



STATE OF NEW JERSEY

In the Matter of Chad Tracy, Albert
C. Wagner Youth Correctional
Facility, Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2019-458 and 2019-
1962
OAL Docket Nos. CSV 13356-18 and
CSR 04632-19
(Consolidated)

ISSUED: DECEMBER 20, 2023

The appeals of Chad Tracy, Senior Correctional Police Officer, Albert C. Wagner Youth Correctional Facility, Department of Corrections, 75 working day suspension and removal, effective January 24, 2019, on charges, were heard by Administrative Law Judge Dean J. Buono (ALJ), who rendered his initial decision on November 20, 2023. Exceptions were filed on behalf of the appellant and a reply 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, adopted the Findings of Fact and Conclusion as found in the initial decision and the recommendation to uphold the removal.¹

Initially, the Commission notes that the ALJ's initial decision is not a paragon of clarity. In this regard, he presented two nearly identical "penalty" sections/discussions in the initial decision, which appears to be a transpositional error, or what is commonly known as a "copy and paste" type error. However, it is clear this error did not detract in any way from the ALJ's findings regarding the actual charges levied in this matter, or on his conclusions made therefrom and his

¹ The ALJ consolidated the 75 working day suspension and the removal, however, he made neither separate findings for each nor indicated a discrete penalty regarding the two matters. Rather, he found the misconduct in total supported removal from employment. As the actual misconduct underlying the suspension also served as a substantial factual basis for the subsequent removal, the Commission finds this disposition non-problematic. Specifically, the suspension was based on the actual inappropriate language used and threats made by the appellant, and the removal was based on a subsequent finding that the misconduct was also in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

assessment of the penalty to be imposed. As such, the Commission, in its *de novo* review, finds such error does not otherwise affect its affirmance of the ALJ's decision.

Moreover, the Commission rejects the appellant's exceptions as unpersuasive. In this regard, the ALJ based his determination mainly on his assessment of the credibility of the witnesses, and he specially found the appellant's testimony regarding the matter not credible. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this matter, the exceptions filed by the appointing authority are not persuasive in demonstrating that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable.

Similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer, such as a Senior Correctional Police Officer, is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990).

In his initial decision, the ALJ found the appellant's actions sufficiently egregious to support removal without regard to progressive discipline. In his exceptions, the appellant argues that the removal should be modified and cites *Matter of Hendrickson*, 235 N.J. 145 (2018). The Commission does not find that matter to be on point as here, the appellant's misconduct included both inappropriate and discriminatory language as well as a threat of violence directed at a co-worker, whereas Hendrickson made a single discriminatory comment about his supervisor not in her presence that was overheard by other employees. Moreover, unlike the appellant, Hendrickson was not a law enforcement officer, who is held to a higher standard. Accordingly, the Commission agrees with the ALJ that the appellant's conduct was egregious and wholly inappropriate for a law enforcement officer and worthy of removal without regard to progressive discipline. The appellant's actions would clearly tend to undermine the public trust and as such, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

One final comment is required for the sake of completeness. Both the ALJ and the appellant, in his exceptions, indicate that he had a previously unblemished disciplinary record as of the imposition of the removal. However, the hearing record clearly indicates that the appointing authority's Exhibit 19, which was admitted into evidence, presents the appellant's prior disciplinary history.²

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeals of Chad Tracy.

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

² Noteworthy in that regard is a Final Notice of Disciplinary Action (FNDA), dated August 8, 2018, for a 30 working day suspension on alleged misconduct that occurred on October 16, 2017, which is quite similar to the misconduct committed in this matter. The Preliminary Notice of Disciplinary Action (PNDA) for the 30 working day suspension was issued on November 28, 2017. The misconduct underlying the current matters initially occurred on December 29, 2017, and were memorialized on a February 12, 2018, PNDA for the 75 working day suspension and a January 17, 2019, FNDA for the removal. As such, the ALJ could have considered it regarding the removal, if he believed that a progressive discipline analysis was necessary, since the PNDA, FNDA and part of the suspension for the 30 working day suspension were issued/imposed prior to the issuance of the PNDA underlying the removal. *See In the Matter of Vanessa Warren* (CSC, decided November 21, 2012), *modified on remand*, Docket No. A-5092-09T3 (App. Div. August 3, 2012) (For the proposition that prior discipline should not be considered if the PNDA had not been served prior to the current misconduct and discipline had not yet been imposed for the prior misconduct).

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

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF CHAD TRACY,
ALBERT C. WAGNER YOUTH
CORRECTIONAL FACILITY,
DEPARTMENT OF CORRECTIONS.**

OAL DKT. NO. CSV 13356-18
AGENCY DKT. NO. 2019-458

And

**IN THE MATTER OF CHAD TRACY,
ALBERT C. WAGNER YOUTH
CORRECTIONAL FACILITY,
DEPARTMENT OF CORRECTIONS.**

OAL DKT. NO. CSR 04632-19
AGENCY DKT. NO. N/A
(CONSOLIDATED) 2019-2039

Kevin P. McCann, Esq., for appellant, Chad Tracy (Chance McCann, LLC,
attorneys)

Elizabeth A. Davies, Deputy Attorney General, for respondent, Albert C. Wagner
Youth Correctional Facility, Department of Corrections (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: October 6, 2023

Decided: November 20, 2023

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Appellant, Chad Tracy (Tracy), an employee of respondent, Department of Corrections (DOC), appeals from the determination of respondent that he be terminated for incidents that occurred on December 29, 2017. Respondent argues that he violated: N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause; HRB 84-17 as amended (C-4) Verbal Abuse of inmate, patient client, resident or employee; C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure, order or administrative decision; D-7 - violation of administrative procedure and/or regulations involving safety and security. The appellant denies the allegations and contends that he acted appropriately.

