

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 11TH DAY OF OCTOBER, 2023

Allison Chris Myers

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Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Division of Appeals and Regulatory Affairs
Civil Service Commission
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 04347-2022

AGENCY DKT. NO. N/A

2022-2828

**IN THE MATTER OF SHANAYA
HENDERSON, DEPARTMENT OF
CORRECTIONS, EDNA MAHAN
CORRECTIONAL FACILITY.**

Shanaya Henderson, appellant, pro se

Jana R. DiCosmo, Deputy Attorney General, appearing for respondent, Department of Corrections, Edna Mahan Correctional Facility (Matthew J. Platkin, Attorney General of New Jersey)

Record Closed: June 12, 2023

Decided: September 11, 2023

BEFORE: EDWARD J. DELANOY, JR., Deputy Director & ALAJ:

STATEMENT OF THE CASE

Appellant, Shanaya Henderson, appeals the determination by respondent, the Department of Corrections, Edna Mahan Correctional Facility (EMCF), removing her from her position as a Senior Correctional Officer effective April 20, 2022, based on disciplinary charges of conduct unbecoming a public employee and other sufficient cause stemming

from her unduly familiar relationships with inmates and her misrepresentation of facts during the investigation of her alleged misconduct.

PROCEDURAL HISTORY

The EMCF received an "Application for Clearance and Issuance of ID Cards" from appellant on July 13, 2021. As a result of discrepancies in the information provided by Henderson in her application, the Special Investigations Division (SID) was directed to conduct an administrative investigation. SID discovered that Henderson engaged in an unduly familiar relationship with inmates by: (1) placing bets on the gambling platform "FanDuel" for her incarcerated brother, Sean Henderson (S.H.), and his fellow inmate at Northern State Prison (NSP); (2) bringing contraband to EMCF; and (3) disclosing safety and security protocols to S.H. In addition, SID determined that Henderson misrepresented facts during her SID interview. The DOC found that her actions violated several Department policies and regulations. Accordingly, on April 28, 2021, the DOC issued a Preliminary Notice of Disciplinary Action (PNDA), which charged Henderson with violations of the New Jersey Administrative Code and DOC policies and procedures, as follows:

- N.J.A.C. 4A:2-2.3(a)6: Conduct Unbecoming of a Public Employee.
- N.J.A.C. 4A:2-2.3(a)12: Other Sufficient Cause.
- HRS 84-17, as amended: C. Conduct 8. Falsification: Intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation or other proceeding.
- HRS 84-17, as amended: C. Conduct 11. Conduct unbecoming an employee.
- HRS 84-17, as amended: C. Conduct 17. possession of contraband on state property or in state vehicles.
- HRS 84-17, as amended: D. Safety and Security Precautions. 4. Improper or unauthorized contact with inmate-undue familiarity with inmates, parolees, their families, or friends.
- HRS 84-17, as amended: E. General 1. Violation of a rule, regulation, policy, procedure, order, or administrative decision.

(R-1.)

The specifications in support of those charges stated:

An investigation revealed and you admitted that you communicated with inmates, including facilitating gambling and financial transactions. You admitted possessing items within the facility or on its grounds which were not issued by the correctional facility or authorized as permissible for retention or receipt. You provided false and obstructive information to the Special Investigation Division when interviewed. Your conduct is unbecoming a sworn law enforcement officer, violates relevant Departmental rules, and shall not be tolerated by the Department.

[Ibid.]

Henderson requested a departmental hearing, which was held on March 22, 2022, at which she had union representation. The hearing officer sustained the charges, and a Final Notice of Disciplinary Action ("FNDA") was issued on April 20, 2022, removing Henderson from her position of employment. (R-2.)

Henderson perfected her appeal on or about May 27, 2022, and on May 31, 2022, the appeal was filed at the Office of Administrative Law (OAL) for a hearing as a contested case before the Honorable Susan Olgiati, ALJ. Respondent filed its motion for summary decision on April 18, 2023. Appellant, representing herself, filed her opposition to respondent's motion on May 30, 2023. Because appellant failed to provide a copy of her brief to respondent when she filed with the court, respondent was given until June 12, 2023, to file a reply brief, which respondent did on June 9, 2023. Following Judge Olgiati's appointment to the Superior Court, the case was reassigned to the undersigned, and the time limit for filing an initial decision was extended pursuant to N.J.A.C. 1:1-18.8.

