



STATE OF NEW JERSEY

In the Matter of Sha-Keana Davis,  
Mercer County Corrections Center

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2023-742; 2023-743;  
2023-743; 2023-745  
OAL Docket Nos. CSV 9449-22; CSV  
9450-22; CSV 9451-22; CSV 9452-  
22<sup>1</sup>

ISSUED: DECEMBER 20, 2023

The appeals of Sha-Keana Davis, County Correctional Police Officer, Mercer County Corrections Center, six, 10, 10 and 20 working day suspensions, on charges, were heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on November 24, 2023. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on December 20, 2023, modified the suspensions to a one working day suspension, a five working day suspension, a five working day suspension and a 10 working day suspension.

As indicated above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them generally unpersuasive. The Commission makes the following comments. In her exceptions, the appellant argues that the ALJ improperly considered charges not upheld on the Final Notices of Disciplinary Action (FNDA). Even assuming, *arguendo*, the accuracy of this assertion, the Commission finds that the ALJ appropriately upheld the charges that were found on the FNDAs. Even if the ALJ considered charges that were not sustained at the departmental level, the Commission would not consider those charges.

The appellant also contends that the charges underlying the six working day

<sup>1</sup> The Administrative Law Judge indicated that while these matters were not formally consolidated, they were heard together.

suspension are, in essence duplicative, and the duplicative charges should be dismissed. She further argues that under the appointing authority's penalty schedule, the upheld misconduct should therefore only receive a one working day suspension. The Commission is not persuaded as to the duplication of charges. Regardless of the proffered charges, the ALJ found that the preponderance of the evidence supported the misconduct alleged.

As such, the only question is the proper penalty to be imposed. In that regard, the Commission notes that its review of the penalty is *de novo*, and while it can be guided by, it is not bound by the appointing authority's penalty schedule in determining the proper penalty. See *In the Matter of Gregory McDaniel*, Docket No. A-5583-02T2 (App. Div. May 24, 2004); *In the Matter of Leonard Wilson* (MSB, decided April 6, 2005); *In the Matter of Patricia Everingham* (MSB, decided March 13, 2003); *In the Matter of George Roskilly* (MSB, decided November 20, 2002). Further, in addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." See *Carter v. Bordentown*, 191 N.J. 474 (2007). Upon its review, it finds that the penalties imposed, in light of the actual misconduct, which was mainly attendance-related, are excessive. In this regard, while the Commission acknowledges that the appellant has numerous previous infractions and is not minimizing the effect that attendance infractions can have on an appointing authority, it finds that the proper penalties to be imposed for the infractions committed are a one working day suspension, a five working day suspension, a five working day suspension and a 10 working day suspension. These penalties should be sufficient to impress on the appellant that any future similar misconduct will result in increased penalties, up to removal from employment.

Since the suspensions have been modified, the appellant is entitled to 25 working days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, she is not entitled to counsel fees. N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalties were modified by the Commission, the charges were sustained, and discipline was imposed.

Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. However, it modifies the suspensions to a one working day suspension, a five working day suspension, a five working day suspension and a 10 working day suspension. The Commission further orders that the appellant be granted 25 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. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 20<sup>TH</sup> DAY OF DECEMBER, 2023



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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
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Civil Service Commission  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CSV 09449-22,  
CSV 09450-22, CSV 09451-22,  
and CSV 09452-22<sup>1</sup>  
AGENCY DKT. NOS. 2023-742,  
2023-743, 2023-744 and 2023-  
745

**IN THE MATTER OF SHA- KEANA DAVIS,  
MERCER COUNTY CORRECTION CENTER.**

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**Arthur J. Murray, Esq.**, for appellant Sha-Keana Davis, Esq. (Alterman & Associates, LLC, attorneys)

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

Record Closed: October 13, 2023

Decided: November 24, 2023

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

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<sup>1</sup> These cases, although not consolidated, were heard together.

### **STATEMENT OF THE CASE**

The appellant, Sha-Keana Davis, a county correctional police officer (CO) at respondent, Mercer County Corrections Center (County), appeals four disciplinary actions seeking the imposition of major discipline, namely six-, ten-, ten- and twenty-day working suspensions, for four alleged violations of N.J.A.C. 4A:2-2.3(a)(4) (chronic or excessive absenteeism or lateness); 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); and Mercer County Corrections Center Standards and Operating Procedures (SOP) A-1 (Absent from work without permission or without notice of intended absence). Specifically, step 1 occurring on September 9, 2021, A-4 (Chronic or excessive absenteeism); steps 2, 3, and 4 respectively, occurring on September 9, 2021, March 25, 2022, March 31, 2022, and April 1, 2022; and A-9 (Refusal or failure to work overtime without a reasonable excuse), specifically step 3 occurring on October 8, 2021.

