



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Keith Martinez,
Hudson County, Department of
Corrections

CSC Docket Nos. 2022-581 and 2022-
582
OAL Docket Nos. CSV 08175-21 and
CSV 08176-21
(Consolidated)

ISSUED: FEBRUARY 1, 2023

The appeals of Keith Martinez, County Correctional Police Officer, Hudson County, Department of Corrections, 60 and 90 working day suspensions, on charges, were heard by Administrative Law Judge William J. Courtney (ALJ), who rendered his initial decision on December 16, 2022. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on February 1, 2023, the Commission adopted the ALJ's recommendation to modify the 60 working day suspension to a 40 working day suspension and reverse the 90 working day suspension.

As indicated above, the Commission thoroughly reviewed the exceptions and reply filed in this matter. Upon that review, it does not find anything persuasive to overturn the ALJ's recommendations regarding the charges or the reduction in penalty regarding the 60 working day suspension or the charges and reversal of the 90 working day suspension. The ALJ's initial decision was thorough and well-reasoned and his findings and conclusions were based on his assessment of the credibility of the witnesses. In this regard, upon its *de novo* review of the record, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State*

v. Locurto, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See N.J.S.A. 52:14B-10(c); *Cavalieri u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this matter, the exceptions filed by the appointing authority are not persuasive in demonstrating that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations or the findings and conclusions made therefrom.

The Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. In this matter, the Commission agrees with the ALJ that the sustained infractions are worthy of a 40 working day suspension. In this regard, given the ALJ's findings of lack of intent and partial compliance, and in light of the appellant's disciplinary history, that suspension should serve as sufficient warning to the appellant that any future infractions may lead to increasingly higher disciplinary penalties, including removal.

Regarding the 60 working day suspension modified to a 40 working day suspension, the appellant is entitled to 20 working days of mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, the appellant is not entitled to counsel fees for this matter. N.J.A.C. 4A:2-2.12(a), which provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). While the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at N.J.A.C. 4A:2-2.12, counsel fees must be denied regarding the 40 working day suspension.

Since the 90 working day suspension has been reversed, the appellant is entitled to 90 working days of mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. He is also entitled to reasonable counsel fees for the reversed

suspension pursuant to *N.J.A.C.* 4A:2-2.12. The Commission notes, however, under no circumstances should counsel fees for this matter exceed 50% of the total counsel fees for both matters.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved.

ORDER

60 Working Day Suspension

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified and modifies that action to a 40 working day suspension. The Commission further orders that the appellant be granted 20 days of back pay, benefits, and seniority.

The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

90 Working Day Suspension

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified and reverses that action. The Commission further orders that the appellant be granted 90 days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10.

The Commission also orders reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12(a). However, under no circumstances should counsel fees for this matter exceed 50% of the total counsel fees for both matters.

Proof of income earned, an affidavit of mitigation and an affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2-2.12, the parties shall make

a good faith effort to resolve any dispute as to the amount of back pay or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF FEBRUARY, 2023



Allison Chris Myers
Acting Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF KEITH MARTINEZ,
HUDSON COUNTT DEPARTMENT
OF CORRECTIONS.**

OAL DKT. NO. CSV 08175-21
AGENCY NO. 2002-581

**IN THE MATTER OF KEITH MARTINEZ,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS**

OAL DKT. NO. CSV 08176-21
AGENCY NO. 2002-582

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

Sarah E. Tornetta, Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: August 5, 2022

Decided: December 16, 2022

BEFORE WILLIAM J. COURTNEY, ALJ

STATEMENT OF THE CASE AND PROCEEDURAL HISTORY

Petitioner, Keith Martinez ("Martinez"), a Corrections Officer ("CO") with the Hudson County Department of Corrections and Rehabilitation ("HCDCR") appeals the imposition of a 60-day and a 90-day suspension that resulted from two major disciplinary actions brought against him for two separate incidents that occurred in July and November of 2020. The first incident involved Martinez loosing of his official Correction Officer's badge. The second involved his failure to return an ID badge to his supervisor after the completion of an overtime shift.

Both matters were transferred by the Civil Service Commission - Division of Appeals and Regulatory Affairs to the Office of Administrative Law on September 30, 2021 for a hearing. On October 20, 2021, an Order was entered consolidating both cases and setting a January 24, 2022 hearing date. At the request of the parties, the hearing was first rescheduled to March of 2022 and then to May of 2022. The hearing was held on May 26, 2022 and written summations were received by the court on July 5, 2022 and August 5, 2022.

I. FACTUAL DISCUSSION

1. The Lost Badge

On November 21, 2020, Martinez began a 20-day suspension for an unrelated incident¹. According to HCDCR Administrative Regulation No. 08 ("ADM. 08"), Martinez was required to turn in his badge and ID card at the start of any suspension from active duty. See, R-1B(C) at 0061)². In partial compliance with ADM.08, Martinez surrendered his ID badge to the officer in charge along with an Incident Report dated July 19, 2020 indicating that he had lost his badge on or about July 13, 2020 while riding his motorcycle (See, R-1B at 0068)³. The procedures that were to be followed, as soon as possible, in the event a CO's badge or ID card was lost included filing a written report to:

1. the law enforcement agency with jurisdiction where it was lost or stolen; and
2. to his or her supervisor; and
3. the Internal Affairs Unit.

[R-1 B at 0061; C-1 p.3 at B2].

¹ The 20-day suspension was a 30-day suspension but ten of those days were to be held in abeyance and vacated in the event he was not found guilty of another disciplinary infraction for a period of one year.

