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November 1, 2023

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Arthur J. Murray, Esq.
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Re: *In the Matter of Judy Bellamy, Mercer County Corrections Center* (CSC Docket No. 2023-1588 and OAL Docket No. CSR 07718-28 [on remand from CSR 01149-23])

Dear Messrs. Amantia and Murray:

The appeal of Judy Bellamy, a County Correctional Police Officer with the Mercer County Corrections Center, of her removal, on charges, was before Administrative Law Judge Edward J. Delanoy, Jr., (ALJ), who rendered his initial decision on remand on October 6, 2023, recommending upholding the removal. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

The matter came before the Civil Service Commission (Commission) at its November 1, 2023, meeting. At that meeting, one of the five members was not in attendance. A motion was made to modify the removal to a 60 calendar day suspension. Two Commission members voted for this motion while the remaining two members voted to adopt the ALJ's recommendation in full. Since there was a tie vote, the motion was defeated, and no further motions were made, therefore, no decision was rendered by the Commission. Henry M. Robert, Sarah Corbin Robert, Henry M. Robert III, William J. Evans, Daniel H. Honemann, and Thomas J. Balch, *Robert's Rules of Order, Newly Revised*, Tenth Edition, October 2000, Da Capo Press, Perseus Book Group, Chapter 2, Section 4, p. 51. Under these circumstances, the ALJ's recommended decision will be deemed adopted as the final decision in this matter. *N.J.S.A. 52:14B-10(c)*. Any further review should be pursued in a judicial forum.

Sincerely,

Nicholas F. Angiulo
Director

Attachment

c: The Honorable Edward J. Delanoy, ALJ



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 07718-23

AGENCY DKT NO. N/A 2023-1588

(ON REMAND CSR 01149-23)

**IN THE MATTER OF JUDY BELLAMY,
MERCER COUNTY CORRECTIONS CENTER.**

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

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

Record Closed: October 4, 2023

Decided: October 6, 2023

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Judy Bellamy, a County Correction Police Officer for the respondent Mercer County Corrections Center ("MCCC" or "Mercer"), appeals the decision of Mercer removing her from her position. On September 23, 2022, Mercer issued a Preliminary Notice of Disciplinary Action setting forth the charges and specifications made on one count of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee,

N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, N.J.A.C. 4A:2-2.3(a)(2) Insubordination, and charges of violating Mercer County Table of Offenses and Penalties C4 Verbal Abuse of a Patient, Client, Resident or Employee; C9 Insubordination - Intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect, or use of insulting or abusive language to a supervisor, Step 3, and D6 Violation of administrative procedures, and/or regulations involving safety and security, Step 2, SOP 004, 238. A departmental hearing was held on January 14, 2023, and on January 20, 2023, a Final Notice of Disciplinary Action was issued removing appellant based upon the aforementioned charges, with the exception of charge C4, Abuse. Appellant appealed to the Office of Administrative Law (OAL) on February 6, 2023. N.J.S.A. 40A:14-202(d).

The hearing was held on March 21, 2023. Timely post hearing submissions were received on behalf of appellant and respondent, and accordingly on May 16, 2023, the record closed. The initial decision was issued on June 27, 2023, and on August 2, 2023, the Civil Service Commission (CSC) remanded the matter back to this tribunal for further proceedings. The CSC stated in the remand that, "While the Commission generally finds the ALJ's decision sufficient, it is concerned that this matter was solely based on the testimony of the appellant and the Correctional Police Sergeant involved in the incident. In that regard, the ALJ made credibility determinations in the initial decision. While the Commission generally defers to such determinations, in this matter, it requires that the ALJ provide further support for his determinations. In this regard, if there is additional evidence in the record to support those determinations, or in support of his ultimate findings and conclusions, he should provide such evidence as a basis as well as providing further explanation or reasons, as to his finding the appellant's testimony not credible. In this regard, the ALJ based that determination solely on the fact that the appellee was 'faced with removal, [and] she has some motivation to remember the facts in the light more favorable to her.' It is at the discretion of the ALJ as to whether any further proceedings are required or whether he can accomplish the above without such proceedings."

