



STATE OF NEW JERSEY

In the Matter of Dominic Caldwell,
 South Woods State Prison,
 Department of Corrections

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC Docket No. 2022-2222
 OAL Docket No. CSV 02086-22

ISSUED: DECEMBER 20, 2023

The appeal of Dominic Caldwell, Electrician, South Woods State Prison, Department of Corrections, 10 working day suspension, on charges, was heard by Administrative Law Judge Tama B. Hughes (ALJ), who rendered her initial decision on November 15, 2023. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply filed by the parties, the Civil Service Commission (Commission), at its meeting on December 20, 2023, adopted the ALJ's Findings of Fact and Conclusions and her recommendation to reverse the 10 working day suspension.

As mentioned above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them unpersuasive in all respects. The Commission makes the following comments. Among other things, the appointing authority argues that the ALJ improperly excluded a report from a witness who did not testify. The Commission rejects this contention. In this regard, the Commission, upon its *de novo* review, agrees with the ALJ's assessment, that based on the evidence in the record, the appointing authority did not present sufficient witness testimony establishing that the report in question was a "business record," and thus, it was not admissible as evidence in this matter. Further, even if the report was admitted as direct evidence, and assuming it was adverse to the appellant, it would likely not be persuasive in this matter. In this regard, the ALJ found both the appellant and an eyewitness credibly testified about the incident in question. Based on those findings, the ALJ determined that the underlying charges could not be sustained. The Commission notes that it is the appointing authority's burden of proof, and it was not

precluded from presenting the individual who authored the report, the other eyewitness to the incident, to directly testify. Such testimony then could have been assessed for credibility and compared to the credibility of the appellant and the other eyewitness.

The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). “[T]rial courts’ credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record.” *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ’s decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this matter, the exceptions filed by the appointing authority are not persuasive in demonstrating that the ALJ’s credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations, or the findings and conclusions made therefrom.

Since the 10 working day suspension has been reversed, the appellant is entitled to 10 working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. He is also entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

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 counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified and reverses that action. The Commission further orders that the appellant be granted 10 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. The Commission also orders reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12(a)*. Proof of income earned, and an

affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.12(b)*, the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF DECEMBER, 2023

Daniel W. O'Mullan

Daniel W. O'Mullan
Member
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02086-22

AGENCY DKT. NO. 2022-2222

**IN THE MATTER OF DOMINIC CALDWELL,
SOUTH WOODS STATE PRISON,
DEPARTMENT OF CORRECTIONS.**

Arnold S. Cohen, Esq., for appellant Dominic Caldwell (Law Offices of Oxfeld Cohen, P.C., attorneys)

Lujana Lee, Legal Specialist, for respondent Department of Corrections, pursuant to N.J.A.C. 1:1-5.4(a)(2)

Record Closed: November 8, 2023

Decided: November 15, 2023

BEFORE **TAMA B. HUGHES, ALJ:**

STATEMENT OF THE CASE

Dominic Caldwell ("appellant" or "Caldwell") appeals the South Woods State Prison, Department of Corrections ("SWSP" or "respondent") sustained charges of violations of N.J.S.A. 4A:2.3(a)(2) – Insubordination and HRB84-17(C-9) – Personal Conduct and the imposition of a ten-working-day suspension.

PROCEDURAL HISTORY

A Final Notice of Disciplinary Action (FNDA) was entered on March 7, 2022. Thereafter, the appellant timely appealed the determination, and the matter was transmitted to the Office of Administrative Law on March 18, 2022, where it was filed for a hearing as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13.

An initial call was held on September 1, 2022, at which time hearing dates were scheduled for April 3, 2023 and May 22, 2023. See September 7, 2022 Prehearing Order. These dates were subsequently adjourned, and the matter was rescheduled for September 5, 2023, at which time the matter was heard. The record was held open to allow the parties the opportunity to submit closing briefs.¹ Upon receipt, the record closed on November 8, 2023.