### **PROCEDURAL HISTORY**

On September 9, 2021, the County filed a Preliminary Notice of Disciplinary Action (PNDA) against appellant charging that on September 1, 2021, the following violations were committed: N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of Offenses and Penalties: A-1 Absent from work without permission or without notice of intended absence; and A-4 Chronic or excessive absenteeism. Based upon appellant's disciplinary history a suspension of six working days was sought.

On November 12, 2021, the County filed a PNDA against appellant charging that on October 8, 2021, the following violations were committed: N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(7) neglect of

duty; and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of Offenses and Penalties: A-9 Refusal or failure to work overtime without a reasonable excuse. Based upon appellant's disciplinary history a suspension of ten working days was sought.

On April 29, 2022, the County filed a PNDA against appellant charging that on March 25, 2022, the following violations were committed: N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of Offenses and Penalties: A-4 Chronic or excessive absenteeism. Based upon appellant's disciplinary history a suspension of ten working days was sought.

On April 29, 2022, the County filed a PNDA against appellant charging that on March 31, and April 1, 2022, the following violations were committed: N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of Offenses and Penalties: A-4 Chronic or excessive absenteeism. Based upon appellant's disciplinary history a suspension of twenty working days was sought.

The appellant requested a departmental hearing on all four PNDA's which was held on September 1, 2022. A Final Notice of Disciplinary Action (FNDA) was issued to appellant on September 27, 2022, sustaining all the charges and suspending her without pay for a total period of forty-six working days.

Appellant timely appealed and the matters were transmitted to the Office of Administrative Law (OAL) where they were filed as contested cases on October 19, 2022:

- CSV 09449-2022 for violations occurring on September 1, 2021, resulting in a suspension of six working days.

- CSV 09450-2022 for violations occurring on October 8, 2021, resulting in a suspension of ten working days.
- CSV 09451-2022 for violations occurring on March 25, 2022, resulting in a suspension of twenty working days.
- CSV 09452-2022 for violations occurring on March 31, and April 1, 2022, resulting in a suspension of twenty working days.

[N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.]

A plenary hearing was conducted on August 29, 2023. The record was held open for the parties to submit closing statements. Post-hearing submissions were received on behalf of appellant and respondent, and on October 13, 2023, the record closed.

## **FACTUAL DISCUSSION**

### **Testimony**

#### **For respondent**

**Michael Kownacki** (Kownacki) testified that he is employed as a captain at the County. His duties include overseeing operations, assisting the Warden and Deputy Warden with supervision and discipline of employees for time and attendance violations.

Kownacki identified the Mercer County Corrections Center, Standards and Operating Policy (SOP) as the applicable policy for CO's and civilian employees. He identified SOP number 132 titled "Sick Leave Policy" as an applicable policy regarding the September 1, 2021, incident. He explained that pursuant to that SOP, if an employee wants to call out sick, they must do so at least two hours before the start of their assigned shift. There are employees who do not "call out sick" and/or "do not show" for their assigned shift. These employees are referred to as a "no call, no show." Kownacki also

explained that the SOP broke disciplinary infractions into categories; "A" violations are for time and attendance violations; "B" are for performance infractions; "C" are for personal conduct infractions; and "D" are for safety and security violations. Appellant's violations were time and attendance violations, and the SOP includes a table of offenses that specifies the penalties to be imposed for these violations. Penalties are increased if the offender has prior violations.

Kownacki testified as to the incidents involving appellant that resulted in the four PNDA's being issued:

- CSV 09449-2022: that on September 1, 2021, the appellant failed to report for her scheduled shift (A shift) at 11:00 p.m. (2300 hrs.) and she had failed to notify Master Control at least two hours prior to her shift that she would be absent. The appellant was charged with both an A-1 violation, "absent from work as scheduled without permission and without proper notice of intended absence; and an A-4 violation "chronic or excessive absenteeism from work without pay." The A-1 violation was a first offense and the SOP called for a suspension of one working day. The A-4 violation was a second offense and the SOP called for a suspension of five working days. These penalties were combined for a total suspension of six working days.
- CSV 09450-2022: that on October 8, 2021, prior to completion of her regular A shift appellant was ordered to remain for the B shift. The appellant refused to work the mandatory overtime and was advised by her lieutenant to submit documentation to support her refusal. No documentation was submitted by the appellant. This was an A-9, "Refusal or failure to work overtime without a reasonable excuse." The A-9 violation was a third offense and the SOP called for a suspension of ten working days.