On August 28, 2023, appellant filed a motion requesting that she be returned to full-pay status under the 180-day rule. Respondent opposed the motion, and on September 29, 2023, this tribunal issued an Order denying said motion.

After reviewing the record, this tribunal is convinced that further proceedings are not necessary, and that this decision on remand can be accomplished without such proceedings. The review of the record was concluded on October 4, 2023, and on that day the record closed.

At issue is whether respondent has proven the charges by a preponderance of credible evidence, and if proven, whether the penalty of removal was justified and reasonable.

FACTUAL DISCUSSION

Testimony

Nicholas Mauro has been employed at Mercer for ten years, the last two as a sergeant. On September 12, 2022, Mauro was working the A tour when he received a radio transmission from Bellamy. Bellamy said, "Mauro, I need to see you in medical." Mauro responded, "Last caller go for Sergeant Mauro." Bellamy responded by again stating, "Mauro, I need you to come to medical." Morrow then stated, "Officer Bellamy, you can call me at 2310." Mauro was unsure if Bellamy heard this order, and Bellamy did not respond to that order to call extension 2310. Extension 2310 is located at the lieutenant's desk in master control where Mauro was at that time. Bellamy did not call Mauro at extension 2310, rather she called him at extension 2217. The call was then transferred to extension 2310. Bellamy then asked Mauro, "Why didn't you come to medical when I called you?" At that time, Bellamy was an officer while Mauro was her superior officer. Bellamy then stated, "I could not come to the phone. I was having an issue with an inmate and you needed to come to medical." Mauro responded by telling Bellamy that if a code was needed, she should have called a code. Bellamy then stated in a disrespectful tone, "I don't need you anymore, I handled it." Bellamy then hung up the phone on Mauro before he could reply to her.

Mercer has codes for every situation that could arise. A code is used to bring a quick response from other officers. After their conversation, Mauro went to medical where he attempted to talk to Bellamy. Mauro advised her that she was disrespectful by hanging up the phone, by ordering him to medical, and by failing to address him as Sergeant Mauro. Bellamy told Mauro that he was disrespectful to her for not reporting to medical when she called as she was having an issue with an inmate. Mauro advised Bellamy that she will not order him to a unit, and if a code is needed, she should call one. Bellamy then responded, "Yeah ok, we don't need to talk about this anymore. I will just call a Code 1 for every incident." Mauro attempted to continue the conversation with Bellamy, but she continued her disrespectful behavior and became belligerent, thus prompting him to write a report. Mauro stated that he interpreted Bellamy's response about calling a code for every incident as a threat to misuse the code system and obtain immediate response when not warranted. Such an action would put officers at risk and tie up resources. Mauro requested that Bellamy write an incident report and Bellamy did, but it was not about the incident that occurred with Mauro. Rather, her report was about the incident that occurred with the inmate in medical. Mauro stated that he was clear to Bellamy about what he wanted from her. On the same day as the incident in question, Mauro filed a report detailing the circumstances of his conversations with Bellamy. (R-2.)

Mauro agreed that when an officer needs assistance, the officer can call a code, or simply ask a supervisor to respond. In addition, officers may call each other by their last names on occasion, it is improper for an officer to call a superior by a last name only. Radio transmissions may sometimes "step" on each other, meaning two people can be talking at the same time.

Judy Bellamy began employment with Mercer in 2001. During that time, and until September 2022, Bellamy had three prior disciplinary matters, not involving time and/or attendance. In 2012, she was counseled for violation of a rule, regulation or policy. Later in 2012, Bellamy received a five-day suspension for insubordination. In 2015, Bellamy received a ten-day suspension for sleeping on duty and neglect of duty. (R-7.)