² A full copy of ADM.08 is attached hereto as Court Exhibit C-1. The copy of ADM.08 presented at the hearing as Exhibit R-1B at 0060-61 contained only one page of the 5-page regulation and was difficult to read due to highlighting marks on the Exhibit.

³ See, also R-1B at 0056.

Martinez testified that in addition to providing a written report of the lost badge to the Bayonne Police Department shortly after he became aware the badge was missing, he provided his superiors with a copy of the Bayonne Police Report along with a separate Incident Report that he prepared himself by placing both documents in the "10:00PM - 6:00AM" ("Box") located in the locker room at the correctional facility⁴ (T-85:17-86:12); see also R-1B at 0066}. Lt. Paul Morales ("Morales"), the Shift Tour Commander and Martinez's supervisor, testified that he never received a copy of the Bayonne Police Department Report or the Incident Report that Martinez claimed he had placed in the Box. (T-86:23-87:1).

Regarding his obligation under ADM.08 to file a written report of a lost badge to the Internal Affairs Unit ("IA"), petitioner freely admits his failure to do so. He further testified that he was unaware of any requirement to advise IA of the lost badge. (T-119:18-20).

2. Failure To Return ID Card

On November 21, 2020, after surrendering his ID card and submitting another written report to Morales concerning the lost badge (See R-1B at 0070), Martinez began his 20-day suspension. On December 8, 2020, while still on suspension, Martinez was permitted to work a 10:00PM- 6:00AM over-time shift at a hospital located outside of the Hudson County Correctional Facility ("Facility"). Morales testified that it was not his decision to allow Martinez to work overtime while on suspension, but he was aware of the decision. (T-61:4-7). Morales indicated that it was the Director of HCDCCR that made the decision to allow petitioner to work the overtime shift at the hospital. (T-61:8-11). He went on to state: "the Director at the time allowed people who were suspended to work overtime on their days off due to a manpower shortage, and also, I think he was trying to be compassionate for some guys so they could make a little bit of money on their

⁴ The "10PM to 6AM box" is mounted on the locker room wall so that officers can submit paperwork to their supervisors. May 26, 2022 Transcript of Recorded Proceedings ("T") at page 86, Lines 13-22 ("T-86:13-22").

suspension.” (T-62:9-14). Captain Yurecko⁵ (“Yurecko”), who testified on behalf of respondent, confirmed that it was Director Edwards that Morales was referring to because Edwards served as the Director of the HCDCR for a five-year period which concluded at the end of 2021. (T-75:13-76:2).

Prior to working the overtime shift on December 8, 2020, Martinez’s gun, badge and Identification Card (“ID”) were returned to him and he wore his full uniform during the off-site shift. (T-60:9-24). At some point in time during the overtime shift on December 8, 2020, Martinez was asked work a second overtime shift the next day, December 9, 2020 from 2:00PM - 10:00PM. (T-115:7-116:7). Martinez returned to the Facility sometime after his shift ended on the morning of December 9, 2020 to return his county issued weapon. (T-116:8-10). He then went home to sleep before the start of his next overtime shift that was scheduled to start in less than eight hours. (T-117:3-18).

After arriving home on the morning of December 9, 2020, petitioner received a telephone call from Yurecko who, according to Martinez, stated, “As per the Director, you are not allowed to come back to the facility to work overtime. You can’t work no more on your suspension”. When Martinez asked Yurecko why, Yurecko indicated that he did not know. (T-116:25-117:25).

Yurecko’s testimony concerning his telephone call to Martinez on December 9, 2022 coincides with Martinez’s testimony. Yurecko testified that he received a telephone call from the Director who expressed concern that there were individuals who were suspended and were working overtime on their days off. The Director told Yurecko that an officer working while on suspension was a violation of policy and he instructed Yurecko to contact the suspended officers and advise them that they could not work overtime while suspended. He specifically instructed Yurecko to reach out to Martinez immediately on that day because he was scheduled to work the 2:00PM - 10:00PM shift. The Director wanted Yurecko “to notify Martinez not to come in for overtime that afternoon and that he could no longer work overtime until his suspension was complete.” (T-73:13-74:5).

⁵ Captain Yurecko held the rank of Lieutenant during the incidents in question. He is referred to as Lieutenant Yurecko in the PNDA (See R-1A at 0001) and will be referred to as Yurecko in this Initial Decision.

Morales' testimony differed substantially from the testimony of Martinez and Yurecko. Morales testified that Yurecko gave Martinez the instruction that he was no longer permitted to work overtime because he failed to return his ID card at the end of his overtime shift. (T-58:5-9). When questioned about Martinez's ID, Yurecko testified that he was not aware if Martinez's ID had been returned to him prior to working the overtime shift. (T-80:18-25).

According to the Preliminary Notice of Disciplinary Action (PNDA") dated July 22, 2022, when Martinez returned to work after his 20-day suspension, Morales ordered him to submit a report explaining why he had not returned his ID "as previously ordered". (R-1A at 002). There was no testimony at the hearing from anyone that they had ordered Martinez to turn over the temporary badge issued to him on December 8, 2020. Moreover, the only indication that Martinez was ordered to turn in the Temporary ID was a statement made by Morales in a January 6, 2021 Request for Disciplinary Action("RDA") that Lt. Thompson had told Martinez to return his ID at the end of the shift. See, R-1A at 0003. Morales failed to attach any report or statement from Lt. Thompson to either the PNDA or the RDA to support his assertion that such an order was in fact given by Lt. Thompson or anyone else⁶. Nor was Lt. Thompson called as a witness at the hearing. The only testimony at the hearing concerning Martinez's compliance with the policy that he turned in his badge when he was suspended was the testimony from Morales that he did turn in his ID when he was suspended but he didn't turn in a temporary ID issued to him when he worked the overtime. (T-22:7-25:2). There was no policy cited by respondent that required an officer to surrender temporary IDs issued while they worked at the request of the HCDCR while on suspension.