- CSV 09451-2022: that on March 25, 2022, the appellant called out sick from work citing Family Medical Leave Act (FMLA). Appellant's FMLA request had expired on March 24, 2022, and she had no available sick time. This was an A-4 violation, "chronic or excessive absenteeism from work without pay." The A-4 violation was a third offense and pursuant to policy called for a suspension of ten working days.
- CSV 09452-2022: that on March 31 and April 1, 2022, the appellant called out sick from work citing FMLA. Appellant's FMLA request had expired on March 24, 2022, and she had no available sick time. This was an A-4 violation, "chronic or excessive absenteeism from work without pay." The A-4 violation was a fourth offense and pursuant to policy called for a suspension of twenty working days.

Kownacki advised that the County provides intermittent FMLA that allows employees to take time off as is necessary. However, the intermittent FMLA only covers six months, and the employees are required to re-apply prior to the expiration in order for FMLA to continue. Kownacki was aware that appellant had been re-approved for FMLA on April 4, 2022. Further, he admitted that FMLA would be considered a "reasonable excuse" for calling out from an assigned shift and/or refusal to work mandatory overtime shift.

Kownacki noted that absenteeism affects the safety and security of both the staff and inmates and can prevent services from being provided to inmates. The County requests employees notify Master Control if they will be late or absent from work so coverage can be arranged for in a timely manner.

For appellant

**Sha Keana Davis** (appellant) testified that she is a corrections officer and began working for a little over thirteen years since her start on July 6, 2010. She has four children: two boys and two girls, ages twenty-four, nineteen, seventeen, and eleven. The

appellant advised that she is familiar with the FMLA program as she has applied for intermittent leave twice a year for approximately twelve years.

Appellant readily admitted that on September 1, 2021, she failed to show up for her scheduled shift and had failed to notify Master Control that she would be absent. She agrees that the facts as contained in the September 1, 2021, PNDA (CSV 09449-2022) are accurate. However, she objects to being charged with both an A-1 and A-4 violation for this offense and feels that she is being charged twice for this infraction.

Appellant also admitted that on October 8, 2021, (CSV 09450-2022) she was ordered by Lieutenant Villella to remain after the completion of her mandatory overtime, and that she refused that order. However, it was appellant's belief that if you had FMLA time then an employee did not have to provide a further explanation or submit documentation. On the "Report to Warden" dated October 8, 2021, the reason for her failure to work overtime states "On the above date and time I Ofc, SK Davis am writing this report due to refusing overtime. End of report." Lieutenant Villella advised appellant to submit documentation to Captain Kownacki. The appellant did not indicate in the report that FMLA was the reason for her refusal to work the mandatory overtime. Further, she did not submit any documentation to Kownacki. Appellant does not believe she is guilty of this infraction because she has a history of approved FMLA over the last eleven years. Appellant opined that "past practices" allowed an employee who had approved FMLA to simply refuse to work mandatory overtime and not have to submit any further explanation or documentation in support of the request to be excused.

Appellant admits that on March 25, 2022, she called out sick from work citing FMLA (CSV 09451-2022), however, she refutes the allegation that her FMLA had expired. The appellant submitted her FMLA renewal paperwork to administrative staff on March 18, 2022, because her FMLA was going to expire on March 24, 2022. The appellant was advised by staff that the form she used was no longer acceptable and that a new form would have to be submitted. Appellant alleges that the staff member advised her that if a revised form was submitted on or before April 7, 2022, then her FMLA approval could be backdated. Appellant provided the revised form prior to April 7, 2022, and assumed that her FMLA request had been renewed so that it would extend for another six months

beginning on March 24, 2022. According to the appellant, the administrative staff is at fault because they did not advise her that the FMLA renewal had not been backdated to March 24, 2022, so that when she called out on March 25, 2022, she assumed her FMLA had been extended.

Appellant admits that on March 31 and April 1, 2022, she called out sick from work citing FMLA (CSV 09452-2022). Appellant repeated that the failure of her FMLA to be renewed in a timely manner was the fault of the administrative staff and not hers. She had been applying for FMLA twice a year for at least twelve years and had not been told that the form had been revised prior to March 24, 2022. The forms are similar in that the same questions appear on both, and since appellant has a history of utilizing FMLA she argues that the administration was at fault here. Appellant's FMLA was re-approved as of April 4, 2022.

### **FINDINGS**

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

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

Here, the testimony from Kownacki was straightforward, detailed, and generally uncontested by appellant. I accept him as credible.

Appellant admitted to her failure to show up for her scheduled shift and had failed to notify Master Control that she would be absent on September 1, 2021. She only argues that the penalty imposed was excessive. Further, she admitted to her refusal to work mandatory overtime on October 8, 2021. She testified that in the past if an employee had approved FMLA then they could simply refuse overtime without providing an explanation. This explanation is unpersuasive, and it is counter to the existing SOP, which requires an employee provide a reasonable excuse for refusing overtime. Further, appellant was required to complete a written report to the warden regarding her failure to work overtime; she could have easily stated she was using her FMLA and that would have been sufficient. Instead, the appellant simply wrote that she was refusing overtime and made no further effort to provide an excuse to administration. Thus, the administrative staff could not determine if appellant had a "reasonable excuse" to avoid the mandatory overtime.