On September 12, 2022, Bellamy was working the A tour, 11:00 p.m. until 7:15 a.m., overseeing the medical unit. A new inmate had just been brought in for intake and was waiting to see a nurse for a health check. The inmate fell asleep, and when he woke up, he was angry that the nurse had not seen him yet. The inmate began yelling at Bellamy. She tried to de-escalate the situation, but as she was having difficulty doing so, she called for Mauro over the radio. At that time, there was not yet a threat from the inmate, and the door to the medical unit was closed but not secured. Bellamy did not have an emergency, so she did not call a code. Bellamy recalled calling Mauro by the prefix "Sergeant," which she believes may have been cut off by a premature release of the transmission button on her radio. Bellamy did not hear Mauro respond to her at that time. The inmate then got up and began attempting to leave the unit. Bellamy called Mauro again, and she recalled that again she called him by the prefix "Sergeant." The inmate began walking toward the door of the medical unit, and Bellamy extended her arm to stop him. She told the inmate to calm down, and the inmate retreated and calmed down. He was processed and eventually left the unit. Bellamy did not hear Mauro tell her to call him at extension 2310. Bellamy then called extension 2217 to call in her count. Bellamy was transferred to extension 2310. Mauro answered angrily, telling Bellamy that he responded twice to her. Bellamy said, "I needed you, but it's ok, I handled it." Bellamy did not hang up on Mauro. Several seconds of quiet then ensued, and she hung up the phone. Sometime later, before her break at approximately 3:00 a.m., Mauro came to the medical unit. He said, "What's going on Bell." Bellamy said, "Nothing." She thought the earlier conversation was concluded. However, Mauro went back over what had occurred. He was raising his voice, and she left to do a unit check. Mauro told her that she should have called a Code 1. However, Bellamy replied that she did not feel as if she was in danger.

Mauro asked for an incident report with regard to what had occurred with the inmate. She prepared that report on September 12, 2022, at approximately 6:00 a.m. (R-3.) That report detailed Bellamy's involvement with the prisoner, rather than a detail of the interaction with Mauro. At no time did Mauro ask her to prepare another report or tell her that her report was wrong or inaccurate. When asked what she might have done differently, she stated that perhaps she should not have asked Mauro the question

that she asked, or that she might have called a code, even though she did not believe the code was warranted. Bellamy did not believe that at any time she was loud or disrespectful to Mauro.

FINDINGS OF FACT

Given that the witnesses have different versions of the events surrounding the incident herein, it is my obligation and responsibility to weigh the credibility of the witness in order to make a determination. Credibility is the value that a fact finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973). Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, 5 N.J. 514.

The respondent's evidence was the testimony of Mauro. The respondent's position is that the appellant's actions warrant removal. Appellant had a responsibility to refrain from this type of action. The altercation was sufficiently egregious as to require the removal of appellant.

Bellamy disagreed with the testimony of Mauro. She stated that she recalled calling Mauro by the prefix "Sergeant," which she believes may have been cut off by a premature release of the transmission button on her radio. Bellamy did not hear Mauro respond to her at that time. Bellamy called Mauro again, and she recalled that again she called him by the prefix "Sergeant." Bellamy did not hear Mauro tell her to call him

at extension 2310. Bellamy then called extension 2217 to call in her count. Bellamy was transferred to extension 2310. Mauro answered angrily, telling Bellamy that he responded twice to her. Bellamy said, "I needed you, but it's ok, I handled it." Bellamy did not hang up on Mauro. Several seconds of quiet then ensued, and she hung up the phone. Sometime later, before her break at approximately 3:00 a.m., Mauro came to the medical unit. He said, "What's going on Bell." Bellamy said, "Nothing." She thought the earlier conversation was concluded. However, Mauro went back over what had occurred. He was raising his voice, and she left to do a unit check. Mauro told her that she should have called a Code 1. However, Bellamy replied that she did not feel as if she was in danger. Mauro asked for an incident report with regard to what had occurred with the inmate. She prepared that report on September 12, 2022, at approximately 6:00 a.m. At no time did Mauro ask her to prepare another report or tell her that her report was wrong or inaccurate.