SUMMARY OF RELEVANT TESTIMONY

William Taylor (Taylor), an assistant engineer in charge of maintenance, testified that he has worked for SWSP for approximately twenty-three years. Among other responsibilities, he oversees the maintenance department where he assigns work as needed, and ensures that the prison is functioning properly. He is Caldwell's supervisor.

On February 1, 2021, he generated a work order (WO) for electrical repair work to be done in the warehouse. (R-4). Caldwell, who is an electrician within the department, along with his co-worker, Dan Whitehead (Whitehead), were assigned to perform the work under the WO by his (Taylor's) immediate supervisor, Jack Davis (Davis).²

¹ The parties were also given the opportunity to submit a letter brief on the issue of business records. By Letter Order, dated September 22, 2023, respondent's application to admit R-3 as a business record was denied. See September 22, 2023 Letter Order.

² Respondent's counsel attempted to introduce R-3 into evidence through Taylor. Taylor testified that he has never seen the document before, nor has he ever had to discipline an employee. Therefore, he has never had to generate a report or complaint. He is not familiar with the process that the DOC uses to discipline employees, he would have to refer to the DOC guidelines to see how it is done. He reiterated multiple times that he has no personal knowledge of how disciplinary reports are kept by the DOC.

He went to the warehouse on February 3, 2021, with Davis to check out the job that needed to be done. Caldwell and Whitehead were there and came over to discuss with Davis how to go about doing the repairs safely. At one point he grabbed a forklift so that Davis could get a closer look at the repair work that needed to be done. When he brought the lift down and Davis got out of the basket, he left to put the forklift away while Davis, Caldwell and Whitehead continued talking on how to safely get the job done. Whatever happened between the three of them after that was outside of his presence. After he put the forklift away, he left to go back to the office. Ultimately, Davis told him that he brought a contractor in to complete the repairs.

Jeffrey Wheaton (Wheaton), an assistant engineer in charge of maintenance at SWSP testified that he has worked at SWSP for approximately sixteen years. Among other responsibilities, he oversees maintenance, issues daily WO, and orders supplies. Caldwell is an electrician within the department, and he (Wheaton), is his supervisor twice removed.

On February 1, 2021, he was asked by Davis to issue a WO to erect scaffolding to access the lighting conduit in the warehouse. The WO was issued to the electricians and the carpenters. He was not involved in the issuance of the February 1, 2021, WO nor was he present when it was given to Caldwell. (R-4). There was a second WO which is the one that he was involved in.

He is aware that the Department of Corrections (DOC) maintains certain documents such as WOs and went through how a WO is generated in the computer system, who can generate them, who assigns the WO and how the WO is handled once the job is complete. He agreed that how the WO processing works is done in the ordinary course of business and the WO itself is kept in the ordinary course of business.

He had previously seen the report written by Davis on February 3, 2021, but could not specifically recall when that would have occurred. He had no knowledge of how or when Davis submitted the report. He personally has not used such a report form and has

never written one but has seen them in the past. It is his understanding that a supervisor can generate a disciplinary report but again, he has never done so. He does, however, have a basic understanding of how it works, and how the disciplinary report moves up the chain of command after it is written. He has no idea how the report gets in the system and believes at some point the disciplinary report that gets sent to administration eventually ends up in the recipients' personnel file.³

Daniel Whitehead (Whitehead) testified that he has worked at SWSP for approximately fourteen years as an electrician. As part of his responsibilities, he is tasked with maintaining the prison electrical system – power, lighting, etc. Caldwell is his co-worker.

On February 3, 2021, he and Caldwell were at the warehouse after receiving a WO to repair the freezer lighting conduit. The WO that they originally received was not the same one that was presented as R-4 - noting that the WO they received was not designated as a priority. He did not recall how or when they received the February 1, 2021 WO, signed by Davis.

