



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of James Chambers,
Mercer County Correction Center

CSC Docket No. 2021-1072
OAL Docket No. CSV 02228-21

ISSUED: MAY 24, 2023

The appeal of James Chambers, County Correctional Police Officer, Mercer County Correction Center, 60 working day suspension, on charges, was heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on April 10, 2023. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on May 24, 2023, adopted the ALJ's Findings of Facts and Conclusion and his recommendation to modify the 60 working day suspension to a 10 working day suspension.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on his assessment of the credibility of the witnesses. In this regard, 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 appellant 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. In this regard, the ALJ concluded that the appointing authority's main witness' testimony was "straightforward, detailed, and . . . credible." Conversely, the ALJ found the appellant's testimony not "entirely credible." Upon its review, the Commission finds nothing persuasive in the record or the appellant's exceptions to question those determinations or the findings and conclusions made therefrom.

Similar to its review of the underlying charges, 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. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007).

In this matter, the Commission agrees with the ALJ's recommendation to modify the 60 working day suspension to a 10 working day suspension. The ALJ properly determined that, based on the circumstances presented, and considering the appellant's previous minor disciplinary history and other mitigating factors, that a significant reduction in penalty was warranted. In this regard, the Commission notes that the 10 working day suspension, a major discipline, is appropriate and signifies to the appellant that his inactions were serious, and any future similar infractions may lead to increasingly severe disciplinary penalties, up to and including removal from employment.

Since the suspension has been modified, the appellant is entitled to 50 working days of mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10. However, he is not entitled to counsel fees. *N.J.A.C.* 4A:2-2.12(a) 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). In the case at hand, although 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.

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 are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore modifies the 60 working day suspension to a 10 working day suspension. The Commission further orders that the appellant be granted 50 working 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.

The parties must inform the Commission, in writing, if there is any dispute as to back pay 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 24TH DAY OF MAY, 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

OAL DKT. NO. CSV 02228-21

AGENCY DKT. NO. 2021-1072

**IN THE MATTER OF JAMES CHAMBERS,
MERCER COUNTY CORRECTIONS CENTER.**

David B. Beckett, Esq., for appellant, James Chambers (Beckett and Paris, LLC,
attorneys)

Michael Anthony Amantia, Esq., for respondent, Mercer County Corrections
Center (Paul R. Adezio, Mercer County Counsel, attorney)

BEFORE WILLIAM T. COOPER, III, ALJ:

Record Closed: January 9, 2023¹

Decided: April 10, 2023

STATEMENT OF THE CASE

Appellant, James Chambers (Chambers or appellant), an employee of respondent, Mercer County Corrections Center (County), appeals disciplinary action seeking a sixty working-day suspension for alleged violations of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a

¹ An order of extension for filing an initial decision was issued on February 23, 2023, extending the filing of the initial decision to April 10, 2023.

public employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause; Mercer County Corrections Center Standards and Operating Procedures (SOP) B-1 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in causing danger to persons or property; Mercer County Corrections Center SOP B-2 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which could result in causing danger to persons or property; Mercer County Corrections Center SOP D-6 Violations of administrative procedures and/or regulations those involving safety and security; SOP 004 Employee Handbook; SOP 104 Internal Affairs; SOP 112 County Property Lost or Stolen; SOP 238 Post Orders-Corrections Officer (General); and SOP 448 Issuing weapons for official use.

PROCEDURAL HISTORY

On March 13, 2018, the County filed a Preliminary Notice of Disciplinary Action (PNDA) against appellant charging that on February 1, 2018, the following violations were committed: N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause; Mercer County Corrections Center SOP B-1 Neglect of duty, loafing, idleness or willful failure to devolve attention to tasks which would not result in causing danger to persons or property; SOP B-2 Neglect of duty, loafing, idleness or willful failure to devolve attention to tasks which would not result in causing danger to persons or property; SOP D-6 Violations of administrative procedures and/or regulations involving safety and security; SOP 004 Employee Handbook; SOP 112 County Property Lost or Stolen; SOP 238 Post Orders-Corrections Officer (General); and SOP 448 Issuing weapons for official use. Based upon the alleged violations, the county sought a sixty working-day suspension.