Mauro was credible, and no evidence was produced as to why he may have been untruthful in his testimony, or that he exaggerated the same. There was no evidence, nor was any detected in the testimony, of any animosity between Mauro and Bellamy. Nothing in the evidence revealed any prior issues between Mauro and Bellamy, or that Mauro was acting in any retaliatory manner toward Bellamy. Mauro had been employed by the respondent for ten years when this incident occurred. He had been a sergeant for two years when this incident occurred. The passage of these years made him an experienced supervisor. He was certainly not a newcomer to his supervisory role. Because of his years of experience, Mauro's testimony must be given at the least, a reasonable degree of deference.

Mauro also admitted when he could not properly recall, or if he did not know an answer. On cross examination, Mauro was forthcoming, and he agreed that when an officer needs assistance, the officer can call a code, or simply ask a supervisor to respond. In addition, he offered that officers may call each other by their last names on occasion, but that it is improper for an officer to call a superior by a last name only. Finally, Mauro agreed that radio transmissions may sometimes "step" on each other, meaning two people can be talking at the same time. Nothing in the record supports a determination that he was anything but credible.

Finally, I note that Mauro's testimony was entirely consistent with his report, which was filed on the very same day as the incident with Bellamy. (R-2.) This consistency enhances the credibility of Mauro, as the report was made immediately after the interaction between Mauro and Bellamy.

Conversely, Bellamy's accounting of the events must be considered in light of what she has at stake. She recalled calling Mauro by the prefix "Sergeant," which she believes may have been cut off by a premature release of the transmission button on her radio. When Bellamy called Mauro again, she recalled that again she called him by the prefix "Sergeant." Mauro was clear that Bellamy did not address him as "Sergeant." In addition, Bellamy's report detailed Bellamy's involvement with the prisoner, rather than a detail of the interaction with Mauro.

Because of the contrasting testimony, this is a situation where credibility must be assessed. In assessing credibility, the interests, motives, or bias of a witness are relevant, and a fact finder is expected to base decisions of credibility on his or her common sense, intuition, or experience. The CSC was concerned in its remand that this tribunal based a credibility determination on the possible motives of Bellamy, stating that, "the ALJ based that [credibility] determination solely on the fact that the appellate was 'faced with removal, [and] she has some motivation to remember the facts in the light more favorable to her.'" However, for a fact-finder, interest and motive are clearly legitimate, legal, proper, viable and practical ways to judge credibility. Because Bellamy is faced with removal, she has some motivation to remember the facts in a light more favorable to her. It is not that I find Bellamy's testimony incredible, as suggested in the remand order; instead, it is that the version of events as detailed by Mauro is the more credible. In addition, in considering the credibility of Bellamy, this tribunal did not rely solely on Bellamy's possible motives in testifying as she did. Nevertheless, in furtherance of the request of the CSC for additional analysis concerning credibility, this tribunal offers the following analysis in reviewing the weight to be given to Bellamy's account of the incident with Mauro.

Bellamy's testimony was based on actions that possibly may have happened. Not one, but two radio transmissions may have "stepped" on each other, meaning two people could have been talking at the same time. Mauro may have thought Bellamy hung up on him, but she only hung up the phone after several seconds of dead air. Bellamy may have believed that Mauro wanted a report about the incident that occurred with the inmate in medical. However, while these things "may" have happened, this tribunal is charged with deciding this matter by a preponderance of the evidence standard, and not by a beyond a reasonable doubt standard. Mauro stated that he was not referred to by his inferior officer as "sergeant," that Bellamy hung up the phone on him, and that he was clear to Bellamy about what type of report he wanted from her. As previously set forth, credible testimony has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. Mauro was a credible witness, and from my experience, knowledge, and common observation, I can accept his testimony as more probable than Bellamy's under the circumstances.

In addition, Mauro testified that he advised Bellamy that she will not order him to a unit, and if a code is needed, she should call one. Bellamy then responded, "Yeah ok, we don't need to talk about this anymore. I will just call a Code 1 for every incident." Mauro attempted to continue the conversation with Bellamy, but she continued her disrespectful behavior and became belligerent, thus prompting him to write a report. Mauro stated that he interpreted Bellamy's response about calling a code for every incident as a threat to misuse the code system and obtain immediate response when not warranted. Such an action would put officers at risk and tie up resources. Bellamy was disrespectful and belligerent, and Mauro was not unreasonable in interpreting Bellamy's response about calling a code for every incident as a threat to misuse the code system and obtain immediate response when not warranted. Once again, Mauro was a credible witness, and from my experience, knowledge, and common observation, I can accept his testimony as more probable than Bellamy's under the circumstances.