After receiving the WO, he and Caldwell went to the warehouse to evaluate how best to approach the work tasked on the WO. Davis was also present at the warehouse so they approached him to discuss how best to effectuate the repair which included the logistical challenges associated to effectuate the WO and the potential safety risks. It was apparent that Davis did not like what they were telling him and probably believed that he and Caldwell were trying to get out of doing the job. The tenor of the conversation was cordial. However, towards the end of the conversation, Davis informed them that he was going to look at the job site himself. It was either that same day, or the following day that Davis took a look at the location where the work was to be performed. He and Caldwell were present at the time. After he (Davis) accessed the work site, he spouted

³ Based upon Wheaton's testimony, respondent's counsel again attempted to submit R-3 into evidence as an exception to the hearsay rule under the business record exception. The application was denied.

off several provocative comments about his personal assessment versus that of Caldwell's – clearly believing that Caldwell's assessment was erroneous.

According to Whitehead, when Davis came at Caldwell with his negative commentary, Caldwell met his tenor with equal skepticism. Whitehead could not recall any specific statements that were made by Caldwell, but the main discussion was how to get up to the location to get the work done. Whitehead went on to note that the ideas that Davis came up with to get the job done were dangerous and could have presented significant life safety issues. Davis clearly wanted to have the work done without bringing in any expertise to evaluate the ceiling. He (Whitehead) and Caldwell wanted to do the work in a safe manner – scaffolding and scissor lifts - which is what Davis wanted to utilize to do the job, were not designed for that purpose.

Whitehead went on to state that the exchange between Davis and Caldwell continued as they approached the officer podium. The officer at the podium had to ask Davis to “cool it” and “take it down a notch.” They all started going out separate doors when Davis spun around and started engaging Caldwell again on the issue. At no time did Caldwell move towards Davis nor was he disrespectful - he was speaking up about a potential life-safety issue which is what anyone in his position would do. Whitehead went on to lament that he has never worked at a place where you get reprimanded for performing your job responsibilities in a safe manner.

According to Whitehead, Caldwell brought the incident to their union. Both he and Caldwell were written up for the incident. Throughout the entire disciplinary process, it was brought up that the job could have been done if the proper safety precautions had been taken. Davis should have paid attention to his expert in the field (i.e., Caldwell) as it related to the WO, which is what he (Davis) refused to do.

He was familiar with the disciplinary report that had been written against Caldwell. He himself had received a similar one, minus the charge of insubordination. It was his belief that Davis was the one who wrote up the report. He does not know what the

rule/practice is for how many days within which a supervisor has to do a write up. He believes that disciplinary write ups are maintained in the Human Resource Department.⁴

Hope Johnson (Johnson) testified that she is the assistant superintendent at SWSP where she has worked since October 2022. She has, however, been employed by the DOC since 2008. As part of her responsibilities, she supervises department heads, runs classifications meetings, assists the administrator and associate administrator with various duties, and manages the facility.

She is testifying in this matter as is a representative of the DOC as it relates to policy and procedure. She is familiar with the charges that have been levied against Caldwell which include insubordination, intentional disobedience, refusal to accept an order, use of disrespectful and insulting language towards a supervisor.

According to Johnson, all employees go through training when they are brought on board and throughout their employment with the DOC. Training records are kept in the employees personnel file which is maintained in the Human Resource Department. Employees can access their personnel file at any time. Caldwell was no exception to the training requirements and received training when he started with the DOC and throughout his employment. (R-5, R-6). Employees, including Caldwell, also receive the employee handbook when they are hired by the DOC as well as a copy of Human Resources Bulletin 84-17 as amended. (R-7 and R-8). The handbook outlines the policy/rules of the DOC. The Human Resources Bulletin outlines possible charges that can be levied against an employee and range of disciplinary action that can be taken. Among the list of potential charges is insubordination. According to Johnson insubordination can affect the safety and security of the facility, orderly running of the facility and it does not promote staff unity.

Under the handbook, Caldwell is charged with violations of: General Principals (Section E) as it relates to "staff unity" and "disparaging remarks"; General Rules and

⁴ Based upon Whitehead's testimony, respondent's counsel again attempted to submit R-3 into evidence as business record. The application was denied.