Appellant does not dispute any of the material facts underlying the charges against her. Instead, she takes issue with the characterization of her improper communications with her brother as "undue familiarity," since the DOC knew her brother was incarcerated, and corrections officers are permitted to have personal relationships with inmates who are family members. More specifically, she calls the DOC's conclusion that she used her JPay account to facilitate gambling for two inmates "speculation," and she argues that

because the use of body-worn cameras (BWCs) by law enforcement officers was public knowledge, her disclosure of corrections officers' use of BWCs was harmless and not deserving of discipline. Further, she disputes the characterization of prohibited but common household items, such as cleaning supplies and snacks, as "contraband." Finally, with respect to her alleged misrepresentation of facts to investigators, she argues that the DOC failed to provide relevant discovery, including exculpatory evidence, though she does not specify what that evidence could be. She asks to be permitted to resign her position, rather than being removed for cause.

FINDINGS OF FACT

In considering the relevant evidence and the parties' submissions, I **FIND** the following **FACTS**:

1. DOC policy requires corrections officers to obtain written permission before corresponding with inmates, including family members. (R-12 at DOC-246; R-13 at DOC-277.)
2. Appellant began corresponding with her brother, S.H., on November 14, 2020. (R-3 to R-5.) Although appellant disclosed that her brother was incarcerated at a DOC facility, she did not seek written permission to communicate with him until July 7, 2021, by which time she had been corresponding with him without authorization for nearly eight months. (R-3 at DOC-017.)
3. Appellant had multiple phone conversations with S.H. and at least one other inmate in which she agreed to place bets on their behalf on various sporting events. (R-5; see R-3 at DOC-019-DOC-20 for partial transcripts of conversations.) As the other people on the phone relayed their bets, appellant attempted to register the picks on the betting platform FanDuel. At one point, a male inmate says to appellant "[i]f I don't win this shit, I might send you another \$100 I can bet with." Appellant shared betting lines and gave feedback in real time on what was and was not working on the

platform. (R-3 at DOC-020.) She also discussed bets that she previously placed for S.H. (R-3 at DOC-020.)

4. In one recording, an inmate other than S.H. came on the phone to explain to appellant how FanDuel was supposed to work. He directed her to reach out to his niece for assistance, which appellant did while on the phone. (R-5, May 23, 2021, 1:41 p.m. at 0:45-5:10; R-3 at DOC-020.)
5. In another recorded conversation, a male inmate asked appellant if she had heard from his friend about getting money from him for gambling. (R-5, July 9, 2021, 2:08 p.m. at 3:30; R-3 at DOC-019.) He asked her to “put the FanDuel thing on real quick,” to which appellant responded that she was on it. (R-5, July 9, 2021, 2:08 p.m. at 11:50.) He proceeded to review bets that he wanted her to place on his behalf.
6. Appellant failed to disclose that she created a JPay account on May 12, 2017, six months before she graduated from the Correctional Staff Training Academy.
7. Appellant's JPay transaction history, showing \$390 in money transfers between her and S.H., corroborates the gambling activity that is explicitly referenced in the recorded phone conversations. (R-3 at DOC-020; R-B.)
8. Immediately after her interview with SID, appellant told S.H. that she was under investigation. Appellant mentioned her interactions with Administrative Lt. Washington, who she said is unfit to do his job.
9. Appellant told S.H. that she brings contraband into work, including prohibited snacks and cleaning supplies.
10. Appellant discussed DOC training with S.H. and confirmed that EMCF officers wear body cameras.

11. Contrary to what is borne out by the evidence, appellant told the SJD investigator that she has never facilitated gambling for her brother or other inmates. (R-4 at 9:00.)

LEGAL DISCUSSION

Standard for Summary Decision

Summary decision should be granted "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). To defeat the motion, the opposing party "must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." A court ruling on a motion for summary decision must "consider whether the competent evidential materials, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540-41 (1995). This standard is substantially the same as that which governs motions for summary judgment in non-administrative, civil proceedings. Ibid.

Here, the material facts are undisputed. Appellant has not presented facts or evidence which would permit a rational factfinder to find in her favor. Accordingly, I **CONCLUDE** that this matter is ripe for summary decision.