In its remand order, the CSC also expressed concern that this matter was decided solely based on the testimony of the appellant and Mauro. That is accurate.

This tribunal did and continues to decide this matter solely based on the testimony of the appellant and Mauro. This tribunal does not need any additional corroborating witnesses, testimony, videos, or any other type of evidence to make this determination. In addition, there is no additional evidence in the record concerning the incident between Mauro and Bellamy. Credibility does not depend on the number of witnesses presented in a matter. Credibility can be determined from the testimony of only one credible witness. The facts of a case can be determined from the testimony of only one credible witness. The facts of this case can be determined from the testimony of one credible witness, Mauro. For these reasons, this tribunal believes it has provided clear and substantial support for the credibility determinations made herein, as required in the remand.

As such, after hearing the testimony of the witnesses, and considering all the documentary reports and other exhibits in evidence, I make the following **FINDINGS OF FACT**: On September 12, 2022, Mauro was working A tour when he received a radio transmission from Bellamy. Bellamy said, "Mauro, I need to see you in medical." Mauro responded, "Last caller go for Sergeant Mauro." Bellamy responded by again stating, "Mauro, I need you to come to medical." Morrow then stated, "Officer Bellamy, you can call me at 2310." Bellamy did not respond to that order. Extension 2310 is located at the lieutenant's desk in master control where Mauro was at that time. Bellamy did not call Mauro at extension 2310, rather she called him at extension 2217. The call was then transferred to extension 2310. Bellamy then asked Mauro, "Why didn't you come to medical when I called you?" At that time, Bellamy was an officer while Mauro was her superior officer. Bellamy then stated, "I could not come to the phone. I was having an issue with an inmate and you needed to come to medical." Mauro responded by telling Bellamy that if a code was needed, she should have called a code. Bellamy then stated in a disrespectful tone, "I don't need you anymore, I handled it." Bellamy then hung up the phone on Mauro before he could reply to her.

After their conversation, Mauro went to medical where he attempted to talk to Bellamy. Mauro advised her that she was disrespectful by hanging up the phone, by ordering him to medical, and by failing to address him as Sergeant Mauro. Bellamy told Mauro that he was disrespectful to her for not reporting to medical when she called as

she was having an issue with an inmate. Mauro advised Bellamy that she will not order him to a unit, and if a code is needed, she should call one. Bellamy then responded, "Yeah ok, we don't need to talk about this anymore. I will just call a Code 1 for every incident." Mauro attempted to continue the conversation with Bellamy, but she continued her disrespectful behavior and became belligerent, thus prompting him to write a report. Mauro stated that he interpreted Bellamy's response about calling a code for every incident as a threat to misuse the code system and obtain immediate response when not warranted. Such an action would put officers at risk and tie up resources. Mauro requested that Bellamy write an incident report and Bellamy did, but it was not about the incident that occurred with Mauro. Rather, her report was about the incident that occurred with the inmate in medical. Mauro stated that he was clear to Bellamy about what he wanted from her.

CONCLUSIONS OF LAW

Appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated thereunder. A civil service employee who commits a wrongful act related to his employment, may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6; 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority shoulders the burden of establishing the truth of the allegations by preponderance of credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (situation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). See Lowe v Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant initially argues in its closing brief, in Point one, that all non-administrative code charges in the FNDA must be dismissed under the 45-day rule. Appellant submits a certification in support of her position. (P-1.) Appellant sets forth