After a Departmental hearing, Martinez was issued a 90-day suspension based upon sustained charges on the following violations for not returning his ID:

⁶ Statements made by other individuals that were relied on by Morales in issuing the RDA were documented in reports signed by the person making the statement. Reports were provided by Officer Tiffany Brantly documenting her attempts to contact Martinez (R-1A at 0005), Sgt. Meshal documenting his attempts to contact Martinez (R-1A at 0006), Sgt. Yuresko documenting that he told Martinez that he could no longer work overtime while on suspension (R-1A at 0008) and Martinez documenting what Yurecko told him (R-1A at 00070).

1. 4A:2-2.3(1) Incompetency, Inefficiency, or Failure to Perform Duties
2. 4A:2-2.3(2) Insubordination
3. 4A:2-2.3(3) Inability to Perform Duties
4. 4A:2-2.3(4) Neglect of Duty

At the same Departmental hearing, Martinez was issued an additional 60-day suspension based upon sustained charges on the following violations for failing to report his lost Badge:

1. 4A:2-2.3(1) Incompetency, Inefficiency, or Failure to Perform Duties
2. 4A:2-2.3(2) Insubordination
3. 4A:2-2.3(3) Inability to Perform Duties
4. 4A:2-2.3(4) Neglect of Duty

II DISCUSSION OF CREDIBILITY

Contested matters are often decided based on the credibility of the witnesses and the fact-finder's determination concerning the credibility of the witnesses dictates the outcome.

Throughout the hearing in this case, I have had the opportunity to listen to the witnesses and observe and assess their demeanor as they testified. I was able to compare each witnesses' testimony with the documentary evidence and the other testimony presented. I was also able to gage each witnesses' testimony as to reasonableness, or to put it a different way, to determine in whole or in part whether the witnesses' testimony made sense.

I do not **FIND** the testimony of Captain Morales to be worthy of belief. Both disciplinary actions being reviewed here depended heavily on the credibility of Morales's testimony and the documentary evidence prepared by him or at his direction. His direct testimony consisted primarily of reading his own reports and or the reports he directed others to write. His confident demeanor changed when his testimony veered from his prepared reports. He appeared less certain and more nervous. I do not believe that this

change in demeanor was the result of general nervousness one might suffer while testifying at a formal hearing. Rather, I believe that Morales was either uncertain if the facts he was testifying to were true or knowingly misrepresenting those facts.

I further **FIND** Morales' testimony not credible because it conflicted with critical and credible testimony presented by respondent's only other witness, Captain Yurecko. This conflicting testimony did not relate to minor issues. One issue related to the identity of the person who permitted Martinez to regain possession of his badge, ID card and weapon while on suspension. Another issue related to the reason why he could no longer work while on suspension thus requiring him to return his temporary ID badge.

Most importantly, however, I do not **FIND** Morales' testimony credible because it simply does not make sense, especially with regard to the issue concerning Martinez's failure to return the ID card. The policy justifications presented by Morales for bringing these charges against Martinez (See, T-15:9-25, 16:5-9 and 48:9-49:13) belie the actual practices in place at the HCDCR at the time these charges were brought.

I **FIND** the testimony of Captain Yurecko to be credible. Although brief, his demeanor remained consistent during direct and cross examination. He appeared to be listening carefully to the questions asked and responding in a sincere and truthful manner. When asked questions about documents he was not familiar with or was not involved, he admitted his lack of knowledge. When asked questions about documents he authored, he gave direct and logical explanations for the content he created or had knowledge of.

Most importantly, I **FIND** Yurecko's testimony credible because it was consistent with other testimony and made logical sense. Martinez's testimony concerning his conversation with Yurecko was consistent with Yurecko's testimony of the same conversation. Yurecko's testimony concerning his conversation with Director Edwards made logical sense because there was a policy in place that required suspended officers to turn in their badge and ID but no policy in place that would permit that same suspended employee to get his badge and ID back during his suspension period so that he could work overtime.

Lastly, I **FIND** Martinez's testimony to be credible. His demeanor was calm, and his answers were responsive on both direct and cross examination. Even when a truthful answer would place him in a less favorable light, he did not hesitate to respond. When he was asked if he signed a document acknowledging that he reviewed a policy he never actually reviewed, he admitted to not reviewing the policy. When his own attorney asked him why he had not followed up for months concerning his replacement badge, he testified "I wasn't thinking...It was stupidity on my part...I made dumb mistakes...I'm not going to lie about it." His testimony is also consistent with Yurecko's testimony concerning their conversation on December 9, 2020. They both acknowledge that the purpose of the call was to advise Martinez that he could no longer work overtime during his suspension. Martinez's testimony concerning the timing of the call also matched Yurecko's testimony. Martinez indicated that the call from Yurecko came in between the two overtime shifts he was scheduled to work on December 9, 2020. Yurecko testified that he called Martinez before he began work on the second shift. Because Martinez was only notified during his first overtime shift that he was scheduled to work the 2PM-10PM overtime shift on December 9, 2020, Yurecko's call had to come between the two overtime shifts. Accordingly, the testimony is consistent and contributes to Martinez's credibility.

