



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kurtis Warner, *et al.*, Juvenile Justice Commission

CSC DKT. NOS. 2022-3248, *et al.*
OAL DKT. NOS. CSR 05320-22, *et al.*

ISSUED: FEBRUARY 1, 2023

The appeals of Kurtis Warner, Timothy Jillson, John Jester, Douglas Weedon and Alberto Campos, Senior Correctional Police Officers, Juvenile Justice, and Quantara Ross, Communications Officer, Secured Facilities, Juvenile Justice Commission (JJC), removals on various dates, on charges, were before Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision granting the appointing authority's motion for summary decision, on December 9, 2022. Exceptions were filed on behalf of the appellants 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 February 1, 2023, remanded the matter to the Office of Administrative Law (OAL) for further proceedings.

The Commission finds that the ALJ's granting the appointing authority's motion for summary decision was not warranted in this matter. In this regard, under Executive Orders 283 and 290, "covered high-risk congregate settings must maintain a policy that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations." However, "[t]he policies adopted by covered settings . . . must provide appropriate accommodations, to the extent required by federal and/or state law, for employees who request and receive an exemption from vaccination because of a . . . sincerely held religious belief, practice, or observance."

Here, the appellants requested religious accommodations to the requirement of receiving the vaccine. They were denied and nevertheless still refused to get vaccinated and were thus subjected to discipline. However, in issuing the summary decision opinion in favor of the JJC, the ALJ made no finding as to whether the accommodations requested were validly denied. In other words, there was no finding

as to whether granting the requested accommodations would have amounted to an undue hardship to the JJC. Rather, the ALJ framed the matters as being concerned only with whether the appellants violated the JJC's vaccination policy. The appellants, however, forcefully argued that they were wrongfully disciplined because the JJC should not have denied their accommodations. In this regard, it is worth noting that in their accommodation requests, the appellants offered to get regularly tested, wear masks, and socially distance. Whether those measures would amount to an undue hardship to the JJC is unclear, as the ALJ did not engage in any fact-finding as to that issue. Further, the Commission rejects the JJC's attempts to argue that the OAL is not the proper forum to raise such arguments. As the appellants arguments are, in essence, their defense to the charges imposed, they could raise any such arguments and present any appropriate evidence in their disciplinary matters before the OAL.¹ As such, the Commission remands the matter to the OAL for a hearing to establish facts as to the appropriateness of the accommodation denials for each appellant and how or if those facts impact any determination as to the appellants' guilt regarding the charges.

ORDER

The Civil Service Commission remands this matter to the Office of Administrative Law for further proceedings as outlined above.

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

Allison Chris Myers

Allison Chris Myers
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment

¹ The appellants also filed appeals of the denials of their discrimination complaints under the State Policy Prohibiting Discrimination in the Workplace (State Policy). Appeals filed under the State Policy pursuant to *N.J.A.C. 4A:7.3.2(m)3* are decided on the written record. Hearings are only granted where the Commission finds material and controlling facts in dispute in the record that it cannot resolve on the written record. *See N.J.A.C. 4A:2-1.1(d)*. In the appellants' matters, as their claims in the appeals served as a defense to their disciplinary charges, they were advised that they could present any arguments that their denial of the accommodations were, in fact, violations of the State Policy, in conjunction with their appeals of their removals at the OAL. However, the appellants were **not** granted independent hearings on the State Policy appeals.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

**IN THE MATTER OF KURTIS WARNER,
JUVENILE JUSTICE COMMISSION.**

OAL DKT. NO. CSR 05340-22

**IN THE MATTER OF TIMOTHY JILLSON,
JUVENILE JUSTICE COMMISSION.**

OAL DKT. NO. CSR 05341-22

**IN THE MATTER OF JOHN JESTER,
JUVENILE JUSTICE COMMISSION.**

OAL DKT. NO. CSR 05342-22

**IN THE MATTER OF DOUGLAS WEEDEN,
JUVENILE JUSTICE COMMISSION.**

OAL DKT. NO. CSR 05339-22

**IN THE MATTER OF QUANTARA ROSS,
JUVENILE JUSTICE COMMISSION.**

OAL DKT. NO. CSV 05908-22

**IN THE MATTER OF ALBERTO CAMPOS,
JUVENILE JUSTICE COMMISSION.**

OAL DKT. NO. CSR 06218-22

Karyn L. White, Esq., for appellants, Kurtis Warner, Timothy Jillson, John Jester,
Douglas Weeden, Quantara Ross, and Alberto Campos (Pacific Justice
Institute, attorneys)