Appellant also argues that her call outs on March 25, March 31, and April 1, 2022, citing FMLA should be excused as she submitted the reapplication forms for FMLA as required on March 18, 2022, and no administrative staff member advised her that the FMLA had not been renewed prior to its expiration. Appellant testified that after she submitted her FMLA renewal form she was alerted that the form she used was outdated and no longer acceptable. It is unclear as to when appellant was notified that her FMLA had expired but she testified that when she was contacted, she was advised that the FMLA request would have to be resubmitted. According to the appellant she was also advised that the application could be backdated to March 24, 2022, if it was received on or before April 7, 2022. There is no credible evidence to support appellant's claim that the FMLA would be backdated. There was no credible evidence to support appellant's claims that the administrative staff was experiencing difficulties in processing FMLA requests. I cannot accept this explanation as reasonable; it was the appellant's obligation to ensure that her request for FMLA was approved in a timely fashion, and she failed to do so. The appellant simply submitted forms to administrative staff but then failed to check

on her FMLA status prior to using it as an excuse to call out on March 25, 31, and April 1, 2022.

Offense date September 1, 2021, FNDA dated September 27, 2022, (CSV 09449-22)

I **FIND** that on September 1, 2021, appellant was scheduled to report to work at 11:00 p.m., however, she did not arrive and failed to advise Master Control at least two hours prior to the start of her shift that she would be absent. I **FIND** that appellant admitted that she had failed to show up for her scheduled shift and had failed to notify Master Control that she would be absent from work.

Offense date October 8, 2021, FNDA dated September 27, 2022, (CSV 09450-22)

I **FIND** that on October 8, 2021, prior to completion of appellant's regular A shift she was ordered to remain for the B shift. Appellant refused to work the mandatory overtime and was advised by her lieutenant to submit documentation to support her refusal. Appellant failed to provide any documentation to support her reasons for refusing to work the mandatory overtime.

Offense date March 25, 2022, FNDA dated September 27, 2022 (CSV 0945122)

I **FIND** that on March 25, 2022, appellant was scheduled to report to work at 11:00 p.m., however, she called Master Control at least two hours prior to the start of her shift and advised that she would be absent from work. Appellant cited FMLA as her reason for being absent. I **FIND** that appellant's intermittent FMLA had expired on March 24, 2022, and appellant failed to timely renew the request to continue intermittent FMLA.

Offense dates March 31 and April 1, 2022, FNDA dated September 27, 2022 (CSV 09452-22)

I **FIND** that on March 31, and April 1, 2022, appellant was scheduled to report to work, however, she called Master Control at least two hours prior to the start of her shift and advised that she would be absent from work. Appellant cited FMLA as her reason

for being absent. I **FIND** that appellant's intermittent FMLA had expired on March 24, 2022, and appellant failed to timely renew the request to continue intermittent FMLA.

### **LEGAL ANALYSIS AND CONCLUSION**

Two issues must be addressed in this matter; first is whether respondent has proven the charges by a preponderance of the evidence, or whether there was a reasonable excuse for appellant's actions on each of the four dates identified in the FNDA's. The second issue is the appropriate penalty to be imposed.

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

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

The appellant herein is charged with violations of N.J.A.C. 4A:2-2.3(a)(1) incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(4) chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause the Mercer County Corrections Center SOP 568 "Overtime Policy"; refusal or failure to work overtime without a reasonable excuse.

**1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency or Failure to Perform Duties**

"Incompetence" is defined as "[t]he states or fact of being unable or unqualified to do something." Black's Law Dictionary 833 (9th ed. 2009).

"Inefficiency" has been defined as the act of being incapable or indisposed to do things required in a timely and satisfactory manner. Glenn v. Twp. of Irvington, CSV 5051-03, Initial Decision (February 25, 2005), adopted, MSB (May 25, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>. Inefficiency, incompetence, or failure to perform duties exists where conduct fails to meet, obtain, or produce the effects or results intended for the necessary and adequate performance of the job.

While not defined specifically, "failure to perform duties" can be understood to mean failure to take an action reasonably anticipated from the duties of the position as set forth in the civil service regulations and job description.