III FINDINGS

After consideration of the credible testimony presented at the May 26, 2022 hearing and the exhibits submitted into evidence, I **FIND** as follows:

1. At all times relevant hereto ADM.08 is the Administrative Policy that was in effect at the HCDCR governing Employee Badges and Identification Cards. See, C-1
2. ADM.08B2 indicates that it is the responsibility of every employee to safeguard their badge and/or ID card at all times and ensure that no unauthorized individuals gain possession of the badge and/or ID card. If the ID or badge is lost or stolen, the employee must file a formal written report to the Law Enforcement Agency with jurisdiction where it was lost or

stolen, the Internal Affairs Unit and his or her supervisor as soon as practicable

3. ADM.08 C1 requires all employees, upon notification of suspension, to immediately surrender their badge, ID and all other County property in their possession or under their control to competent authority.
4. ADM.08 C2 prohibits sworn personnel under suspension from carrying any identification and/or badges and shall not identify themselves as law enforcement officers.
5. On November 20, 2022 Martinez was scheduled to begin a 20-day suspension. Prior to the start of the suspension, Martinez turned in his ID badge to the officer in charge along with a Police Report from the City of Bayonne, New Jersey indicating that he had lost his badge in July of 2020. See, R-1 B at 0056; See also, R-1B at 0066 and 0068.
6. In July of 2020, when Martinez lost his badge, he filed a Police Report with the Bayonne Police. T-119:3-10. He also wrote out an Incident Report advising his superiors of the lost badge and put it in a white sealed envelope with his employee number at the top and deposited it into the Box. (T-119:11-120:1); See also, (R-1 B at 0066 and 0067).
7. The Box is a mailbox mounted on the wall by the locker room so officers can submit paperwork to their supervisors. (T-86:13-22)
8. Martinez admits that he did not submit a formal written report to Internal Affairs concerning his lost badge. (T: 119:18-20)
9. Martinez, in a written summation submitted by his attorney, stipulated that the neglect of duty charge should be sustained for his failure to submit a written report concerning his lost badge to Internal Affairs.
10. While still serving his 20-day suspension, Martinez was permitted to work an overtime shift from 10:00PM on December 8, 2020 to 6:00AM on December 9, 2022.
11. Martinez was issued a temporary ID prior to the start of the overtime shift on December 8, 2020. See, (T:23:16-20; 24:4-17)

12. While working the overtime shift on December 8, 2020, Matinez was contacted to work another overtime shift beginning at 2:00PM on December 9, 2020 and ending at 10:00PM on December 9, 2020. (T: 115:7-116).
13. Martinez returned to the facility on the morning of December 9, 2020 at the end of his first overtime shift and turned in his County issued firearm. (T 116;8-10)
14. After turning in his County issued firearm, Matinez returned to his home to sleep before the start of his next overtime shift that was scheduled to begin in less than 8 hours. (T-117:3-18)
15. Martinez complied with the requirement contained in ADM.08 that he surrender his ID at the start of his suspension. (T-24:4-25:3).
16. Martinez was not advised that he needed to return his Temporary ID Card between his two overtime shifts on December 9, 2020. (T-24:4-25:2).
17. After arriving home on the morning of December 9, 2020, Martinez received a telephone call from Yurecko who stated, "As per the Director, you're not allowed to come back to the facility to work overtime. You can't work no more on your suspension". When Martinez asked Yurecko why, Yurecko said, "Don't know why. As per the Director, you can't come back to the facility to work. That's it". (T116:25-117:25).
18. The Director of the HCDCR informed Yurecko that he became aware while he was going through the scheduling that there were officers violating policy by working overtime while on suspension. (T-73:6-22)
19. The Director informed Yurecko to reach out Martinez immediately and notify him that he could no longer work overtime moving forward until after his suspension was complete. (T-74:1-5).
20. As a result of Yurecko's telephone call, Martinez did not return to the facility until December 31, 2020 after the completion of his 20-day suspension. (T-117:25; T-14:12:15).

LEGAL ANALYSIS

1. Overview

The burden of proof is, generally, imposed on the party best able to satisfy it because of its "greater expertise and access to relevant information." J.E. ex rel. G.E v State, 131 N.J. 552, 569-570 (1993). In most civil causes of action, whether judicial or administrative, the party asserting a claim has the burden to prove it. WCI-Westinghouse, Inc. v. Edison Twp., 7 N.J. Tax 610, 630 (Tax Ct. 1985), aff'd 9 N.J. Tax 86 (App. Div. 1986). The appointing authority has the burden to prove by the preponderance of the competent, relevant, and credible evidence that the employee has committed the charged offense(s). Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1982). This tribunal must therefore "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. D.L. and W.R.R. Co., 111 N.J.L. 478, 490 (E.&A. 1933). The evidence is found to preponderate if establishes a "reasonable probability of fact." Loew v. Union Beach, 56 N.J. Super. 93,104 (App. Div. 1959).

The HCDCR seeks to satisfy its burden of proof primarily through the testimony of and documents generated by or at the request of Captain Morales. I **FIND** that the weight of that testimony and those documents fall short of what is needed to tip the scales in respondent's favor on the claims relating to Martinez's failure to return the ID and necessitates a modification of the penalties imposed for his failure to fully comply with the policies of the HCDCR concerning his lost badge.

The proofs presented by respondent at the hearing were conflicting on major points calling into question the reasonableness of their truth. Morales testified that Yurecko gave Martinez the instruction that he was no longer allowed to work overtime shifts during his suspension because he failed return his ID badge at the end of his overtime shift. (T-58:5-9). When Yurecko was questioned on this same topic, he testified that he informed Martinez that he could no longer work overtime because the Director had advised him that working while on suspension was against policy and that the Director specifically

instructed him to reach out to Martinez to notify him, he could not work overtime until his suspension was complete. (T-73:16-74.5).