Kathryn B. Moynihan, Deputy Attorney General, for respondent, Juvenile Justice Commission (Matthew J Platkin, Attorney General of New Jersey, attorney)

Record Closed: November 17, 2022

Decided: December 9, 2022

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

Appellants Kurtis Warner, Tim Jillson, John Jester, Douglas Weedon, Alberto Campos, Senior Correctional Police Officers and appellant Quantara Ross, Administrative Aide (referred to collectively as appellants) employed by respondent, Juvenile Justice Commission (JJC), appeal their removal from employment, based on their failure to comply with Executive Order 283 (E.O. 283) requiring certain public employees to furnish proof of a COVID-19 vaccination and the JJC "Policy Regarding the Implementation of E.O. 283; Vaccination Requirements for Covered Workers."

PROCEDURAL HISTORY

The JJC served the appellants a Preliminary Notice of Disciplinary Action (PNDA) charging them with violations of conduct unbecoming a public employee N.J.A.C. 4A:2-2.6 and other sufficient cause, to wit, Executive Order 283 (E.O. 283) and JJC policy regarding implementation E.O. 283. N.J.A.C. 4A:2-2.3(a)(12). Departmental hearings were held and, thereafter, the respondent served upon each of the appellants a Final Notice of Disciplinary Action (FNDA) sustaining the charges and immediately removing them from respondent's employment.

The sustained charges were as follows:

1. N.J.A.C.4A:2-2.3(a)(6) — Conduct Unbecoming a Public Employee, and;
2. N.J.A.C. 4A: 2-2.3(a)(12) — Other sufficient cause, to wit Executive Order 283 (E.O. 283) and JJC policy regarding implementation E.O. 283.

The specifications in support of the charges noted that:

You failed to comply with E.O. 283 and JJC' policy regarding the implementation of E.O.283.

Your presence in a congregate setting is a serious health and safety risk which could adversely affect the health and safety of others.

Appellants filed timely appeals on June 28, 2022, with the Civil Service Commission (CSC) and the Office of Administrative Law (OAL) pursuant to N.J.S.A. 40A:14-202(d). On September 12, 2022, an order of consolidation was entered and on September 14, 2022, the respondent moved for summary decision and the appellants opposed the motion. On September 26, 2022, oral argument on the motion was heard, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

For purposes of deciding this application, the following is a summary of the relevant facts derived from the contents of the petitions, legal memorandum, exhibits submitted, and arguments of counsel adduced during the hearing; **I FIND as FACT:**

The JJC is a paramilitary organization charged with maintaining order and discipline in facilities housing often dangerous yet vulnerable populations, namely incarcerated youth, in a communal or congregate setting.

To fulfill its mission of rehabilitating troubled youthful offenders, the JJC must provide a safe and healthy environment for its residents.

On January 19, 2022, Governor Philip D. Murphy issued E.O. 283 and declared it effective immediately. E.O. 283, in relevant part, required "covered high risk congregate settings" to adopt a policy requiring covered workers "to provide adequate proof that they are up to date with their COVID-19 vaccinations."

E.O. 283 (Jan. 19, 2022), 54 N.J.R. 295(a). “Covered high-risk congregate settings” as:

“. . . all congregate care settings operated by the JJC, which includes secure care facilities and residential community homes; licensed community residences for individuals with developmental disabilities (IDD) and traumatic brain injury (TBI)”; licensed community residences for adults with mental illness; certified day programs for individuals with IDD and TBI, and group homes and psychiatric community homes licensed by [New Jersey Department of Children and Families].