Having determined that this matter is appropriate for summary decision, I next analyze the law regarding the substantive legal issues raised in this matter. Appellant's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (the Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2. A public employee who commits a wrongful act may be subject to major discipline for a wide variety of offenses connected to his or her employment. N.J.A.C. 4A:2-2.3(a). Major discipline for such offenses may include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a).

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). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940). (citation omitted.) That is, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottlin, 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Conduct Unbecoming

"Conduct unbecoming a public employee is an elastic phrase, encompassing conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. Atl. Cty., 152 N.J. 532 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-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)). The determination of what constitutes conduct unbecoming is primarily a question of law and is made on a case-by-case basis. Karins, 152 N.J. at 553; In re King, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>.

Law enforcement officials, by the nature of their duties, are held to a higher standard of conduct than other public employees. See Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966); see also In re Phillips, 117 N.J. 567, 576-77 (1990). They 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." Armstrong, 89 N.J. Super. at 566. As such, they must "exercise tact,

restraint and good judgment in [their] relationship with the public.” Ibid. Officers are on notice that they are held to this higher standard twenty-four hours a day.

It is well established That improper or unauthorized contact between an officer and an inmate can constitute conduct unbecoming. See Bowden v. Bayside State Prison, 268 N.J. Super. 301 (App. Div. 1993), certify. denied, 135 N.J. 469 (1994). As the Appellate Division explained in Bowden:

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become ‘tinderboxes’ . . . The violation of rules barring relationships of familiarity and dealings between correction officers and inmates would seem to us to be conduct which the system cannot safely tolerate.

[kl at 305-06.]

In this case, appellant engaged in multiple, discrete acts unbecoming a public employee — from communicating with inmates without prior authorization, to facilitating gambling by inmates, to lying to investigators, and possessing contraband. Taken together, her conduct reflects a pattern of behavior that calls into question her ability to fulfill her duties. Therefore, I **CONCLUDE** that respondent has met its burden of proving that appellant engaged in conduct unbecoming a public employee.

Undue Familiarity

Although DOC staff are permitted to maintain personal relationships with family members incarcerated in DOC facilities, “[u]nder no circumstances may a staff member contact or correspond with an inmate or an inmate’s family without written permission from the organization unit administrator or designee . . .” (R-12 at DOC-246; R-13 at DOC-277.) “In the event that the staff member wishes to contact or visit an inmate located in a correctional facility other than the employee’s organizational unit of employment, the employee shall notify the Administrator or designee of that facility, in writing, prior to

contacting or visiting the inmate.” (*Ibid.*) The mandatory nature of the policy is emphasized with nondiscretionary language.

It is undisputed that appellant communicated with S.H. and at least one other inmate and an inmate’s niece without prior authorization. Moreover, the content of appellant’s unauthorized communications — concerning gambling and confidential DOC matters — was often inappropriate. Thus, I **CONCLUDE** that respondent has met its burden of proving that appellant violated the DOC policy against undue familiarity.

Other Sufficient Cause

Appellant was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), “Other sufficient cause.” This catch-all provision of the code means that a finding of misconduct deserving of discipline need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” *Hartmann v. Police Dep’t of Ridgewood*, 258 N.J. Super. 32, 39-40 (App. Div. 1992) (citing references omitted). As set forth in the findings of fact and as discussed above, appellant’s conduct in this case violated the standard of good behavior expected of corrections officers. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause by a preponderance of credible evidence.

Security Protocol

DOC policy prohibits officers from disclosing “information received or acquired in the course of, and by reason of, official duty not generally available to the public, unless specifically authorized.” (R-11 at DOC-267.) Furthermore, the policy states that officers “shall . . . [t]reat as confidential, unless the contrary is authorized by Competent Authority, matters or information pertaining to the Department, its operations, investigations or internal procedures.” (*Ibid.*) The recorded calls show appellant violated this policy multiple times when she disclosed details of SID’s investigation into her, when she told S.H. that Administrative Lt. Washington is not fit to do his job, and when she confirmed

that corrections officers had started wearing body cameras. (R-5, August 2, 2021, 2:09 p.m.; R-5, August 5, 2021, 1:15 p.m.; R-3 at DOC-019.) Thus, I **CONCLUDE** that respondent has met its burden of proving appellant violated HRB 84-17 (as amended).