The appellant requested a departmental hearing on all the PNDA which was held, resulting in a Final Notice of Disciplinary Action (FNDA) being issued to appellant on January 8, 2021, sustaining all the charges as set forth above and suspending him without pay for a total of sixty working-day.

Appellant timely appealed and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on February 24, 2021. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

A plenary hearing was conducted on September 29, 2022, via Zoom. The record remained open for the parties to submit closing statements. Post hearing submissions were received on behalf of appellant and respondent on January 9, 2023, and the record closed that day.²

FACTUAL DISCUSSION

Testimony

For respondent

Phyliss Oliver (Oliver) testified that she previously served as the Deputy Warden of the Mercer County Corrections Center (facility). She is now retired. Her duties included overseeing operations and assisting the Warden with day-to-day operations at the facility. Included in her responsibilities was overseeing Internal Affairs (IA). In that capacity the Warden assigned her to investigate an incident that occurred on February 1, 2018, involving the appellant and Correctional Officer Ranesha Burnett (Burnett).

During the course of the investigation Oliver learned that Burnett and the appellant were on duty on February 1, 2018, guarding an inmate at the Capital Health-Helene Fund Campus (CHHFC). During the shift Burnett was feeling ill and used a semi-private restroom available to CHHFC staff (the restroom). When Burnett finished, she exited, and inadvertently left her duty weapon (weapon) in the restroom. She then returned to the area where the inmate and appellant were located. Within minutes of her return a CHHFC staff member appeared and advised that a weapon was located in the restroom. Burnett immediately returned to the restroom, retrieved her weapon, and inspected it to

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ensure no rounds of ammunition were missing. According to Oliver, Burnett's weapon was "temporarily lost" on February 1, 2018.

Oliver acknowledged that the appellant had forwarded an email to her and the Warden on February 2, 2018, alerting him that an "incident" had occurred during appellant's shift on February 1, 2018. However, the email failed to provide any details as to what the incident was.

Oliver interviewed appellant who indicated that Burnett was not feeling well on February 1, 2018, and had made several visits to the restroom. During one such visit, Burnett had left her weapon in the restroom. He also confirmed that a nurse alerted the officers that a weapon had been found in the restroom at which point Burnett immediately retrieved and secured the weapon. Oliver asked if appellant had advised the shift commander of the incident involving a lost weapon and appellant advised he had not. The appellant offered that the restroom was only available to CHHFC staff, Burnett had quickly recovered the weapon and the inmate remained secure during the entirety of the event, therefore, he did not feel it necessary to immediately report the incident. Oliver questioned the appellant as to Standard Operating Procedures (SOP) regarding missing weapons; he said he was unaware of them.

Oliver also interviewed Burnett who admitted that she "temporarily lost" her weapon while on duty but immediately recovered it. Burnett advised that she and the appellant discussed the necessity of reporting this incident and that the appellant told her "he would take care of the incident."

According to Oliver, neither the appellant nor Burnett submitted written reports for the incident until February 5, 2018.

Oliver testified as to the SOPs that were violated by appellant on February 1, 2018:

- SOP 004 "Employee Handbook" establishes baseline principles and requirements for all employees that include the timely reporting of lost or stolen equipment.
- SOP 112 "County Lost or Stolen Property" requires immediate written notification to an employee's supervisor when a duty weapon is lost. The SOP requires the supervisor to notify the Captain and the IA office and warn that an investigation may be ordered. If the property is recovered, then the employees have twenty-four hours to report it to their supervisor and immediately advise IA and local law enforcement, if the loss was reported to them.
- SOP 238 "Post Orders-Correction Officer (General)" requires the immediate reporting both orally and in writing of all incidents of an unusual nature.
- SOP 448 "Issuing Weapons for Official Use" requires that an employee always maintains possession and control of an assigned duty weapon, and to report to law enforcement authorities "as soon as possible, but no later than three hours from the time" the weapon is discovered missing.