The JJC operates a congregate setting in Bordentown, New Jersey called the Johnstone Campus. The JJC web site describes the Johnstone Campus as follows:

The Johnstone Campus is the JJC's most secure facilities. The male facilities are known as the Juvenile Medium Security Facility-North Compound (JMSF-N), the Juvenile Medium Security Facility-South Compound (JMSF-S), and the female facility is referred to as the Juvenile Female Secure Care and Intake Facility (JFSCIF). These facilities provide secure and structured environments for male and female juveniles committed to the JJC by the courts. The Johnstone Campus has the capacity to serve 262 male offenders and 52 female offenders. The age of the residents' ranges from 14 to 20 years of age, with the majority of juveniles being 16 or 17 years old. The Johnstone Campus provides education, training and rehabilitation for those residents who are unable to participate in a less secure setting. The diverse group of juveniles possesses serious emotional and behavioral disorders that require a highly structured and secure environment.¹

Pursuant to E.O. 283, the JJC first implemented a vaccination policy on January 20, 2022. The policy was entitled the JJC “Policy Regarding the Implementation of E.O. 283; Vaccination Requirements for Covered Workers.” (JJC policy.)

¹ <http://www.njoag.gov/about/division-and-offices/juvenile-justice-commission-home/juvenile-justice-commission-facilities/>

The JJC policy defined covered workers as both full- and part-time “employees, and contractors, who work in, or who may have occasion to enter, a JJC secure facility or residential community home.”

Appellants, Warner, Jillson, Jester, Weedon and Campos are covered workers under the JJC policy, employed as senior correctional police officers at the Johnstone Campus.

Appellant Ross is a covered worker under the JJC policy, employed as a communications operator at the Johnstone Campus.

Under the JJC policy, unvaccinated covered workers were required to obtain their first dose of a vaccine, by February 16, 2022. To be “up to date,” covered workers also had to demonstrate that by March 30, 2022, they received any booster doses for which they were eligible.

Governor Murphy subsequently issued Executive Order 290 (E.O. 290) on March 7, 2022, and extended the time for employees to provide adequate proof of vaccination to May 11, 2022. Exec. Order No. 290, 54 N.J.A.R. 511(a).

The original JJC policy provided that covered workers were previously required to show they received the first dose of a COVID-19 vaccine, or an approved single dose COVID-19 vaccine, by February 16, 2022. Consistent with E.O. 290, the JJC policy was updated and provided, that “[a]ll covered workers then had until May 11, 2022, to submit proof that they are up to date with their vaccinations.”

The updated JJC policy also provided covered workers the ability to request an exemption from vaccination in accordance with applicable law because of a disability, medical condition, or sincerely held religious belief, practice, or observance by contacting Alicia Warner or Lisa Everett in the JJC Human Resource Department prior to February 16, 2022.

Appellants all requested exemptions from vaccination due to sincerely held religious beliefs, practice, or observance; those exemption requests were all subsequently denied. In issuing the denial of the appellants religious exemption requests the JJC noted the following:

“Your request for an accommodation from the requirement that you provide adequate proof that you are up to date with COVID-19 vaccinations is denied because it is an undue hardship. In your position as a Senior Police Correctional Officer, you are an essential employee and are required to interact with JJC residents in an indoor congregate care setting. You not being vaccinated risks the introduction to or spread of COVID-19 into the facility where you are assigned. COVID-19 has burdened the JJC with significant operational and financial costs, including requiring the temporary closure and consolidation of housing units, the denial of vaccination leave time, and the requirement of healthy staff work more overtime. Notably, unvaccinated staff, which compromises 32% of the workforce, were responsible for nearly half the positive cases.”²

Appellants each filed a discrimination complaint with the New Jersey Attorney General’s Office of Equal Employment Opportunity (EEO) challenging the JJC’s denial of their respective religious exemption requests. On August 22, 2022, the EEO found in part as follows:

. . . the office of EEO finds that JJC’s proffered non-discriminatory reasons in its Accommodation Decisions as well as the safe operation of its facilities formed the foundation for its “undue hardship” denials here, and as a result, the JJC did not commit a violation of the State Anti-Discrimination Policy.

Appellants admittedly failed to comply with the JJC “Policy Regarding the Implementation of E.O. 283; Vaccination Requirements for Covered Workers,” and remain unvaccinated.

² The JJC denial of appellant Ross’ exemption request properly noted that she was employed as a Communications Operator.

The updated JJC policy advised that covered workers who are not up to date with their vaccinations, or for whom vaccination status is unknown, or who have not provided sufficient proof of vaccination in [accordance] with the approved schedule are considered noncompliant with E.O. 283 and E.O. 290 and JJC policy.

The updated JJC policy warned that covered workers who are noncompliant are subject to disciplinary actions, including termination.