Yurecko never testified that he instructed Martinez that he could no longer work overtime because he failed to return his ID badge and there has been no credible proof offered to show that he did. The sole reason for his instruction to Martinez that day was the order that he received from the Director⁷. Indeed, Yurecko's testimony regarding his communication with the Director forms the basis of another major discrepancy in Morales' testimony. Morales testified on cross examination that although he was made aware that Martinez would be working the overtime shift at the hospital while he was on suspension, he testified it was the Director's decision to allow Martinez to work, not his. (T-60:25-61:11). He went on to testify, "the Director at that time⁸ allowed people to work overtime on their days off due to a manpower shortage, and also, I think he was trying to be compassionate for some guys so they could make a little bit of money on their suspension." (T-62:9-14). This testimony was a direct contradiction to Yurecko's testimony that when the Director learned suspended officers were working overtime, he viewed it as a policy violation and ordered the practice to immediately cease.

In addition to the direct conflicts between Morales' and Yurecko's testimony, Morales' actions simply did not make sense. Morales testified at length as to the policies that Martinez had violated when he failed to turn in his ID Card between the two overtime shifts. He cited a portion of Policy ADM.08 C entitled "Seizure" which states:

The following guidelines shall apply to [HCDCCR] employees regarding seizure of identification badges:

1. Upon notification of suspension, the member or employee will immediately surrender their badge, identification card, and all other county property under their control to competent authority.

[R-1A at 0015]

⁷ We also know that Yurecko contacted Martinez on December 9, 2020 sometime between 6:00 am (the end of the first overtime shift) and 2:00 pm (the beginning of the proposed second overtime shift) which was a day before he sent Officer Tiffany Brantley to retrieve the badge and two days before he asked Sargent Meshal to retrieve the badge. (R-1A at 0003.)

⁸ It was established later that the Director at that time was Director Edward. (T-75:5-76:2)

He failed however to cite the very next and very relevant paragraph in ADM.08 C and also failed to explain his reasons for not doing so. That provision states:

2. Sworn personnel under suspension shall not carry any county identification and/or badges and shall not identify themselves as Law Enforcement Officers.

[Exhibit C at 3-4]

This second paragraph in Section C of ADM.08 makes it painstakingly clear that it is the policy of the HCDCR that a suspended officer cannot carry county identification, a badge or identify themselves as a law enforcement officer. Yet in this case, after Martinez complied with subsection one of the policy by turning in his identification card at the time of his suspension, respondent actually violated subsection two of the policy and gave it back to him while he was on suspension.

Respondent also violated ADM 08 C2 of the policy when they assigned Martinez to work an overtime shift at an outside location where he was represented to the public as a Law Enforcement Officer, dressed in a full uniform, with an ID, badge and a gun while on suspension. (T-60:9-24). While not referring to ADM.08 C2 directly in his testimony, Morales was at least aware of the prohibitions contained therein because he testified that the identification card issued to law enforcement officers identifies them as "members in good standing and an indicator that the person is allowed to carry a firearm ... while [Martinez] was suspended he was not authorized to carry a firearm." (T-15:13-16:4).

Respondent's selective enforcement of the very policy they claim Martinez violated calls into question the legitimacy of the policy itself. At the very least, respondent's return of his lost badge and confiscated ID Card while Martinez was still on suspension demonstrates that they had no real concern with Martinez possessing them while still on suspension. This lack of concern also appears to seem justified because Morales testified that during the time Martinez had the temporary ID in his possession, there were no complaints that Martinez improperly held himself out as a police officer, inappropriately

attempted to gain access to the correctional facility or do anything else improper with the temporary ID he was issued. (T-51-52:21).

2. Failure to Return the ID

Regarding the charges against Martinez for failing to return his ID, I **FIND** that there was insufficient credible evidence presented by respondent to establish violations of N.J.A.C. 4A:2-2.3(a)(1), (2),(3) AND (7). Although there are four separate charges against Martinez, all four charges arise from the same alleged improper conduct of failing to return his County ID.

A trier of fact may reject testimony as inherently incredible, if it is inconsistent with other testimony, common experience or overborne by the testimony of other witnesses. Congleton v. Dura-Tech Stove Company, 53 N.J. Super 282, 287 (App. Div. 1958). For all of the reasons previously stated, I reject Morales's testimony as it is inconsistent with Lt. Yurecko's testimony, inconsistent with common experience of not letting employees suspended from work, work during their suspension. For the same reasons, I disregarded Morales's testimony, also in this regard, the reports he prepared or that were prepared at his request.

The only other testimony that respondent provided was that of Lt. Yurecko. I have considered Yurecko's testimony but **FIND** it has virtually no relevance to whether or not Martinez did or did not return his County ID, whether it was improper for him not to do so or whether he was ever informed that he had to return the ID. Yurecko's testimony was very limited and for the most part not relevant to whether Martinez was ever informed that he was required to turn in his County ID after his overtime shift.

Yurecko testified that he never told Martinez that he was not permitted to return to the facility to return his ID card. (T-70:6-12). That testimony was not relevant because Martinez himself testified that Yurecko never told him that he was not permitted to return to the facility. (T-125:23-25). The only relevant testimony that Yurecko provided related to any policy relating to suspensions at HCDCR was that during his twenty-five years of employment at the HCDCR, the policy had been that the ID and badge were confiscated

when an officer was suspended, and in essence they were not to carry – most importantly when suspended, they're not to carry a firearm. (T-70:24-71:5).

