobedience or refusal to accept [a] reasonable order." (R-9 at 3.) MCCC Standards and Operating Procedures 004, § 1.02.2 requires all officers and correctional employees be responsible for compliance with all lawful orders and other directives, "whether transmitted in writing or verbal." (R-7.)

At approximately 2:00 p.m. on May 31, 2019, Lt. Gorski was given a direct order by an individual senior to him in his recognized chain of command to ensure that Inmate M.P. received a mental health screening and was secured in a cell in the protective custody unit at MCCC. These orders were issued out of concern for the safety of an incoming inmate who MCCC administration believed was a suicide risk who needed to be held in protective custody. While Lt. Gorski contends that he delegated those orders he received from DA Paris to a sergeant to perform, he still bore responsibility for seeing the order carried out and, despite DA Paris' subsequent follow-up telephone call to Lt. Gorski at approximately 2:30 p.m. to check on inmate M.P.'s status, inmate M.P. remained in the R&D unit at MCCC until approximately 3:30 p.m. when DA Paris ordered Lt. Lyszczak to complete the orders that Lt. Gorski did not carry out before the

end of his shift at 3:00 p.m. that day. Accordingly, I **CONCLUDE** that Lt. Gorski was negligent in discharging the duties of his job and he failed to carry out a direct lawful orders of a superior regarding the intake of inmate M.P. and that the respondent has met its burden of proof to sustain the charges of violations of MCPSTOCO Nos. B-1, neglect of duty, B-4, failure or excessive delay in carrying out an order, C-9, insubordination and D-6, violation of administrative procedure or regulation involving safety and security.

Lt. Gorski was also charged with one count of N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO No. C-8, falsification or intentional misstatement of material fact for the contents of his written report of the May 31, 2019, incident. (R-5.) This regulation addresses “intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation, or other proceeding.” (R-9 at 3.) In his written report, Lt. Gorski reported that, on May 31, 2019, at “appx. 1430 hrs. I was advised by Sgt. Victor that inmate [M.P.] arrived in R&D” and pursuant to previous directive “I contacted D.A. Paris” and received orders that inmate M.P. was to be housed in SPC cell 6 after being seen by medical and mental health. (R-5.)

The timeline of events that day is undisputed. Inmate M.P. arrived at MCCC at approximately 1:30 p.m. on May 31, 2019. (See R-6.) Lt. Gorski notified DA Paris of Inmate M.P.’s arrival by telephone and, following that phone call, Lt. Gorski and DA Paris met at MCCC at approximately 2:00 p.m. where Lt. Gorski received his orders from DA Paris. (See R-3.) While Lt. Gorski testified that, had he known he was under investigation for failing to carry out DA Paris’ orders that day, he would have put additional attention into the details of his report, in particular the times he documented in that report (Tr. at 174:3-7.), Lt. Gorski was under an affirmative obligation to ensure that all reports he submitted were “truthful and complete” and do not knowingly contain “any inaccurate, false, or improper information.” (R-7 at 6 (MCCC SOP 004 at § 1.04.4).)

Lt. Gorski’s shift ended on May 31, 2019, at 3:00 p.m. If, as Lt. Gorski’s report detailed, Inmate M.P. arrived at MCCC at 1430 hours or 2:30 p.m., that would have left

just a half an hour for Lt. Gorski to notify DA Paris of Inmate M.P.'s arrival by telephone, DA Paris to travel to MCCC and personally meet with Lt. Gorski on site at MCCC to give him orders regarding Inmate M.P., and for DA Paris to leave and make a follow-up telephone call to check on the status of Inmate M.P. a half hour after their meeting at MCCC before Lt. Gorski left MCCC at 3:00 p.m. at the end of his shift. Given the number of events that occurred that day, it would appear that Lt. Gorski's stated timing of Inmate M.P.'s arrival at MCCC at 2:30 p.m. was more than a casual oversight. This is further compounded by the fact that Lt. Gorski had a follow-up call from DA Paris at 2:30 on May 31, 2019, where he had to inform DA Paris that his earlier orders had not been complied with and Inmate M.P. was still in the R&D Unit at MCCC. Following this call, Lt. Gorski was ordered to prepare a report of this incident, placing him on notice that his conduct in carrying out or not carrying out DA Paris' orders in a timely manner were going to be subjected to further scrutiny. Accordingly, I **CONCLUDE** that the respondent has met their burden to sustain the charge of N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO No. C-8, falsification or intentional misstatement of material fact.

### **PENALTY**

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, 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 Bock 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, Bock, 38 N.J. at 523, 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, 268 N.J. Super. at 205. The respondent has proven by a preponderance of the credible evidence the following charges against Lt. Gorski: N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties and N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO Nos. B-1, neglect of duty, B-4, failure or excessive delay in carrying out an order, C-8, falsification or intentional misstatement of material fact, C-9, insubordination, and D-6, violation of administrative procedure or regulation involving safety and security. A twenty-five-working-day suspension was imposed upon Lt. Gorski for his conduct. The question to be resolved is whether the discipline imposed in this case is appropriate.