**2. N.J.A.C. 4A:2-2.3(a)(4) Chronic or Excessive Absenteeism or Lateness**

An employee may be subject to discipline for chronic or excessive absenteeism. N.J.A.C. 4A:2-2.3(a)4. While there is no precise number that constitutes "chronic," it is generally understood that chronic conduct is conduct that continues over a long time or recurs frequently. Good v. Northern State Prison, 97 N.J.A.R.2d (CSV) 529, 531. Courts have consistently held that excessive absenteeism need not be accommodated, and that attendance is an essential function of most jobs. See, e.g., Muller v. Exxon Research and Engineering Company, 345 N.J. Super. 595, 605-06 (App. Div. 2001) (under the

LAD, excess absenteeism need not be accommodated even if it is caused by a disability otherwise protected by the Act.); Svarnas v. AT&T Communications, 326 N.J. Super. 59, 79 (App. Div. 1999) ([a]n employee who does not come to work cannot perform any of her job functions, essential or otherwise). See, also, Dudley v. Calif. Department of Transportation, 2000 U.S. App. LEXIS 5249 (9th Cir. 2000) (a diabetic with frequent absences who failed to provide adequate medical documentation and could not provide a definite return to work date was not a qualified individual).

In Hatcher v. Northern State Prison, 2002 W.L. 31731008 (N.J. Adm.) at p. 4, the court held that:

[T]here is no way to reasonably accommodate the unpredictable aspect of an employee's sporadic and unscheduled absences. Svarnas v. AT&T Communications, 326 N.J. Super. 59, 77 (App. Div. 1999). As noted by the New Jersey Supreme Court, "just cause for dismissal can be found in habitual tardiness or similar chronic conduct." West New York v. Bock, 38 N.J. 500, 522 (1962). While a single instance may not be sufficient, "numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty." Ibid. . . . . Especially in times of budgetary constraint, it is important that management utilize existing staff efficiently and effectively. "We do not expect heroics", but "being there," i.e., appearing for work on a regular and timely basis is not asking too much. State Operated Sch. Dist. Of Newark v. Gaines, 309 N.J. Super. 327, 333 (App. Div. 1998).

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

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



violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” In re Tuch, 159 N.J. Super. 219, 224 (App. Div. 1978).

The courts have frequently recognized the sensitive position held by law enforcement officers. It is firmly established that “[t]he obligation to act in a responsible manner is especially compelling in a case involving a law enforcement official.” In re Phillips, 117 N.J. 567, 576 (1990). In the words of the Appellate Division:

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

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

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

Conduct unbecoming a public employee is not defined in the New Jersey Administrative Code but has been interpreted broadly to include conduct that adversely affects morale and efficiency, or that has a tendency to destroy public respect for the

agency or its employees. Emmons, 63 N.J. Super. 136; Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32 (App. Div. 1992).

#### **4. N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty**

There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). Neglect of duty is predicated on an employee's omission to perform, or failure to perform or discharge, a duty required by the employee's position and includes official misconduct or misdoing as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div.), certif. granted, 97N.J. 588 (1984), aff'd on other grounds, 99 N.J. 1 (1985).

#### **5. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause**

Pursuant to N.J.A.C. 4A:2-2.3(a)(12) An employee may be subject to discipline for other sufficient causes.

"Other sufficient cause" is essentially the catchall provision for conduct, which is not specified in the eleven listed causes at N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would "violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Keith Harkcom, Dep't of Corrections, CSR

14703-19 (April 13, 2020), <[https://njlaw.rutgers.edu/collections/oal/html/initial/csr14703-19\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/csr14703-19_1.html)>, adopted Comm'r (May 22, 2020).

Specifically, appellant has additionally been charged with violations of the Department rule and regulations as follows: A) SOP 132 Sick Leave Policy and ; B) SOP 568 Overtime Policy.

- **SOP 132 Sick Leave:**

- A. Policy; "It is the responsibility of the Corrections Center to maintain full staff and twenty-four-hour coverage within the institution. Custodial illnesses, while not entirely preventable, do hamper administrative efforts and reduce the operation efficiency of the institution. In the event of custody staff illness, call-offs must be made to the institution within the designated time period, so that posts that require coverage are filled in a timely manner.
- B (1) Procedures for Sick Call-Off; "Call-offs due to illness must be made no later than two hours before the start of each shift for essential personnel. Essential personnel include all custodial staff. All other staff is required to call off one-hour prior to their start time to Master Control."

- **SOP 568 Overtime Policy**

- A. Policy; "It is the policy of the Mercer County Corrections Center to maintain a minimum manning level to assure necessary safety in the facility. Overtime for all contractual employees will be in accordance established contractual agreements."
- E. Forced Overtime; "In circumstances where the Shift Commander or his/her designee is unsuccessful in soliciting staff to fill vacancies voluntarily, Forced Overtime will be used. Forced overtime positions will be filled by the Shift Commander directing officers currently working to stay."