I **FIND** that the only relevance of the testimony provided by Yurecko was that it emphasized the obligation of respondent to confiscate the ID and badge of a suspended officer and to ensure that the suspended officer did not carry a firearm during his suspension. When this evidence is applied to the facts in this case it supports the proposition that it was the respondent and not the petitioner who violated ADMIN.08.

The respondent has also failed to identify the Rule or Policy that compels a suspended officer to do anything more than surrender their ID, badge and all other county property in their possession or control at the time of their suspension. (See ADM.08 C1). Respondent's claim against Martinez in this matter is that he failed to surrender an ID issued to him during the suspension to enable him to work overtime. Respondent has provided no evidence of any statute, policy or rule that would require the return of ID's, or county property issued after or during a suspension.

The only evidence that Martinez was instructed to turn the ID card in at the end of his overtime shift was a statement made in a Request for Disciplinary Action ("RDA") Form generated by Morales. In a hearsay statement contained within the RDA, it is reported that a Lt. Thomson instructed Martinez to return the ID card to the officer in charge upon the completion of his overtime shift. (R-1A at p.0003). While Morales did supply written statements of Officers Tiffany Brantly, Adam Marshal and Lt. Yurecko to support hearsay statements made in the reports offered into evidence, he failed to provide any statement or testimony of Lt. Thompson concerning his critical instruction to Martinez to return to ID card at the end of the overtime shift.

The treatment of hearsay testimony in an administrative proceeding is governed by N.J.S.A.1:1-15.5 and is also known as the residuum rule.

The rule states:

- (a) Subject to the judge's discretion, to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstance of its creation and production, and generally, its reliability

- (b) Notwithstanding the admissibility of hearsay evidence, **some legally competent evidence must exist** to support each ultimate finding of fact to the extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

[Emphasis added]

While Morales did supply Written Statements of Officers Tiffany Brantly, Adam Marshal and Lt. Yurecko to support hearsay statements made in the reports offered into evidence, he failed to provide any statement or testimony of Lt. Thompson concerning his alleged instruction to Martinez to return to ID at the end of the overtime shift. Instead, respondent chose to rely on the testimony of Morales that he heard Lt. Thompson give the instruction to Martinez. (T-16:5-9). I, however, have already found Morales' testimony to not be credible and now **FIND** that it does not rise to the level of legally competent evidence which is needed to satisfy the residuum rule. I therefore **FIND** that respondent has not shown that Martinez was instructed or ordered to return the ID card to anyone at the conclusion of the overtime shift he worked on December 8, 2020.

Based on my findings I **CONCLUDE** that respondent has failed to sustain his burden of proof by a preponderance of the credible evidence that Martinez violated N.J.A.C. 4A:2-2.3(1), (2),(3) or (7).

3. The Lost Badge

There is no dispute that ADM.08 B2 requires a correction officer to safeguard their badge and if their badge is lost or stolen the officer must file a written report as soon as practicable with:

1. The law enforcement agency with jurisdiction where it was lost; and
2. His or her supervisor; and
3. The Internal Affairs Unit.

Martinez's testimony indicates that he filed a written report with the Bayonne Police Department shortly after he discovered his badge was missing. (T-119:3-1). That report was produced at the hearing by respondent. (R-1 B:68). Although Morales testified that he never received a written report from Martinez, Martinez has testified that shortly after receiving the Incident Report from the Bayonne Police Department, he drafted his own Incident Report and placed it, along with a copy of the Bayonne Police Report, into an envelope and placed the envelope in the Box located at the Facility. (T-119:21-120:14).

For the same reasons, I found Morales' testimony not credible on the ID card issue, I **FIND** it to be less than credible here. I also **FIND** Martinez's testimony that he prepared an Incident Report and placed it, along with a copy of the Bayonne Police Department Report into the Box to be highly credible.

While I recognize that Morales testified that he did not believe Martinez deposited the reports into the Box (See, T-86:23-87:1), for the same reasons stated above, I do not **FIND** Morales's testimony to be credible. In addition, while testifying to this issue, Morales did not appear to be testifying based on his own recollection as to what did or did not occur. Instead, he was reading a Preliminary Notice of Disciplinary Action, that he admits he did not prepare (See, R-1B at 0056-57; T-87:24-88:1). He went on to state that he did not know who wrote the report he was reading (T-88:3-6) but, that it was based upon the Request for Discipline that he submitted. Id.

Morales confirmed Martinez's testimony concerning the existence of the Box and then confirmed that it was "mounted on the wall by the locker rooms so officers could submit paperwork to their supervisors that way". (T-86:13-19). After admitting the purpose for the Box, Morales stated "Incident Reports are not provided that way. That box is normally for, like a vacation request, or a doctor's note or that kind of stuff." Id at 19-22. At no time however did Morales refer to any policy, procedure or documented practice that limited the type of paperwork that officers could submit to their supervisors through the use of the Box. He also provided no reason why certain types of communications with the supervisor would be proper use of the Box while others would not. He also failed to provide any information that would indicate that there was any specific procedure for submitting Incident Reports to a supervisor.

I **FIND** Martinez's testimony that he did prepare and submit an Incident Report to his supervisor by depositing it into the Box to be credible. I further **FIND** that Martinez's use of the Box for submitting the Incident Report concerning his lost badge to his supervisor was proper and satisfied his requirement under ADM.08 B2 to timely advise his supervisor in writing of the lost badge. One particular reason why I **FIND** Martinez's testimony on this issue to be credible is due to his admission that he never satisfied the third requirement under ADM.08 B2 to notify IA of the loss. Although he claims to have satisfied two of the three reporting requirements, he never asserted that he met all his obligations and specifically testified that he did not provide the required notice to IA. (T-119:18:20). If Martinez was lying about placing the Incident Report and Bayonne Police Report in the Box, he could easily have said that he copied Internal Affairs on the notice, but he didn't. Instead, he admitted his non-compliance. Indeed, there would be no benefit to Martinez to lie about providing notice to only two of the three required entities about losing his badge.