that for purposes of N.J.S.A. 40A:14-147, charges must be brought within forty-five days of the time the person filing the complaint had sufficient information to bring the charges. Aristizabal v. City of Atlantic City, 380 N.J. Super. 405 (App. Div. 2005). Here, the events occurred on September 12, 2022. MCCC had all information it needed as it relates to this matter within twenty-four hours of the event taking place. Thus, all charges had to be filed and served within forty-five days of September 13, 2022, which would have been by October 28, 2022. If the original PNDA (Page 2 of MC-1 of CSR 01149-2023) had been served at a proper address, same would have been timely. It was not. The Amended PNDA (Page 1 of MC-1 of CSR 01149-2023) was not even prepared, let alone mailed and served, within the requisite forty-five days. It is of no moment that Bellamy's Collective Bargaining Unit (PBA Local 167) or Counsel for PBA Local 167 (Alterman & Associates, LLC) was in receipt of the PNDA within the requisite forty-five days. The charges are against the employee, Bellamy; not PBA Local 167 and not its counsel.

Appellant's arguments fail on several grounds. First, the argument should have been raised at the hearing. Appellant did not call witnesses to provide testimony concerning this allegation. Appellant may have raised this issue in a pre-trial motion for dismissal or summary decision but failed to do so. As such, because this allegation requires fact-finding, this allegation cannot be addressed at this time, as all testimony has been completed and the record closed. For example, appellant urges in her brief that as the event took place on September 12, 2022, respondent "had all information it needed as it relates to this matter within 24 hours of the event taking place. Thus, all charges had to be filed and served within 45 days of September 13, 2022, which would have been by October 28, 2022." Appellant did not receive the charges until November 2, 2022. Therefore, appellant argues the 45-day rule was violated. Whether or not respondent "had all the information it needed by September 13, 2022," is clearly a factual issue, that cannot be resolved without testimony from witnesses.

Second, appellant cites to N.J.S.A. 40A:14-147 in support of her argument. Appellant sets forth that the statute requires "charges . . . be brought within 45 days . . ." The statute actually requires that charges be "filed" within 45 days. Service of the charges within 45 days is not a necessary component of the statute, as argued by

appellant. In addition, appellant does not argue in her certification that the PNDA was not filed within 45 days. Therefore, the allegation raised by appellant concerning respondent's mandate to follow the "45-day rule" must be rejected and dismissed.

Appellant also argues in her closing brief, in Points two through six, that all charges should be dismissed because respondent was mandated to follow the New Jersey Attorney General Guidelines as to Internal Affairs and failed to do so. In particular, that respondent failed to send a "target letter," failed to properly interview witnesses and record those interviews, failed to provide basic due process, and failed to follow procedures and Internal Affairs guidelines regarding investigations.

Unfortunately, these arguments, having been raised for the first time in the appellant's closing brief, are not timely. These arguments should properly have been raised at the hearing. Appellant did not call witnesses to provide testimony concerning these allegations. Appellant may have raised these issues in pre-trial motions for dismissal or summary decision but failed to do so. As such, because these allegations require fact-finding, these allegations cannot be addressed at this time, when all testimony has been completed and the record closed. Therefore, the allegations raised by appellant concerning respondent's mandate to follow the New Jersey Attorney General Guidelines as to Internal Affairs involve factual questions about how the investigation was conducted. As no factual proof about these allegations was provided, they are rejected and dismissed.

As to the charge of Mercer County Table of Offenses and Penalties C9 Insubordination - Intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect, or use of insulting or abusive language to a supervisor, Step 3, and "Insubordination" under the Administrative Code, Bellamy argues that she is not guilty of these charges because miscommunication over the radio or a failure to appreciate that a telephone call had not concluded resulting in a premature hang up is not insubordination. She argues that the record will show there was no intentional non-compliance by Bellamy. The record will show there were no affirmative acts of disobedience by Bellamy. Instead, there were multiple instances of miscommunication on the night in question. Communication is a two-way street. And,