Regulations (Section B) as it relates to efficient performance of duties assigned"; and General Rules and Regulations (Section H) as it relates to "abusive language". He was also charged with violation of N.J.A.C. 4A:2-2.3(2) – insubordination.

She is familiar with how disciplinary reports are maintained – noting that they are kept in the employees' personnel file kept in Human Resources. She has seen the disciplinary report/memo generated by Davis against Caldwell for insubordination. It is her belief that such a report is typically written within a short period of time after an event occurs. The report is generally generated and kept in the ordinary course of business and placed in the employee file.

When asked on voir dire, Johnson stated that the document is deemed a memo regarding official discipline for insubordination and the events surrounding it. The memo could be attached to witness statements, but she could not state in this case if there was anything else attached to the document in question. Johnson was insistent that the document was prepared to support discipline then changed her testimony and said that the report was generated as a result of discipline. She subsequently again modified her testimony, stating that the document was used for discipline and documentation of an incident and was prepared by a supervisor.

Johnson could not answer whether a statement alone, regardless of who generated it, could be placed in an employee's personnel file without a supervisor memo associated with it. When questioned further, she noted that she did not work in Human Resources. She acquiesced that she was not above Human Resources in the supervisory chain of command and in her capacity as an assistant superintendent, she does not make a determination of what goes into an employee's personnel folder, nor does she manage personnel files. Such action rests with the Human Resource Department. Having said that, Johnson was adamant that if discipline has been meted out, the documentation supporting the discipline would be retained in the employee file. She believes that the memo generated by Davis was placed in Caldwell's personnel file but could not say that for certain.

FACTUAL DISCUSSION

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). 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).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

In this case, no conflicting testimony was presented. Four witnesses testified, three of them as fact witnesses – Taylor, Wheaton and Whitehead. I found all of the fact witnesses to be candid in their testimony. Only one witness, Whitehead, was present during the interplay between Caldwell and Davis. I found his testimony, while somewhat negative as it relates to Davis, to be credible as to the verbal exchange between Caldwell and Davis on February 3, 2021.

I gave weight to Johnson's testimony as it related to the policies in place at the facility, but did not find her knowledgeable about what records were kept within personnel

files in HR. Little to no weight was given to her testimony that the report generated by Davis was a business record generated in the ordinary course of business and kept in Caldwell's personnel file. She had no personal knowledge to support this statement and by her own admission, she did not work in HR and had no knowledge of what records were actually kept in employee personnel files.

With the above in mind, I **FIND** the following as **FACT**:

Caldwell was hired as an electrician by the DOC at SWSP on September 3, 2017. Among his duties and responsibilities is the performance of various types of work as it relates to the installation, inspection, servicing and maintenance of electrical equipment, appliances, machinery, and circuits.

On February 1, 2021, a WO was generated which was assigned to Caldwell and Whitehead for the repair of a freezer lighting conduit and wires that may have been cut in "I Building."

Taylor and Whitehead were present on February 3, 2021, at the warehouse facility when a verbal exchange took place between Caldwell and Davis. Taylor testified that, while present in the building, he did not see or hear any type of exchange between Caldwell and Davis because he was putting the forklift away. Whitehead testified that he was present when Caldwell spoke to Davis about the WO and safety concerns. Davis initiated a negative exchange with Caldwell which was met with equal negativity and skepticism. No testimony was presented as to what was said, whether there was derogatory commentary on Caldwell's part or whether Caldwell demonstrated any type of aggression – either verbally or physically towards Davis.

The undisputed and credible testimony presented in this matter finds that Caldwell and Whitehead went to the "I" building to look at the job that was tasked under a February 1, 2021 WO. Upon looking at the job in question, Caldwell and Whitehead had significant

safety concerns about the job. These concerns were brought to Davis's attention who was also present at the time of their inspection.⁵

The exchange between Caldwell and Davis appears to have been a frank discussion about how to safely perform the task that had been assigned with both parties standing firm on how they respectively believed the job should be done. The discussion ensued as the parties walked and talked as they approached the security podium. Due to Davis's volume and demeanor, the security guard at the podium told Davis to "take it down a notch" and "cool it". When the parties separated to go their own way, Davis started to head out a separate exit, when he (Davis), spun around and started going after Caldwell a second time on the same issue.