Finally, I **FIND** Martinez's testimony credible on this issue because he admits that he was negligent in not following up with his supervisor concerning the lost badge when he didn't hear back from him. He admitted that he made a dumb mistake and that he deserves major discipline for this mistake. (T-120:1-121:15). He also indicated in his written summation that he was guilty of Neglect of Duty (N.J.A.C. 4A:2.3(a)(7)) but not

incompetency (N.J.A.C. 4A:2.3(a)(1), insubordination (N.J.A.C. 4A:2.3(a)(2) or inability to perform duties (N.J.A.C. 4A:2.3(a)(3). I agree.

Neglect of duty is one of the grounds for disciplinary action in a civil service matter under N.J.A.C. 4A:2-2.3(7). Although not defined by the regulation, it generally means that a person is not performing their 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. The duty may arise by specific statute, Post Orders, policies or from the very nature of the job itself. See generally, In re Calio, 2018 N.J. Super. Unpub. LEXIS 2706; West New York v. Bock, 38 N.J. 500 (1962). Here, Martinez was required by policy (Adm.08 B2) to report his lost badge to Internal affairs and neglected his duty when he failed to do so. This failure was a clear violation of N.J.A.C. 4A:2.3(a)(7).

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. While the Administrative Code provides no specific definition of these terms

case law has determined incompetence is a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomayer v. Plainfield Police Dep't CSV 09921-98, Initial Decision (December 6, 1999), adopted, Merit Sys. Bd. (January 24, 2000), <http://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf> (citing Steinel v. City of Jersey City, 7 N.J.A.R. 91 (1983); Clark v. New Jersey Dep't of Ag., 1 N.J.A.R. 315 (1980).)

In the Matter of Ciuppa, 2014 N.J. Agen LEXIS 106.

There was no credible evidence submitted in this case that would indicate Martinez was unwilling or unable to perform his duties and thus violated N.J.A.C. 4A:2.3(a)(3). Similarly, there was no evidence presented that would indicate Martinez refused to obey an order of his supervisor or engaged in affirmative acts of disobedience that could be interpreted as Insubordination In violation of N.J.A.C. 4A:2.3(a)(2). See, e.g., Belleville v.

Coppla, 187 N.J. Super. 147 (App. Div. 1982); Millan V. Morris View, 177 N.J. Super. 620 (App. Div. 1981); Stanziale v. County of Monmouth Bd. of Health and Merit System Bd. 350 N.J. Super. 414 (App. Div. 2002) cert. denied, 174 N.J. 361 (2002).

Based on my findings I **CONCLUDE** that Martinez failed to fully comply with the notice requirements of ADM.08 B2 by failing to notify Internal Affairs in writing about his lost badge. I further **CONCLUDE** that Martinez's failure in this regard was not intentional. I believe his testimony that he failed to report the lost badge to Internal Affairs because he did not know he was supposed to (T-123:14-17). I further **CONCLUDE** that his failure in this regard constituted Neglect of Duty and a violation of N.J.A.C. 4A:2.3(A)(7).

DISCIPLINE

A Civil Service employee who commits a wrongful act related to his duties or gives other just cause may be subject to major discipline. N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In determining the nature of nature and extent of the discipline imposed the use of progressive discipline is strongly encouraged. See West New York v. Bock, 38 N.J. 500, 522-524 (1962).

To assure proper progressive discipline, and a resulting penalty based on the totality of the work history, an employee's past record with emphasis on the "reasonably recent past" should be considered. Bock, supra, 38 N.J. at 524, 186 A.2d 97. This includes consideration of the totality of the employee's work performance, including *all* prior infractions. See Carter, supra, 191 N.J. at 484, 924 A.2d 525... progressive discipline is a flexible concept, and its application depends on the totality and remoteness of the individual instances of misconduct that comprise the disciplinary record. The number and remoteness or timing of the offenses and their comparative seriousness, together with an analysis of the present conduct, must inform the evaluation of the appropriate penalty. Even where the present conduct alone would not warrant termination, a history of discipline in the reasonably recent past may justify a greater penalty; the number, timing, or seriousness of the previous offenses may make termination the appropriate penalty.

[In re Stallworth, 208 N.J. 182, 199 (2011)]

During the hearing in this case, an undisputed disciplinary history of Martinez was produced by respondent and consisted of the following:

1. From July 15, 2015 through August 30, 2018, six separate incidents of discipline resulting in no time off:
 - a. A Written Warning on July 10, 2015 for chronic absenteeism (R-1 E:126)
 - b. A Verbal Warning and counseling on April 8, 2016 for failing to produce doctor's note for an absence (R-1 E:125);
 - c. A Written Warning and counseling on July 29, 2016 for losing his handcuff key (R-1 E:124);
 - d. A counselling on August 17, 2017 to reinforce the importance of accessing the Direct Management System and familiarization with all policies and procedures (R-1 E:123);
 - e. A counselling on October 22, 2017 for walking out of the building to his personal car without first asking permission from the Tour Commander (R-1 E:122);
 - f. A Verbal Warning on August 29, 2018 for failing to correct a facial hair violation (R-1E:121);

2. From February 2019 to May 20, 2020 the following disciplinary incidents occurred which resulted in suspensions from work:
 - a. A three-day suspension in February of 2019 for failing to complete security checks (R- 1 A:32);
 - b. A five-day suspension in May of 2019 for insubordination for failing to correct a uniform violation (he had folded the collar of his shirt under and did not correct it when instructed to do so) (R-1 A:21).