Contraband

Under DOC rules, "contraband" includes "[a]ny item, article or material found within the facility or on its grounds which has not been issued by the correctional facility or authorized as permissible for retention or receipt," as well as "[a]ny item, article or material found in the possession of, or under the control of, staff or visitors within the facility or on its grounds which is not authorized for receipt, retention or importation." In addition, "[a]ny article, which may be harmful or presents a threat to the security and orderly operation of the facility, shall be considered contraband." (R-14 at DOC-282.) DOC policies also prohibit officers from consuming food "while at their assigned stations or enroute thereto." (R-11 at DOC-258.)

Appellant told S.H. that she brings contraband into work, including prohibited snacks and cleaning supplies. (R-S, August 5, 2021, 1:15 p.m. at 3:10-4:00.) While no physical evidence of contraband was submitted by respondent, appellant's admission is sufficient to sustain this charge. Thus, I **CONCLUDE** that respondent has met its burden of proving appellant violated the DOC's policy against contraband.

Misrepresentation of Facts

Article II of the DOC's Rules of Conduct, concerning the Performance of Duties, prohibits officers from misrepresenting facts and making false or misleading statements. (R-11 at DOC-255.) Appellant's statement to SID that she never facilitated gambling for her brother or other inmates is plainly contradicted by the evidence. Accordingly, I **CONCLUDE** that respondent has met its burden of proving that appellant made an intentional misstatement of material fact in connection with the investigation into her alleged misconduct.

Penalty

Having established that appellant engaged in misconduct warranting discipline, the next question is the appropriate level of that discipline. A system of progressive discipline has evolved in New Jersey, tracing back to the New Jersey Supreme Court case in W. New York v. Bock, 38 N.J. 500 (1962). The idea is to consider the nature, number, and proximity of prior disciplinary infractions in levying progressively increasing penalties. Progressive discipline serves the goals of providing employees with job security and protecting them from arbitrary employment decisions.

The concept of progressive discipline is not rigid, however. The law is clear that a single incident can be severe enough to warrant removal. See In re Herrmann, 192 N.J. 19, 33 (2007); see also In re Carter, 191 N.J. 474 (2007). This is particularly true when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Here, appellant's misconduct is severe enough to warrant removal. Even if it was not, the penalty of removal is consistent with the concept of progressive discipline based on appellant's previous violations for neglect of duty (twice) and insubordination. (R-16.) Based on the foregoing, respondent's motion for summary decision is **GRANTED**.

ORDER

I hereby **ORDER** that the charges against appellant are **SUSTAINED**. I further **ORDER** that respondent's action removing appellant from her position of employment is **AFFIRMED**.

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

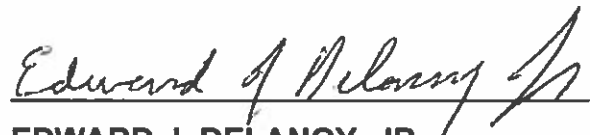
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision

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.

September 11, 2023

DATE



EDWARD J. DELANOY, JR.,

Deputy Director & ALAJ

Date Received at Agency:

Date Mailed to Parties:

EJD/cb

APPENDIX

EXHIBITS

For appellant

None

For respondent

- R-1 Preliminary Notice of Disciplinary Action
- R-2 Final Notice of Disciplinary Action
- R-3 Department of Corrections Special Investigations Division Report No. 2019-11-19-001- SSCF
- R-4 DVD of SID interview of Shanaya Henderson
- R-5 DVD of recorded calls with inmates
- R-6 iTag Historical Summary for inmate S.H., SBI# 1269005
- R-7 Emails to SCPO Cabrera disclosing familial relationship with incarcerated brother and father
- R-8 JPay Transaction Records
- R-9 Henderson July 7, 2021, Identification Renewal Application (for Clearance and Issuance of ID Cards)
- R-10 Henderson's July 7, 2021, and July 14, 2021, Special Custody Reports
- R-11 Law Enforcement Personnel Rules and Regulations
- R-12 Policy ADM.010.001: Standards of Professional Conduct
- R-13 EMCF Level III IMP Custody Directive 93
- R-14 EMCF Level III IMP Custody Directive 1
- R-15 New-Hire Orientation Policy Receipt Checklist
- R-16 Shanaya Henderson's DOC Disciplinary History