The appellant opted not to brief on the issue of the applicable penalty in their closing argument, instead focusing their argument exclusively on the propriety of the charges themselves. (App. Closing at 30.) The appellant’s prior disciplinary history (R-8) is as follows: a written reprimand for lateness on August 29, 2019, a half-day fine of \$206.11 for violating a rule, regulation, or policy on March 9, 2013, and written reprimands for neglect of duty on March 6, 2013, chronic or excessive absenteeism and refusal to work overtime on November 15, 2010, and unsatisfactory attendance on August 30, 2005.

Against this record, the imposition of a fifteen-working-day suspension is a significant escalation from what was imposed in prior disciplinary actions. Appropriate focus, however, must be given to the nature and seriousness of Lt. Gorski’s current actions. Lt. Gorski was given direct orders regarding an inmate his custody to have that inmate undergo a mental health evaluation and to place that inmate in supervised custody. While the reasons for that supervised custody order were not conveyed to Lt. Gorski by DA Paris at the time, an order to take a given inmate and to place them into a more supervised environment such as the protective custody unit at MCCC carries

obvious implications for the safety of that inmate and possibly other inmates in MCCC custody. Despite this, Lt. Gorski did not carry out DA Paris' orders and Inmate M.P. remained in the R&D unit at MCCC for at least two hours until DA Paris reached Lt. Lyszczak and had him escort Inmate M.P. out of the R&D unit. When ordered to prepare a report regarding his failure to carry out DA Paris' orders with respect to Inmate M.P., Lt. Gorski knowingly misstated the timeline of Inmate M.P.'s arrival at MCCC in an apparent effort to minimize his temporal delay in carrying out DA Paris' orders.

Given the serious nature of these actions—even without a prior disciplinary history—imposition of major discipline would be warranted. (See, e.g., R-9 (MCPSTOCO noting penalties for first violation of B-4 (failure or excessive delay in carrying out an order) is a three-day suspension, C-8 (falsification) ranges from five-day suspension to removal, C-9 (insubordination) is five-day suspension, and D-6 (violation of administrative procedures and/or regulations involving safety and security) ranges from reprimand to removal).) As a corrections officer, Lt. Gorski 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 05336-02, Initial Decision (December 11, 2003), adopted, Merit Systems Board (February 17, 2004) <http://njlaw.rutgers.edu/collections/oal/search.htm> (emphasis added). A corrections officer who fails in their professional duty by not obeying a lawful order from a superior can place their fellow corrections officers and the inmates in their charge at great risk of harm. While corrections officers are held to a high standard, Lt. Gorski's actions on May 31, 2019, failed to live up to that high standard.

### CONCLUSION

After having considered all of the proofs offered in this matter, the impact upon the institution regarding the behavior by the appellant herein, and in light of the seriousness of the offense and in consideration of the appellant's prior disciplinary record, I **CONCLUDE** that Lt. Gorski's conduct on May 31, 2019, warrants the imposition of a fifteen-working-day suspension as imposed by the appointing authority, which, in part, is meant to impress upon him, as well as others, the seriousness of his infractions.

### ORDER

The respondent has proven by a preponderance of the credible evidence the following charges against Lt. Gorski: N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties and N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of MCPSTOCO Nos. B-1, neglect of duty, B-4, failure or excessive delay in carrying out an order, C-8, falsification or intentional misstatement of material fact, C-9, insubordination, and D-6, violation of administrative procedure or regulation involving safety and security. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**.

I **ORDER** that the penalty of a fifteen-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. 40A:14-204.

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.

September 23, 2022

DATE

  
\_\_\_\_\_  
DAVID M. FRITCH, ALJ

Date Received at Agency:

September 23, 2022

Date Mailed to Parties:

September 23, 2022

/dw



**APPENDIX**  
**LIST OF WITNESSES**

**For appellant:**

Michael E. Gorski, Corrections Lieutenant, MCCC

**For respondent:**

Mark Lyszczak, Lieutenant (retired), MCCC

Asa Paris, Deputy Administrator, MCCC

**LIST OF EXHIBITS IN EVIDENCE**

**For appellant:**

None.

**For respondent:**

- R-1 Preliminary Notice of Disciplinary Action, July 8, 2019
- R-2 Incident Report, DA Paris, June 6, 2019
- R-3 DVD Containing Video Surveillance from MCCC, May 31, 2019
- R-4 Incident Report, Lt. Lyszczak, May 31, 2019
- R-5 Incident Report, Lt. Gorski, June 5, 2019
- R-6 MCCC Log Book Entries, May 31, 2019
- R-7 MCCC, Department of Public Safety Standards and Operating Procedures 004, Employee Handbook
- R-8 Lt. Gorski, Disciplinary History
- R-9 Mercer County Public Safety, Table of Offenses
- R-10 Marked, but not admitted into evidence
- R-11 Final Notice of Disciplinary Action