in this case, miscommunication was a two-way street. I disagree. The record shows multiple instances of intentional and affirmative acts of disobedience and disrespect on the part of Bellamy toward her supervisor, Sergeant Mauro. She was disrespectful by hanging up the phone on Mauro, by ordering Mauro to medical, and by failing to address him as Sergeant Mauro. Mauro advised Bellamy that she would not order him to a unit, and if a code is needed, she should call one. Bellamy then responded, "Yeah ok, we don't need to talk about this anymore. I will just call a Code 1 for every incident." Mauro attempted to continue the conversation with Bellamy, but she continued her disrespectful behavior and became belligerent, thus prompting him to write a report. Mauro stated that he interpreted Bellamy's response about calling a code for every incident as a threat to misuse the code system and obtain immediate response when not warranted. This type of behavior cannot be tolerated. As such, I **CONCLUDE** that petitioner's conduct was insubordinate under the Administrative Code. The respondent has carried its burden of proof on this issue.

As to the charge of "Conduct Unbecoming a Public Employee," the law is well established. "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 v. City of Atlantic City, 152 N.J. 532, 554 (1998); see 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, 398 Pa. 35, 43, 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)).

Conduct unbecoming is grounds for discipline under N.J.A.C. 4A:2-2.3(a)(6). The New Jersey Supreme Court noted that the phrase "unbecoming conduct" is an elastic one that has been defined as "any conduct which adversely affects . . . morale or

efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” Karins, 152 N.J. at 554. A finding of misconduct 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, 258 N.J. Super. at 40.

Here, Bellamy was told that if a code is needed, she should call one. Bellamy then responded, “Yeah ok, we don’t need to talk about this anymore. I will just call a Code 1 for every incident.” Mauro attempted to continue the conversation with Bellamy, but she continued her disrespectful behavior and became belligerent, thus prompting him to write a report. Mauro stated that he interpreted Bellamy’s response about calling a code for every incident as a threat to misuse the code system and obtain immediate response when not warranted. These actions constitute conduct which adversely affects both morale or efficiency at MCCC, and which could have a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services. The conduct also violates 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.

As such, it follows that Bellamy’s conduct was unbecoming a public employee, and I so **CONCLUDE**. Appellant has violated the implicit standard of good behavior which she was required to follow, as one who stands in the public eye. The respondent has carried its burden of proof on this issue.

As to the charge of “Other Sufficient Cause” under the Administrative Code. This charge can apply to a variety of misconduct that calls for major discipline. This could include violations of infractions as set forth in the Mercer County Table of Offenses and Penalties. Those charges have not been dismissed based on a violation of the 45-day rule, as set forth above. As such, it follows that Bellamy’s conduct was violative of the Mercer County Table of Offenses and Penalties, and I so **CONCLUDE**. The respondent has carried its burden of proof on this issue.

Finally, as to the charge of Mercer County Table of Offenses and Penalties D6 Violation of administrative procedures, and/or regulations involving safety and security, Step 2, SOP 004, 238, Bellamy argues that a prerequisite to violating D6 is that one must violate an "administrative procedure involving safety or security" or an "administrative regulation involving safety or security." MCCC submitted no proof or evidence at the hearing that Bellamy's conduct involved, let alone violated an "administrative procedure involving safety or security" or an "administrative regulation involving safety or security." In the absence of MCCC identifying with specificity the "safety or security" element of an administrative procedure or an administrative regulation that Bellamy's actions violated, this charge cannot be allowed. However, Bellamy's response about calling a code for every incident was a threat to misuse the code system and obtain immediate response when not warranted. Such an action could and would put officers at risk and tie up resources. As such, it follows that Bellamy's conduct was violative of the Mercer County Table of Offenses and Penalties, in that it did violate an administrative procedure involving safety or security, and I so **CONCLUDE**. The respondent has carried its burden of proof on this issue.

PENALTY

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Dev. Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

Appellant has prior disciplinary action on her record. (R-7.) On June 23, 2023, in a separate Initial Decision, this tribunal upheld appellant's suspension by respondent for

twenty-five days for insubordination; violation of administrative procedures, and/or regulations involving safety and security; and fighting or creating a disturbance on county property. On May 17, 2021, appellant was given a five-day suspension for insubordination. On September 15, 2016, appellant was given a major suspension of eight days for lateness. On July 1, 2015, appellant was given a ten-day suspension for neglect of duty and sleeping on the job. On November 18, 2012, appellant was given a five-day suspension for insubordination. As such, this is effectively her third instance of insubordination. There are many other disciplinary actions for time and attendance matters.