LEGAL ANALYSIS

Summary Decision

The respondent seeks summary decision. Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Such motion “shall be served with briefs and with or without supporting affidavits” and “[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). When the motion “is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” (ibid.)

The standards for determining motions for summary judgment (referred to as summary decision in administrative proceedings) are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67 (1954), and later in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). Summary decision is appropriate when “the evidence . . . is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 541 [quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)].

The regulations provide that the decision sought by the movant “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show

that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b).

Respondent’s Argument

Respondent contends that the material facts are undisputed and clearly establish that appellants are covered workers who have failed to comply with E.O. 283 and the JJC policy requiring employees obtain COVID-19 vaccination.

E.O. 283 in relevant part requires that “covered high risk settings adopt a policy requiring covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations.” Unvaccinated employees were required to obtain their first dose of a vaccine by February 16, 2022. Employees then must be up to date on their vaccinations by March 30, 2022, and if applicable received the second dose of their respective COVID-19 vaccination. The deadlines were extended under E.O. 290 until May 11, 2022, so that employees would be able to provide adequate proof of vaccination.

Covered employees were provided an opportunity to request a religious exemption from the vaccination requirements. Each of the appellants applied for a religious exemption but were advised that they were not eligible. Accordingly, each of the appellants were required to produce proof of vaccination status. Each of the appellants failed to provide proof of vaccination status and a PNDA was issued against each appellant.

Respondent acknowledges the general preference for “progressive discipline.” However, respondent asserts that the misconduct here is egregious in which the appellants have refused to comply with the vaccination requirement. Further, appellants’ actions compromised the “principles of order, integrity, and discipline by violating a direct order and the clear and unambiguous policies.” In addition, appellants’ status as

unvaccinated render them unqualified for continuation in their respective positions. Respondent argues that under these circumstances removal is required.

Appellants' Argument

Appellants raise four points in opposition to respondent's motion for summary decision;

1. The "disciplinary action was improper and prematurely pursued against appellants."

In support of this position appellants argue that they had an absolute right to appeal the denial of their respective requests for religious exemptions and allege that the actions of respondent hindered that right. The appellants first argue that they requested a stay of the disciplinary hearings until the appeal of the religious exemption denials had been concluded. According to appellants, respondent denied their requests for stays and proceeded with the hearings, which appellants allege was patently unfair.

Appellants next argue that respondent failed to provide appellants with proper notice that the timelines to obtain the COVID-19 vaccine had been extended with the issuance of E.O. 290. The PNDA's were issued in this matter under E.O. 283 which required compliance with the COVID-19 vaccine requirement by February 16, 2022, while E.O. 290 changed the deadline to May 11, 2022.

In the final argument in support of this position, the appellants claim that the denial of their respective religious exemption requests was improperly denied by the respondent in violation of the New Jersey Laws Against Discrimination (NJLAD).

The first two arguments raised by appellants relate to alleged procedural defects in the prosecution of the disciplinary charges. These arguments fail to recognize that a Civil Service Commission appeal requires the OAL to conduct a de novo hearing to determine whether the charges should be sustained or dismissed, 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). It is as if there had been no disciplinary hearing and as if no decision had been previously rendered. Hous. Auth. Of Newark v Norfolk Realty Co., 71 N.J. 314, 326 (1976). Thus, the procedural arguments raised by appellants have no bearing on this motion for summary decision. They fail to raise any issue of material fact.

Further, the EEO on August 22, 2022, completed its review, upholding the denials of appellants' respective requests for religious exemptions. The EEO concluded that the denials issued by the JJC were not in violation of the State Anti-Discrimination Policy. Thus, appellants' arguments that the denials were in violation of NJLAD have now properly been concluded.

2. The respondent woefully failed to submit sufficient evidence to support the incidents as stated on the FNDA which allegedly gave rise to the charge.

In support of this position, the appellants argue that the specific charge on the PNDA and FNDA did not mirror the conduct which formed the basis of the hearing officer's decision, or the testimony produced at the hearing. Further, appellants claim that the respondent is required to prove by a preponderance of the evidence that; 1. The appellants' violated E.O. 283; 2. That appellants work in a congregate setting; and 3. appellants were a danger to others.

Initially it is noted that this appeal is de novo and the hearing officer's decision is irrelevant and of no consequence in this proceeding. The issues here are whether appellants failed to comply with the JJC policy and if so, did it rise to conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(6). And further, if a violation has occurred, is removal the appropriate penalty.