- E. (2); "Upon request and for just cause, an employee may be excused from working forced overtime, even though a less junior officer will be forced to stay. However, in such circumstances the employee is required to submit an incident report describing the circumstances and reason why he/she cannot work. The Shift Commander is also required to submit an incident report. The employee is required to submit additional documentation to the Captain within 72 hours for approval of the denial of the request."

### **Appellant's Position**

Appellant argues in her closing brief, in points one through three, 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. 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. Appellant's allegations involve factual questions about how the investigation was conducted. No factual proof about these allegations was raised at the hearing, nor did the appellant call witnesses to provide testimony concerning these allegations. Appellant could 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 and its failure to do so, are rejected and dismissed.

Appellant also argues that based upon "past practice" that the violation of SOP 568, Failure to work mandatory overtime which occurred on October 8, 2021, (FNDA dated September 27, 2022, (CSV 09450-2022) should have either been docked eight hours of

FMLA time or dismissed. The basis for this position is appellant's belief that prior to October 8, 2021, "if you had approved FMLA time then an officer would not have to submit an explanation or further documentation" in support of a request to be excused from mandatory overtime. This argument is unconvincing as SOP 568 E (2) specifies that "[T]he employee is required to submit additional documentation to the Captain within 72 hours for approval of the denial of the request." Further, a review of the incident report to the warden dated October 8, 2021, does not disclose that the appellant was citing FMLA as her reason for refusing to work mandatory overtime. The appellant's argument is rooted in her belief that a disclosure would somehow violate the Health Insurance Portability and Accountability Act (HIPPA). This position is unfounded, it would not be a violation of HIPPA if appellant had simply noted on the report to the Warden that she was using FMLA time. Here, appellant failed to properly explain why she was refusing to work overtime and therefore there was no basis for respondent to determine that her refusal was reasonable.

Appellant admitted that on September 1, 2021, she failed to show up for her regularly scheduled shift (A shift) at 11:00 p.m. and she had failed to notify Master Control at least two hours prior to her shift that she would be absent. As a result, the appellant was charged with both an A-1 violation, absent from work as scheduled without permission and without proper notice of intended absence; and an A-4 violation "chronic or excessive absenteeism from work without pay." Appellant argues that it is improper for respondent to charge her with both the A-1 and A-4 infraction. This argument is unpersuasive as the two violations are separate and distinct violations and not a "double charge" as claimed by appellant. An employee can be guilty of not showing up for work on a scheduled day and further that failure can also support a charge of chronic absenteeism.

Finally, the appellant argues that the violations occurring on March 25, March 31 and April 1, 2022, should be dismissed because she relied on the oral promise allegedly made to her by an administrative staff member, that her FMLA renewal could be backdated to March 24, 2022. This argument is unpersuasive, as the credible evidence supports the conclusion that the appellant was aware that her FMLA status expired on March 24, 2022, and she failed to ensure that the FMLA was renewed on or before that date. The appellant has the obligation to ensure that the renewal of her FMLA status was approved prior to

utilizing it as an excuse for her absence from a scheduled shift. Here she failed to do so and instead attempts to blame administrative staff for this failure.

### **Respondent's Position**

Respondent submits that it has proven the appellant's guilt to each of the alleged violations by a preponderance of credible evidence. Respondent requests that the suspension without pay for a total period of forty-six working days be upheld.

Therefore, I **CONCLUDE** the following as to each charge:

Offense date September 1, 2021, FNDA dated September 27, 2022, (CSV 09449-22)

#### Coupled

The appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, the Mercer County Corrections Center Table of Offenses and Penalties: A-1 Absent from work as scheduled without permission and without proper notice; and A-4 Chronic or excessive absenteeism from work..

Appellant admitted that she was scheduled to report to work at 11:00 p.m. on September 1, 2021, however, she did not appear for work and failed to advise Master Control at least two hours prior to the start of her shift that she would be absent. The appellant's failure to appear for work coupled with her failure to notify Master Control that she would be absent is conduct unbecoming a public employee.

Applying the law to the facts, I **CONCLUDE** that the respondent has proven, by a preponderance of the competent, credible evidence, the charges of chronic and excessive lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of

Offenses and Penalties: A-1 Absent from work as scheduled without permission and without proper notice; and A-4 Chronic or excessive absenteeism from work.

Offense date October 8, 2021, FNDA dated September 27, 2022, (CSV 09450-22)

The appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(7) neglect of duty; and violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, the Mercer County Corrections Center Table of Offenses and Penalties: A-9 Refusal to work overtime without a reasonable excuse.