Oliver testified that a correctional officer (CO) on hospital duty is required to contact master control at the correction center and provide their status at the post either every half hour or every hour. Further, a CO is required to advise master control of any unusual incidents that occurred during the shift which in turn are recorded in the master control logbook. According to Oliver, an incident where a CO temporarily loses possession of a duty weapon is an event that COs are required to report to master control. The control logbook for February 1, 2018, did not include any report of an unusual incident at CHHFC on February 1, 2018.

Based upon Oliver's investigation, she concluded that Burnett failed to immediately advise her supervisor in an oral report that her weapon had been temporarily lost and that both appellant and Burnett failed to report that the weapon was missing.

Oliver was questioned as to possible animus between herself and the appellant, who for a time served as the acting president of the Police Benevolent Association (PBA) (the union covering correctional officers). In that capacity the appellant had made allegations of malfeasance against both Oliver and the Warden to the Mercer County Prosecutor and local newspapers. Oliver denied having any animosity toward the appellant.

Ranessa Burnett (Burnett) testified that she is employed as a CO for respondent and was on duty on February 1, 2018. On that date she was working with appellant at CHHFC, guarding an inmate. During the shift Burnett became ill and repeatedly used an employee restroom. On her last trip to the restroom, she inadvertently left her weapon behind. Within a minute of her returning to the location where the appellant and inmate were located, a nurse arrived and asked if anyone had left a handgun in the restroom. At this point Burnett immediately went to the restroom and retrieved the weapon. She also inspected it, counted the rounds of ammunition, and then holstered her weapon.

Burnett described the restroom as a single use facility used only by employees of CHHFC. As a courtesy, COs are also allowed to use it.

Burnett prepared a written report and then used a time stamp located in the sallyport of the correction center to record that the report was completed on February 2, 2018. She intended to deliver it to Oliver, but she was not in her office on that day. According to Burnett, Oliver was not in on February 3 or 4. The first opportunity Oliver had to deliver the report was on February 5, 2018. Burnett chose not to submit the report to master control or a supervisor because she wanted Oliver to have the report since she oversaw internal affairs (IA).

Burnett took full responsibility for this incident. She denied that the appellant used any undue influence on her to not report the incident. She admitted that she was careless but felt that this was due to her illness.

For appellant

James Chambers (appellant) testified that he was a correctional officer but had retired in May 2022. While employed he served as the Vice President of the local PBA and a month prior to his retirement he served as the acting President.

The appellant was working on February 1, 2018, with Burnett guarding an inmate at CHHFC. During the shift Burnett was not feeling well and had made several trips to the restroom. On her last visit, shortly after she returned, a CHHFC staff member appeared in the doorway and asked if anyone had left "a gun in the bathroom?" At this point Burnett immediately stood up and returned to retrieve her weapon. According to the appellant the restroom was only ten or fifteen feet away from their location. He also confirmed that it was a single use facility for CHHFC staff only.

Burnett and the appellant discussed the need to report the incident but neither felt that it needed to be done immediately and chose not to report it to master control or a supervisor. Chambers alerted the Warden and Deputy Warden when he got home by sending an email. That email read:

FYI, an incident occurred at the hospital with Officer Burnett however, NOT involving the [S]afety and [S]ecurity of the [I]nmate. Officer Burnett will submit an incident report in the A.M. and I will submit one electronically in the morning because I called out personal sick for B-tour. This incident is being directly reported to your office for the reasons of validity and accuracy, which is often lost in 3rd part communication.

Appellant did not file an incident report on February 2, 2018, because he was not feeling well, and took a sick day. It was not until February 5, 2018, that he submitted a written incident report to the Warden. It was the appellant's opinion that this incident did

not require immediate action by himself or Burnett because the weapon was recovered quickly.

FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

The testimony from Oliver was straightforward, detailed, and generally uncontested by appellant. I accept her as credible.

The testimony from Burnett was clear and concise. Moreover, she took full responsibility for her actions on February 1, 2018, I also find her to be credible.

Appellant's testimony was consistent, and his recollection of events matches with Burnett and the reports they both eventually filed. However, his characterization of this incident as one that did not require immediate action is concerning. Further, his email on February 1, 2018, did not adequately relate to what happened at CHHFC. Overall it was

apparent that the appellant failed to grasp the severity of the incident and as such, I cannot accept him as entirely credible.

Specifically, as to these charges I **FIND**:

On February 1, 2018, the appellant and Burnett were on duty guarding an inmate at CHHFC. Burnett was not feeling well and had made multiple trips to a single-person staff restroom.

On her last trip to the restroom, she removed her weapon from the holster. When she exited the restroom, she forgot to take her weapon and left it in the restroom. Within a minute or two upon her return to the appellant's location, a CHHFC staff member notified the appellant and Burnett that the weapon was in the restroom. Burnett retrieved the weapon, inspected it, and counted the rounds to ensure none were missing.

Burnett temporarily lost possession and control of her weapon.

The incident involving Burnett's weapon occurred during appellant's shift on February 1, 2018. Burnett and the appellant admitted that they failed to advise the shift commander about the incident.

Appellant sent an email to the Warden and Oliver on February 2, 2018, notifying them that an incident had occurred but failed to advise them that it involved Burnett's weapon.

Appellant did not submit a written incident report until February 5, 2018.

LEGAL ANALYSIS AND CONCLUSION

Two issues must be addressed in this matter; first is whether respondent has proven the charges by a preponderance of the evidence, and the second issue is whether the sixty working-day suspension was reasonable.

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-20; N.J.A.C. 4A:2-2.2. -2.3(a).

An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the appellant's guilt or innocence, as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143, (App. Div. 1987). The respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that the appellant was guilty of the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Appellant's status as a correctional officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576-77 (1990). Law-enforcement employees, such as a correctional officer, represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

These matters involve major disciplinary actions, brought by the County against appellant, seeking suspension without pay for a period of sixty working-day. The FNDA charged the appellant with N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause; and Mercer County Correction Center SOP B-1 Neglect of duty, loafing, idleness or willful failure to devolve attention to tasks which would not result in causing danger to persons or property; SOP B-2 Neglect of duty, loafing, idleness or willful failure to devolve attention to tasks which would not result in causing danger to persons or property; SOP D-6 Violations of administrative procedures and/or regulations involving safety and security step 4; SOP 004 Employee Handbook; SOP 112 County Property Lost or Stolen; SOP 238 Post Orders-Corrections Officer (Generally); and SOP 448 Issuing weapons for official use.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

As to conduct unbecoming a public employee, this term has been described as an "elastic" phrase that includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); see Karins v. City of Atl. City, 152 N.J. 532 (1998). Unbecoming conduct by a police officer need not be predicated upon a violation of the employer's rules or policies. See City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955). Rather, it "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." In re Tuch, 159 N.J. Super. 219, 224 (App. Div. 1978).

The courts have frequently recognized the sensitive position held by law enforcement officers. It is firmly established that "[t]he obligation to act in a responsible

manner is especially compelling in a case involving a law enforcement official.” In re Phillips, 117 N.J. 567, 576 (1990). In the words of the Appellate Division:

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint, and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . .

[Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).]