Here, the JJC policy clearly defines a covered worker as "both full-time and part-time employees, and contractors, who work in, or who may have occasion to enter, a JJC secure facility or residential community home."

It is uncontroverted that appellants are all full-time employees who work in and have occasion to enter the Johnstone Campus, which is a secure JJC facility, where the appellants may work inside that facility is of no consequence. Appellants argument that they do not work in a congregate setting ignores the clear definition of a covered worker. This argument fails as appellants are covered workers who are subject to the JJC policy.

Appellants next argue that respondent has failed to establish that they pose a "serious health risk which would adversely affect the health and safety of others." Appellants misconstrue the clear and unambiguous language of the policy, which simply states that "covered workers had until May 11, 2022, to submit proof that they are up to date with their vaccinations." To justify their failure to comply with the policy the appellants are asserting a requirement that does not exist in the JJC policy or in E.O. 283. This argument fails as the appellants admittedly have not obtained the COVID-19 vaccination and remain unvaccinated.

3. Appellants' disciplinary action resulting in termination is discriminatory action based upon the disparate treatment when compared with strikingly similar State Correctional Officers who are unvaccinated.

In support of this position appellants assert "upon information and belief" that the JJC is the only "correctional facility" that has sought to discipline its employees who were denied a request for a religious exemption to the COVID-19 vaccine. The appellants further assert that the New Jersey Department of Corrections (DOC) has 1,625 employees who have requested religious exemptions and who remain unvaccinated and undisciplined months after E.O. 283 was issued. Appellants argue that these facts support a claim of disparate treatment.

Here, the appellants do not allege disparate treatment of JJC employees, rather they argue that they are being treated differently than employees from the DOC. It is important to note that any examination respecting disparate treatment must be made between individuals who are similarly situated. Thus, how another employer may or may not have implemented E.O. 283 and/or the discipline of its employees for violations of

policies implementing same is simply not relevant here. DOC employees and JJC employees are not similarly situated.

4. Upon information and belief, the JJC has approved medical exemptions to the COVID-19 vaccine for individuals who perform strikingly similar or the same job duties as appellants. Thus, the disciplinary action against appellants is based upon religious discrimination and are improper.

In support of this position appellants state that “upon information and belief” there are other JJC employees who submitted and received approval for medical exemptions to the COVID-19 vaccine. Accordingly, these employees “upon information and belief” were afforded accommodations from the vaccine requirement while appellants were unfairly denied same.

As previously noted, any examination as to disparate treatment must be made between individuals who are similarly situated. How the JJC handled accommodations from the COVID-19 vaccine requirement for JJC employees with “medical exemptions” does not raise an issue of disparate treatment because the employees are not similarly situated. The arguments asserted by appellants under this heading do not raise any issue of material fact.

Accordingly, I **CONCLUDE** that under the Brill standards these matters are appropriate for summary disposition. The allegations are supported by tangible evidence and the facts presented by the appellants in their opposition papers are insufficient to raise disputed facts in the record.

Having determined that these matters are appropriate for summary decision, the law regarding the substantive legal issues must be addressed. The issues to be decided is whether there is sufficient credible evidence to sustain the departmental charges of conduct unbecoming a public employee, N.J.A.C 4A:2-2.3(a)(6), and other sufficient cause N.J.A.C 4A:2-2.3(a)(6) to wit, E.O. 283 and the JJC policy regarding the

implementation of E.O. 283; and whether the penalty of removal is justified and reasonable if the charges are sustained.

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 to properly execute 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 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).

N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental

services. Karins, 152 N.J. at 554; see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complaint of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555, quoting In re Zeber, 156 A.2d 821, 825 (1959). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955).

The credible evidence establishes that each of the appellants here has violated E.O. 283 and the JJC “Policy Regarding the Implementation of E.O. 283; Vaccination Requirements for Covered Workers” when they failed to furnish proof of vaccination on or before May 11, 2022. Each appellant was afforded the opportunity to apply for a religious exemption from the vaccination requirement and each request was denied. Once the exemption request was denied the appellants were obligated to comply with the JJC vaccine policy, but they failed to do so.