The appellant admitted that on October 8, 2021, she was ordered to remain after the completion of her A shift to cover for the B shift but refused. She also admitted to failing to provide the captain with any explanation or documentation to support that she had a reasonable excuse for failure to work the overtime shift.

Applying the law to the facts, I **CONCLUDE** that the respondent has proven, by a preponderance of the competent, credible evidence, the charges of charged with violation of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, the Mercer County Corrections Center Table of Offenses and Penalties: A-9 Refusal to work overtime without a reasonable excuse.

Offense date March 25, 2022, FNDA dated September 27, 2022 (CSV 09451-22)

The appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, the Mercer County Corrections Center Table of Offenses and Penalties: A-4 Chronic or excessive absenteeism from work, and SOP sick leave policy.

Appellant admitted that she called out of work on March 25, 2022, citing FMLA. However, appellant's FMLA status had expired on March 24, 2022, and the appellant did not have any available sick time.

Applying the law to the facts, I **CONCLUDE** that the respondent has proven, by a preponderance of the competent, credible evidence, the charges of chronic and excessive lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of Offenses and Penalties: A-4 Chronic or excessive absenteeism from work, and SOP sick leave policy.

Offense dates March 31 and April 1, 2022, FNDA dated September 27, 2022 (CSV 09452-22)

The appellant was charged with violation of N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, the Mercer County Corrections Center Table of Offenses and Penalties: A-4 Chronic or excessive absenteeism from work, and SOP sick leave policy.

Appellant admitted that she called out of work on March 31, and April 1, 2022, citing FMLA. However, appellant's FMLA status had expired on March 24, 2022, and the appellant did not have any available sick time.

Applying the law to the facts, I **CONCLUDE** that the respondent has proven, by a preponderance of the competent, credible evidence, the charges of chronic and excessive lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, violation of the Mercer County Corrections Center Table of Offenses and Penalties: A-4 Chronic or excessive absenteeism from work, and SOP sick leave policy.



## PENALTY

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182, 195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant's past record. Bock, 38 N.J. at 523-24.

The employee's past record is said to encompass their reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Ibid. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Id. at 524.

However, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all the circumstances, to shock one's sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. Ibid.

Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid. In re Herrmann, 192 N.J. 19, 33-34 (2007). Indeed, progressive discipline "is not a necessary consideration when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." Herrmann, 192 N.J. at 33.

Although the focus is generally on the seriousness of the current charge as well as the prior disciplinary history of the appellant, consideration must also be given to the

purpose of the civil service laws. Civil service laws "are designed to promote efficient public service, not to benefit errant employees . . . The welfare of the people as a whole, and not exclusively the welfare of the civil servant, is the basic policy underlining the statutory scheme." State Operated School District v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). "The overriding concern in assessing the propriety of the penalty is the public good. Of the various considerations which bear upon that issue, several factors may be considered, including the nature of the offense, the concept of progressive discipline, and the employee's prior record." George v. North Princeton Developmental Center, 96 N.J.A.R. 2d. (CSV) 463, 465.

Here, a review of the appellant's disciplinary history (R-18) reveals numerous infractions between February 2013 to October 2020. These offenses include; conduct unbecoming a public employee on July 1, 2013, and October 20, 2020; absent without proper notice on June 28, 2013, January 5, 2017, April 18, 2018, and October 20, 2020; chronic, excessive absenteeism on February 28, 2013, February 5, 2016, June 21, 2016, and February 20, 2018. These prior infractions coupled with the current infractions reveal that the appellant has difficulty in complying with the SOP's policy regarding time and attendance. As Kownacki noted absenteeism affects the safety and security of both the staff and inmates and can prevent services from being provided to inmates.

Having considered the proofs offered in this matter and the impact of the appellant's behavior upon the institution, and after having given due deference to the principal of progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon her the seriousness of her continued failure to comply with time and attendance mandates. Based upon the violations of time and attendance the appellant is subject to discipline pursuant to the Mercer County Public Safety Table of Offenses Corrections Center (MCTOCC) which specifies the length of suspension based upon the number of times an employee has violated the SOP's:

Offense date September 1, 2021, FNDA dated September 27, 2022, (CSV 09449-22)

Having concluded that the appellant had failed to show for her scheduled shift and failed to contact Master Control at least two hours in advance of the start of her shift on September 1, 2021, she has committed both the A-1 violation of failing to show up for her scheduled shift without notice and the A-4 violation of chronic or excessive absenteeism. The A-1 violation is a first offense which results in a suspension of one working day and the A-4 violation is second infraction which results in a suspension of five working days.

Offense date October 8, 2021, FNDA dated September 27, 2022, (CSV 09450-22)

Having concluded that the appellant had refused to work a mandatory overtime shift without providing a reasonable excuse on October 8, 2021, she has committed an A-9 violation. The A-9 violation is appellant's third offense which results in a suspension of ten working days.