I understand that the penalty of removal is substantial. However, I am satisfied that appellant's actions herein were egregious. As a law enforcement officer, appellant is held to a higher standard of conduct, since she represents law and order to the citizenry and therefore must present an image of personal integrity and dependability. Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Appellant was charged with various violations of N.J.A.C. 4A:2-2.3, as enumerated above. The court in Armstrong, at page 566, concludes that it must be recognized that a police officer is a special kind of public employee. His (her) primary duty is to enforce and uphold the law and is constantly called upon to exercise tact, restraint and good judgment . . . in this matter, appellant did not act in an appropriate manner when faced with unruly inmates.

In this situation, appellant did not exercise tact, restraint and reasonable judgment, and she did not attempt to defuse a situation, which in fact, did escalate. Her conduct was disrespectful, defiant, and in some ways, outright belligerent. And this conduct was not towards an inmate or a co-worker, but towards her supervisor. Such actions from an employee in the position of appellant is unacceptable. In a corrections setting, an officer must control her behavior and her emotions, and she must respect the authority of her supervisors and superior officers. Reasonable orders from supervisors must be complied with. This type of para-military command is in place to ensure the proper workings of a correctional facility. One representing law and order to the citizenry must present an image of personal integrity and dependability. It is not possible to see how the respondent could continue to allow appellant to remain in her

position. The removal was necessary to maintain the diligence and integrity of the respondent's staff.

The removal of appellant is not inappropriate. Serious acts of insubordination and conduct unbecoming can result in termination. In addition, based on the concept of progressive discipline, appellant's prior history also calls for removal. She has been given many prior chances. Despite those chances, her behavior caused her many previous disciplinary infractions. She has been disciplined on three prior occasions for insubordination. The respondent need not wait for another instance of insubordination to occur. The action by the respondent of removing appellant was acceptable.

DISPOSITION

I **CONCLUDE** that the respondent has met its burden of proof and has established that appellant was insubordinate, and that her conduct was unbecoming. The respondent has also sustained its burden of proof as to the charge of violation of a rule, regulation, policy, procedure or administrative decision.

Accordingly, I **CONCLUDE** that the removal of appellant from her position as a corrections officer was justified and warranted, and I **ORDER** that the action of the respondent is **AFFIRMED**.

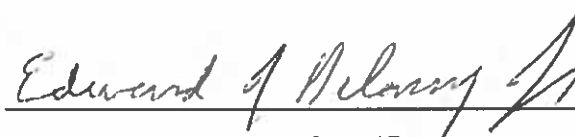
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

October 6, 2023

DATE



EDWARD J. DELANOY, JR.,

Deputy Director & ALAJ

Date Received at Agency:

October 6, 2023

Date Mailed to Parties:

October 6, 2023

EJD/cb

APPENDIX

WITNESSES

For appellant

Judy Bellamy

For respondent

Sergeant Nicholas Mauro

EXHIBITS

For appellant

P-1 Certification of Employee in Support of 45-Day Rule Motion, dated
December 13, 2022

For respondent

- R-1 Preliminary Notice of Disciplinary Action, dated September 23, 2022
- R-2 Incident Report: Sergeant Mauro, dated September 12, 2022
- R-3 Incident Report: Officer Bellamy, dated September 12, 2022
- R-4 Final Notice of Disciplinary Action, dated September 17, 2021
- R-5 Mercer County Corrections Center, Department of Public Safety
Standards and Operating Procedures 004: Employee Handbook
- R-6 Mercer County Corrections Center, Department of Public Safety
Standards and Operating Procedures 238: Post Orders – Correction
Officer (General).
- R-7 Judy Bellamy – Disciplinary History
- R-8 Mercer County (Public Safety) – Table of Offenses and Penalties
- R-9 Not in Evidence
- R-10 Final Notice of Disciplinary Action, dated January 20, 2023