The JJC is a paramilitary organization charged with maintaining order and discipline in facilities housing often dangerous populations. The JJC is also required to maintain the health and safety of those confined within those facilities. The appellants’ actions in refusing to comply with the vaccine mandate could compromise the JJC’s ability to safeguard the health and safety of those individuals confined within the facilities. Further, by violating the direct order to obtain the COVID-19 vaccine, the appellants compromised the principles of order, integrity, and discipline.

Applying the regulations to the facts of this matter, I **CONCLUDE** that each appellant’s action in failing to become vaccinated constituted unbecoming conduct. Therefore, the charges of N.J.A.C. 4A:2-2.3(a)(6) as to each appellant are hereby **SUSTAINED**.

Pursuant to N.J.A.C. 4A:2-2.3(a)(12) an employee may be subject to discipline for: Other sufficient causes. “Other sufficient cause” is essentially the catchall provision for

conduct, which is not specified in the eleven listed causes at N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would "violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Keith Harkcom, Dep't of Corrections, CSR 14703-19 (April 13, 2020), <https://njlaw.rutgers.edu/collections/oal/html/initial/csr14703-19_1.html>, adopted Comm'r (May 22, 2020).

The appellants have additionally been charged with violations of the updated JJC "Policy Regarding the Implementation of E.O. 283 and E.O. 290; Vaccination Requirements for Covered Workers." Here, the appellants admittedly failed to furnish proof of vaccination on or before May 11, 2022, as required under the JJC policy. Therefore, I **CONCLUDE** that appellants' actions constitute a violation, and the charges of N.J.A.C. 4A:2-2.3(a)(12) as to each appellant are hereby **SUSTAINED**.

PENALTY

Once it has been determined that a civil-service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523–24. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. at 524. Consideration should also be given to the timing of the most recently adjudicated disciplinary history. (Ibid.)

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record."

(Ibid.) The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. (Ibid.) Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. (Id.) at 485. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious.

Here, respondent has brought and sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

The salient facts in these matters are not in dispute. Appellants were required to furnish proof of vaccination on or before May 11, 2022. Appellants applied for but were denied a religious exemption from the vaccination requirement. Appellants have failed to obtain the COVID-19 vaccination as ordered.

The respondent is a paramilitary organization charged with maintaining order and discipline in facilities housing often dangerous populations. The respondent is concomitantly required to maintain the health and safety of those confined within its facilities. Under such circumstances, the respondent cannot permit its employees to compromise the principles of order, integrity, and discipline by violating its direct orders and its clear and unambiguous policies. In addition, appellants status as unvaccinated rendered them unqualified for continuation in their respective positions.

Accordingly, I **CONCLUDE** that the sustained charges are sufficiently egregious to warrant the termination of appellants' positions.

ORDER

It is hereby **ORDERED** that the respondent's **Motion for Summary Decision** is **GRANTED**.

It is hereby **ORDERED** that the charges of violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; as follows: E.O. 283 and the JJC regarding the implementation of E.O. 283, are **SUSTAINED** against all appellants.

It is hereby further **ORDERED** that the Juvenile Justice Commission's removal of appellant Kurtis Warner from his public employment as a senior correctional police officer is **AFFIRMED**.

It is hereby further **ORDERED** that the Juvenile Justice Commission's removal of appellant Timothy Jillson from his public employment as a senior correctional police officer is **AFFIRMED**.

It is hereby further **ORDERED** that the Juvenile Justice Commission's removal of appellant John Jester from his public employment as a senior correctional police officer is **AFFIRMED**.

It is hereby further **ORDERED** that the Juvenile Justice Commission's removal of appellant Douglas Weeden from his public employment as a senior correctional police officer is **AFFIRMED**.

It is hereby further **ORDERED** that the Juvenile Justice Commission's removal of appellant Quantara Ross from her public employment as an administrative aide is **AFFIRMED**.

It is hereby further **ORDERED** that the Juvenile Justice Commission's removal of appellant Alberto Campos from his public employment as a senior correctional police officer is **AFFIRMED**.

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.

December 9, 2022

DATE



WILLIAM T. COOPER III, ALJ

Date Received at Agency:

Date Mailed to Parties:

WTC/am

APPENDIX

WITNESSES

For appellants

None

For respondent

None

EXHIBITS

For appellants

Motion for Summary Decision

For respondent

Opposition to Summary Decision