As previously noted, no testimony or credible evidence was presented that Caldwell was disrespectful, refused to perform the job, violated Davis personal space, or was aggressive in any manner. No testimony or credible evidence was presented that Caldwell threw up roadblocks or excuses as to why the WO could not be performed either before or after he looked at the task that had been assigned.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. 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 satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline,

⁵ Taylor is Caldwell and Whitehead's direct supervisor. Davis is Taylor's supervisor.

including removal and/or resignation not in good standing. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

At the same time, the Act protects classified employees from partisanship, favoritism, arbitrary dismissal, and other onerous sanctions. See Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), adopted, Comm'n. (September 3, 2014), <https://njlaw.rutgers.edu/collections/oal/>; "The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Ibid. Depending upon the incident complained of and the employee's past record, major discipline may include suspension or removal. See West New York v. Bock, 38 N.J. 500, 523-24 (1962) (describing use of progressive discipline). If the current charges against Pollock are sustained, the appropriate penalty will be determined with due consideration of his disciplinary record.

The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such "as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958) (citations omitted). Preponderance may also be described as the greater weight of credible evidence in the case, the evidence which carries the greater convincing power. State v. Lewis, 67 N.J. 47, 49 (1975).

In the instant matter, the sustained charges against appellant were violations of N.J.S.A. 4A:2.3(a)(2) – insubordination, and violation of HRB84-17-17 as amended, C-9 (Personal Conduct) – insubordination: Intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abuse language to supervisor.

The incident giving rise to the sustained charges were noted to be:

On 2/1/21, you were assigned by Assistant Engineer's William Taylor and Jeff Wheaton, work order #66723, concerning the repair of electrical conduit and wiring for lighting in I Building Food Warehouse Freezer. As of 2/3/21, you had not attempted to perform the job task, and were given a direct order from Jack Davis (Engineer in Charge of Maintenance) to evaluate and complete such job task. You then stated an array of excuses not to perform this job, prior to even looking at or evaluating the needed task.

After the aggressive manner and tone at which you conveyed within ear shot and eye sight of Custody, Civilian, and inmate staff located in the I Building Food Warehouse – you were directed by Jack Davis (EICM) that it was not your job to demand to him what he needs to do. Jack Davis then stated to you that he is your supervisor, at which point you confronted Jack Davis in an aggressive manner, inches within his personal space. You were instructed by Jack Davis to get out of his personal space and provide him with the mandated 6' of social distancing. You did not comply until Officer Griffin interceded and demanded that you leave the area. (R-2)

It is respondent's position that the appellant's actions – his disrespect towards Davis by and through his language, hostile and aggressive manner, and violation of his (Davis) personal space, is conduct that cannot be tolerated by the DOC. Citing to Henry v. Rahway State Prison, 81 N.J. 871, 579 (1980), respondent contends that the maintenance of discipline in prisons is crucial for the stability and integrity of the prison. Respondent further points out that Whitehead's testimony was biased because he too

received discipline as a result of the incident which in turn affects the weight his testimony should be given.

The appellant on the other hand points out that while four witnesses testified in this matter, only one witness, Whitehead, was present when Davis attempted to “bully” and intimidate both he and Whitehead into performing work that was unsafe. Appellant further argues that at no time did he or Whitehead refuse to do the work – rather, attempt to determine how to safely complete the job that had been tasked.⁶

Insubordination is defined in Black’s Law Dictionary 802 (11th Ed. 2019) as a “willful disregard of an employer’s instructions” or an “act of disobedience to proper authority.” Webster’s II New College Dictionary (1995) defines insubordination as “not submissive to authority: disobedient.” Such dictionary definitions have been used by courts to define the term where it is not specifically defined in contract or regulation.