Based upon the sustained charges together with appellant's disciplinary history for absenteeism, I **CONCLUDE** that the imposition of a suspension of ten working days is appropriate.

Offense date March 25, 2022, FNDA dated September 27, 2022 (CSV 09451-022)

Having concluded that the appellant called out sick from work citing Family Medical Leave Act (FMLA) on March 25, 2022, after appellant's approved request had expired on March 24, 2022, and she had committed an A-4 violation of chronic or excessive absenteeism. The A-4 violation is a third offense which results in a suspension of ten working days.

Based upon the sustained charges together with appellant's disciplinary history for lateness, I **CONCLUDE** that the imposition of a suspension of ten working days is appropriate.

Offense dates March 31 and April 1, 2022, FNDA dated September 27, 2022 (CSV 09452-22)

Having concluded that the appellant called out sick from work citing Family Medical Leave Act (FMLA) on March 31 and April 1, 2022, after appellant's approved request had expired on March 24, 2022, and she had committed an A-4 violation of chronic or excessive absenteeism. The A-4 violation is a fourth offense which results in a suspension of twenty working days.

Based upon the sustained charges together with appellant's disciplinary history for lateness, I **CONCLUDE** that the imposition of a suspension of twenty working days is appropriate.

### **ORDER**

For the reasons set forth above, it is **ORDERED** that the charges entered on the FNDA, dated September 27, 2022, (CSV 09449-22) by the respondent, Mercer County Corrections Center, against the appellant, Sha-Keena Davis, are hereby **SUSTAINED**.

For the reasons set forth above, it is **ORDERED** that the charges entered on the FNDA, dated September 27, 2022, (CSV 09450-22) by the respondent, Mercer County Corrections Center, against the appellant, Sha-Keena Davis, are hereby **SUATAINED**.

For the reasons set forth above, it is **ORDERED** that the charges entered on the FNDA, dated September 27, 2022, (CSV 09451-22) by the respondent, Mercer County Corrections Center, against the appellant, Sha-Keena Davis, are hereby **SUSTAINED**.


For the reasons set forth above, it is **ORDERED** that the charges entered on the FNDA, dated September 27, 2022, (CSV 09452-22) by the respondent, Mercer County Corrections Center, against the appellant, Sha-Keena Davis, are hereby **SUSTAINED**.

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 24, 2023  
DATE

  
\_\_\_\_\_  
**WILLIAM T. COOPER, III, ALJ**

Date Received at Agency: \_\_\_\_\_

Date E-Mailed to Parties: \_\_\_\_\_

WTC/am/mph

**APPENDIX**

**WITNESSES**

**For appellant**

Sha-Keena Davis

**For respondent**

Michael Kownacki

**EXHIBITS**

**For appellant**

None

**For respondent**

- R-1 Preliminary Notice of Disciplinary Action, dated September 1, 2021
- R-2 iSeries Timekeeper Record, dated September 1, 2021
- R-3 Attendance & Overtime Record- Sha-Keena Davis
- R-4 Time and Attendance records- Sha-Keena Davis
- R-5 Mercer County Corrections Center, Department of Public Safety, Standards and Operating Procedures 132: Sick Leave
- R-6 Preliminary Notice of Disciplinary Action, dated November 12, 2021
- R-7 Incident Report: Officer Sha-Keena Davis, dated October 8, 2021
- R-8 Mercer County Corrections Center, Department of Public Safety, Standards and Operating Procedures 568 Overtime Policy
- R-9 Preliminary Notice of Disciplinary Action, dated April 29, 2022, amended August 1, 2022
- R-10 Primepoint Time and Entry Notes — March 25, 2022
- R-11 Attendance and Overtime Record
- R-12 Time Attendance Records Sha-Keena Davis
- R-13 Preliminary Notice of Disciplinary Action, dated April 29, 2022, amended August 1, 2022

- R-14 Primepoint Employee Time Sheets — March 31 and April 1, 2022
- R-15 Attendance & Overtime Record — March 31, 2022
- R-16 Attendance & Overtime Record — April 1, 2022
- R-17 Memorandum to Sha-Keena Davis, dated April 13, 2022
- R-18 Sha-Keena Davis Disciplinary History
- R-19 Mercer County — Public Safety — Table of Offenses
- R-21 FNDA, dated September 27, 2022 (PNDA, dated September 9, 2021)
- R-22 FNDA, dated September 27, 2022 (PNDA, dated November 12, 2021)
- R-23 FNDA, dated September 27, 2022 (PNDA, dated April 29, 2022)
- R-24 FNDA, dated September 27, 2022 (PNDA, dated April 29, 2022)