In other words, “[s]ociety reposes in police officers’ responsibilities that are simultaneously weighty, sensitive, and fraught with dangerous consequences to themselves, other police officers, and the public.” In re Vey, 135 N.J. 306, 308 (1994). They are authorized to carry firearms and to use deadly force in justifiable circumstances, they can engage in high-speed chases, and they are sometimes required to intervene in domestic disputes. Ibid. Conduct by a police officer that indicates “an attitude of mind and approach to the obligation of his office fundamentally at variance with his sworn duty” is a violation of the required standard of behavior inherent in the position. Asbury Park, 17 N.J. at 429–30. Adherence to this high standard of conduct is an obligation that a law enforcement officer voluntarily assumes when he or she enters public service. Emmons, 63 N.J. Super. at 142.

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

failure to perform or discharge, a duty required by the employee's position and includes official misconduct or misdoing as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div.), certif. granted, 97N.J. 588 (1984), aff'd on other grounds, 99 N.J. 1 (1985).

The appellant has also been charged with "other sufficient cause," pursuant to N.J.A.C. 4A:2-2.3(a)(12), for violating the county SOP's concerning the reporting of lost or stolen duty weapon. Violating a rule or policy means failure to adhere to the standards set forth by the institution, in this case by the appellant failing to immediately advise a supervisor that Burnett had temporarily lost possession and control of her duty weapon on February 1, 2018. SOP 112 requires "strict accountability of all County Property issued for individual use and shall require immediate notification in the event of loss or theft." The SOP further states that "the loss, theft, or destruction, of guns must be immediately reported to the Shift Commander, Captain and Internal Affairs Office by any employee having knowledge of its loss, theft, or destruction. Such loss must be considered a major incident and warrants a full investigation."

Here, the credible evidence establishes that Burnett carelessly left her duty weapon in the CHHFC staff restroom on February 1, 2018, and in so doing she lost possession and control of her duty weapon. The appellant argues that the loss was only "temporary," and the weapon was "quickly" recovered and therefore the incident did not require immediate reporting. This argument is unpersuasive. It is immaterial whether the loss was for a short duration or for an extended period as the appellant was required to immediately report the incident to the shift commander that the incident had occurred.

Appellant's argument that he reported the incident on February 2, 2018, when he sent an email to the Warden and Oliver is similarly unpersuasive. That email stated only that an incident occurred, but failed to disclose that the incident involved the loss of a duty weapon.

I **CONCLUDE** that the respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties) and that such charges must be **SUSTAINED**.

I further **CONCLUDE** that the respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee), and that such charges must be **SUSTAINED**.

I further **CONCLUDE** that the respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty) and that such charges must be **SUSTAINED**.

The charge of violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, is based on an allegation of violation of a rule, regulation, policy, procedure, order or administrative decision. Here, the record reflects that the appellant failed to immediately notify the shift commander about the loss of a service weapon. And the email the appellant sent to the Warden and Deputy Warden was insufficient in conveying what occurred on February 1, 2018.

Accordingly, I **CONCLUDE** respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of Mercer County Corrections Center SOP's 004 112, 238 and 448 and therefore N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause), that such charge must be **SUSTAINED**.

PENALTY

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182.195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature

of the sustained charges and the appellant's past record. *Bock*, 38 N.J. at 523-24. The employee's past record is said to encompass their 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." *Ibid.* Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. *Id.* at 524.

However, the theory of progressive discipline is not a fixed rule to be followed without question.

An analysis of the mitigating and aggravating factors must be undertaken before the appropriate discipline can be determined. The mitigating factors are as follows: First, the appellant was not careless in the handling of his duty weapon. His failure in this situation centered around his failure to properly report Burnett for the carelessness she exhibited in her handling of her weapon. Second, the weapon was found quickly. While there was the potential of harm to others, none occurred here because of the brevity of the incident. Third, the inmate was kept secure and in custody during the incident. He had no access to the restroom where the weapon had been briefly left. Finally, although the appellant's efforts to notify the Warden of the incident fell below what was required under the SOP's, the appellant did attempt to notify the Warden within a reasonable amount of time.