“Insubordination” is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

The above definitions incorporate acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter. “Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the

⁶ Appellant’s counsel recitation of facts appears to add facts/testimony that are not in the record or documents admitted into evidence. Only the testimony and documentary evidence presented in this matter has been considered by the Tribunal in rendering the decision in this matter.

department.” Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Similarly, in HRB 84-17 as amended, insubordination found under subsection C9, includes “intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor.” (R-8). The above definitions incorporate acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter. “Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department.” Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Respondent is correct that it is important to maintain discipline in a correctional facility in light of the inherent danger when order and discipline are disrupted or destroyed. See, Bowden v. Bayside State Prison Dept. of Corr., 268 N.J. Super 301 (App. Div. 1993) (citing Henry v. Rahway State Prison, 81 N.J. 571 (1988)). However, no credible evidence was presented in this matter that appellant’s conduct was disruptive or aggressive in any way shape or form. Moreover, no testimony or documentary evidence was presented that the appellant was insubordinate, disrespectful, used insulting or abusive language towards his supervisor, refused to perform the WO, or acted either verbally or physically aggressive towards Davis. If anything, it appears quite the opposite and that Davis was the instigator.

With regard to respondent’s argument that Whitehead’s testimony was biased, which affects the weight it should be given, I disagree. There is no question that Whitehead was angry that both he and the appellant were disciplined for attempting to do their job the correct way and in a safe manner. Such emotion came through loud and clear in his testimony and was an honest expression of his annoyance over how the incident was handled and the discipline the was meted out to both him and the appellant. Whitehead also testified that there was an exchange between Davis and the appellant

over the safety concerns of undertaking the job under the WO and that the appellant did not back down. The safety concerns were also touched upon in Taylor's testimony. It is also clear that Whitehead has a lot of respect for the appellant's field expertise and had no respect for Davis' level of experience and disdain for his (Davis) lack thereof. Whitehead also made it abundantly clear that Davis was the one who initiated the confrontation, and that Caldwell did not back down. No evidence to the contrary was presented in this matter. While there is no doubt that Whitehead had a personal interest in this case, his testimony was straightforward and did not appear to be duplicitous or deceitful.

In looking at the totality of the evidence presented in this matter – both testimonial and documentary, I **CONCLUDE** that the respondent has failed to meet their burden of proof to sustain the charges of violations of N.J.A.C. 4A:2-2.3(a)2 (Insubordination) and HRB 84-17, as amended C-9 (Personal Conduct) and that the sustained findings should be **REVERSED**.

PENALTY

No penalty analysis is required due to the respondent's failure to meet its burden of proof as to the underlying charges.

ORDER

I hereby **ORDER** that the charges in the Final Notice of Disciplinary Action against Dominic Caldwell be **DISMISSED** and that the disciplinary action taken be **RESCINDED**.

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

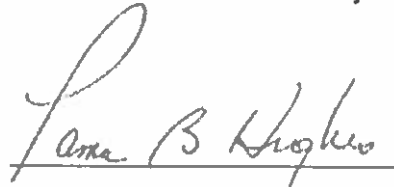
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this

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.

November 15, 2023

DATE


TAMA B. HUGHES, ALJ

Date Received at Agency:

Date Mailed to Parties:

TBH/lam

APPENDIX

WITNESSES

For Appellant:

None

For Respondent:

William Taylor

Jeffrey Wheaton

Daniel Whitehead

Hope Johnson

EXHIBITS

Joint Exhibits

J-1 Joint Stipulation of Facts

For Appellant:

None

For Respondent:

R-1 No R-1

R-2 Final Notice of Disciplinary Action

R-3 Not in Evidence*

R-4 Work Order Report

R-5 Individual Training Summary

R-6 New Hire Orientation Checklist

- R-7 Handbook of Information and Rules
- R-8 Title 4A. Civil Service regulations
- R-9 Disciplinary History**

*See September 22, 2023 Order

**This exhibit was held in reserve pending a determination of whether the charges were sustained by this Tribunal and a penalty determination was required.