- c. A thirty-day suspension [20 days with 10 days held in abeyance for one year] served in full, for failing to complete security checks in May of 2020.

In my review of the prior disciplinary history of Martinez involving the imposition of a period of suspension, I observed that each incident involved willful violations of policies and/or established procedures of the HCDCR. It is undisputed in this case that Martinez losing his badge in 2020 was not an intentional act. It is also clear to me, and I **FIND** that after he discovered that the badge was lost, he acted promptly in reporting the loss to two of the three required entities.

This finding that the acts and omissions of Martinez relating to the lost badge were unintentional does not however end our analysis of the appropriateness of the 60-day suspension imposed by respondent. Adm.08 B2 places the responsibility on the officer to safeguard their badge "at all times". The loss of his badge, whether or not that loss was intentional, compels this Court to find that Martinez failed to safeguard his badge and that he did in fact violate Adm.08 B2 by losing it. Martinez's excuse that he did not notify the Internal Affairs Unit because he did not know he had to does not create an exception to the policies he was expected to follow as a Law Enforcement Officer. In 2017, Martinez was counselled for not accessing the Directive Management System("DMS") "to ensure compliance and familiarization with all policies and procedures". Also, while testifying, Martinez indicated that he did not know he was supposed to advise Internal Affairs of the lost badge (T-123:14-17) but then essentially explained that he didn't know of the policies he was expected to follow because he never really reviewed the policies he was given (even though he did sign acknowledging their receipt) (T-123:9-124:17).

Because of Martinez's prior discipline relating to his failure to review the DMS and become familiar to policies and procedures and his testimony that he did not read policies and procedures that he was given, I give no weight to his argument that his failure to advise Internal Affairs was unintentional. His unintentional failure to report the loss to the IA Unit was a direct result of his intentional failure ensure compliance and familiarization with all policies and procedure. I do however **FIND** that there was substantial compliance

with the reporting requirements of Adm.08 2B because of Martinez's reports to his supervisor and to the Bayonne Police Department.

My review of the Preliminary Notice of Disciplinary Action ("PNDA") (R-B:56-59), the reports of the investigation conducted (R-B:66-71) indicate that the gravamen of the charges relating to the lost badge is that Martinez did not follow any of the reporting requirements contained in Adm.08 2B. The facts reveal that he failed to follow only one of the three. I do **FIND** however that his failure to satisfy all three reporting requirements constituted neglect of duty in violation of N.J.A.C. 4A:2-2.3(7). Indeed, Martinez has agreed that he is guilty of this charge. I also **CONCLUDE** that the 60-day suspension, which he has already served, based upon the allegation that he failed to follow all three of the reporting requirements was excessive. I also **CONCLUDE** that given his recent disciplinary history and the seriousness of his offense, that a fairer and appropriate suspension would have been 40-days.

Accordingly, I **ORDER** that:

1. The Decision of the Hudson County Department of Corrections and Rehabilitation as reflected in the August 31, 2021 Final Notice of Disciplinary Action finding Martinez in violation of N.J.A.C. 4A:2-2.3 (1), (2), (3) & (7) be **REVERSED** and the 90-working day suspension be **REINDED**;
2. Hudson County Department of Corrections and Rehabilitation shall reimburse Martinez for any lost pay resulting from his serving any portion of the 90-day suspension previously imposed. Martinez shall also be credited for any loss of pension and/or any loss of other benefits resulting from any portion of the 90-day suspension that he has already served. Any loss of seniority resulting from any portion of the 90-day suspension that he has already served shall be restored to Martinez.
3. The Decision of the Hudson County Department of Corrections and Rehabilitation as reflected in the August 31, 2021 Final Notice of Disciplinary


Action finding Martinez in violation of N.J.A.C. 4A:2.23 (1), (2), (3) & (7) is, **AFFIRMED IN PART, MODIFIED IN PART** and **REVERSED IN PART**.

- a. The portion of the Decision finding Martinez in violation of N.J.A.C. 4A:2.3(7) is **AFFIRMED**;
 - b. The portion of the Decision finding Martinez in violation of N.J.A.C. 4A:2.3 (1), (2) and (3) is **REVERSED**; and
 - c. The portion of the Decision imposing a 60 -day suspension is **MODIFIED TO** a 40 -day suspension.
4. Hudson County Department of Corrections and Rehabilitation shall reimburse Martinez for 20 of the 60-days of lost pay that he incurred while on suspension for the lost badge. Martinez shall also be credited for any loss of pension and/or other benefits resulting from the 20 extra days of suspension that he has already served. Any loss of seniority resulting from the 20 extra days of suspension that he has already served shall be restored to Martinez.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



December 16, 2022

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

December 16, 2022

Date Mailed to Parties:

December 16, 2022

sej

APPENDIX

WITNESSES

For Petitioner:

Keith Martinez

For Respondent:

Paul Morales

Christopher Ureco

EXHIBITS

For Petitioner

None

For Respondent

- R-1 (A) Failure to Return ID
- (B) Failure to Report Lost Badge
- (C) Final Notice of Disciplinary Action dated 8/31/21 Re: Lost ID
- (D) Final Notice of Disciplinary Action dated 8/31/21 Re: Lost Badge
- (E) Employee Performance Warning Notice dated 10/22/17

Court Exhibits

- C-1 Employee Identification and Badges Policy (5) pages