The aggravating factors include the severity of the offense and the appellant's prior limited disciplinary history. Appellant's prior disciplinary matters include the following:

- April 7, 2019, Violation of Administrative Procedures — five-day suspension
- January 16, 2019, Absent Without Proper Notice — Written Reprimand
- June 28, 2018, Violation of Administrative Procedures — two-day suspension

- June 6, 2018, Violation of Administrative Procedures — Written Reprimand
- March 22, 2016, Excessive Absences — Written Reprimand
- March 6, 2012, Falsification of A Report — two-day suspension
- May 27, 2011, Refusal to Work O/T — Written Reprimand
- April 15, 2011, Neglect of Duty — Written Reprimand

Weighing the mitigating and the aggravating factors, I conclude that the mitigating factors outweigh the aggravating factors. Here, the respondent sought a penalty of a sixty working-day suspension. Under the circumstances presented here, such a penalty is disproportionate to the facts surrounding the sustained charges and ignores the mitigating factors that support a less stringent penalty.

I therefore **CONCLUDE** that the imposition of a ten working-day suspension is appropriate under the circumstances presented here.

ORDER

I **ORDER** that the charges of violating N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) neglect of duty; N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, to wit Mercer County Corrections Center SOP's 004, 112, 238 and 448 having been proven by the respondent by a preponderance of the credible evidence are hereby **SUSTAINED**.

It is further **ORDERED** that the sixty working-day suspension against appellant be amended to a ten working-day suspension be imposed.

It is also **ORDERED** that back pay and other benefits be issued to appellant as may be dictated by N.J.A.C. 4A:2-2.10.

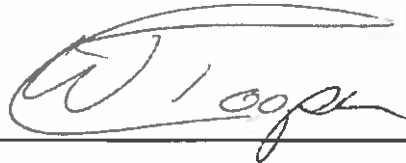
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

April 10, 2023

DATE



WILLIAM T. COOPER, III, ALJ

Date Received at Agency:

Date E-Mailed to Parties:

WTC/am

APPENDIX

WITNESSES

For appellant

James Chambers

For respondent

Phyliss Oliver

Ranesha Burnett

EXHIBITS

For appellant

- A-1 Complaint, dated January 4, 2018, signed by James Chambers
- A-2 Newspaper Article, dated January 8, 2018, Re: Complaint
- A-3 Newspaper Article, dated January 11, 2018, Re: Complaint
- A-4 Report of Officer Burnett, dated February 2, 2018
- A-5 Incident Email of James Chambers, dated February 2, 2018, and Reply
- A-6 Collective Bargaining Agreement between PBA Local 167 and County of Mercer, 2015–2017 (latest contract)
- A-7 Not admitted
- A-8 Signed Answers to Request for Admissions

For respondent

- R-1 Preliminary Notice of Disciplinary Action, dated March 13, 2018
- R-2 Mercer County Corrections Center-Official Internal Affairs Investigation Report, dated March 26, 2018
- R-3 Incident Report, C.O. James Chambers, dated February 5, 2018
- R-4 Email: from C.O. Chambers to Warden Ellis, dated February 2, 2018
- R-5 Incident Report, C.O. R. Burnett, dated February 2, 2018
- R-6 Master Control Log of Incidents/Events, Thursday C-Tour, February 1, 2018
- R-7 Arsenal Control Form 441-F1 February 1, 2018

- R-8 Logbook, dated February 1, 2018
- R-9 Mercer County Corrections Center, Department of Public Safety Standard (MCCCDPS) Standard Operating Procedures (SOP) 004: Employee Handbook
- R-10 MCCCDPS SOP 104: Internal Affairs
- R-11 MCCCDPS SOP 112: County Property Lost or Stolen
- R-12 MCCCDPS SOP 238: Post Orders-Corrections Officers (General)
- R-13 MCCCDPS SOP 448: Issuing Weapons for Official Use
- R-14 Mercer County Public Safety- Table of Offenses and Penalties
- R-15 James Chambers- disciplinary history
- R-16 Not Admitted
- R-17 FNDA re PNDA, dated March 1, 2018