PROCEDURAL HISTORY

A Preliminary Notice of Disciplinary Action was issued on September 4, 2018. A Final Notice of Disciplinary Action was issued on January 17, 2019. Tracy appealed. The Equal Employment Division ("EED") performed a separate investigation and a Preliminary Notice of Disciplinary Action which was issued on February 9, 2018. A Final Notice of Disciplinary Action was issued on July 31, 2018. Tracy appealed. On March 27, 2023, the appeals were consolidated to this appeal. Appellant filed a timely notice of appeal.

This matter was appealed to the Office of Administrative Law (OAL) on March 22, 2019. N.J.S.A. 40A:14-202(d). Due to the Covid-19 pandemic, in-person hearings were held on April 18, 2023, and July 5, 2023. At the request of the parties, the record remained open until for the parties to submit closing summations and the record closed on October 6, 2023.

FACTUAL DISCUSSION

Testimony

Respondent

Senior Corrections Officer John Strittmatter testified that as of the date of his testimony, he was a seventeen-year veteran of the Department of Corrections.

On December 29, 2017, he had an interaction with Chad Tracy in the cell unit desk with approximately twenty to thirty inmates around. At that time Tracy exclaimed to the group of officers that "let me turn my back so all you p*ssy [sic] and fags can talk behind my back." Tracy then focused his attention on Officer Bleeker but he would not engage Tracy. Then Tracy turned his attention to Strittmatter. Someone told Tracy to stop and then Strittmatter told Tracy that he was being a bully. It was at that time that Tracy exclaimed that Tracy's girlfriend at the time (Officer Vega) "is so much hotter than your fat pig wife." It was at that time also that Tracy exclaimed to Strittmatter that he was going to "knock his teeth down his throat" "stop sucking Mr. Grant's d*ck [sic]." Apparently, Mr. Grant is an administrator in the prison system. (R-5.)

Unfortunately, this was not the first time Strittmatter had an unpleasant interaction with Tracy. There were several times that Tracy told Strittmatter that he was a "p*ssy [sic]." In fact, after reviewing R-6, there were multiple occasions where Tracy referred to Strittmatter as a "p*ssy [sic]" and "faggot."

On cross-examination, Strittmatter relayed that "a lot of people heard what Tracy said." In fact, Tracy had a reputation for this and did this for years like hitting him with his shoulder in the hallway. Strittmatter never filed any charges or ever brought it up. Interestingly, there was a complaint filed out of Gloucester County for keep away order. Apparently, there was some interaction between the two individuals about car rims.

On many occasions, Strittmatter used sick days just so that he could stay away from Tracy. Strittmatter was questioned about the insults on his manhood and how it

affected him. He said it was worse because it came from an officer, not the inmates. Strittmatter wrote Tracy up on several occasions and he in fact got a reputation as a snitch and a bad rap. There was an attempt at showing Strittmatter was prejudiced against Tracy, but Strittmatter was with a Hispanic woman for more than eleven years.

Senior Corrections Officer Damon Bleeker testified that he is a sergeant at the Department of Corrections and actually worked with Tracy for fifteen years.

On December 29, 2017, Bleeker arrived at a collection of officers including Tracy, Strittmatter and several others. It was at this time that Bleeker heard Tracy say, "let me turn my back on you" and then he spoke to Strittmatter and said that he would "knock his teeth down his throat" and that he was a "p*ssy [sic] and fag." He also heard Tracy say, "stop sucking Grant's d*ck [sic]". Bleeker had no idea where this was coming from and he was focusing his attention on the inmates. It was at the same time that he heard Tracy tell Strittmatter that his wife was a "fat pig."

On cross-examination, Bleeker never had any prior conflicts with Tracy but Tracy did tell him directly that Bleeker was talking behind his back. However, that fact was not true. After the incident, Tracy was following Bleeker around and said, "I got enough sh*t [sic] going on today" and tried to get Bleeker to not write him up following the incident. This did not happen. Bleeker went on to say he found Tracy's comments to Strittmatter offensive.

Reuben Baca is employed by the Department of Corrections as an investigator. He testified that he was familiar with the Chad Tracy taped statement and the offensive language. As a result, he produced his report. (R-11.)

Senior Corrections Officer Glendaliz Vega has been with the Department corrections for fifteen years. She admitted that she and Chad Tracy had a relationship together as boyfriend and girlfriend, but nobody ever teased her about it. She spoke with Tracy on the phone about the incident and Tracy admitted that he used the names "faggot" and "p*ssy [sic]" to refer to Strittmatter.

On cross-examination, she stated that although she was not present for the confrontation, she did say that there is a lot of name-calling in the jail. Officers routinely call each other "faggot" and refer to each other as "p*ssy [sic]." Both Strittmatter and Bleeker have used the phrases in the past to other officers.

Senior Corrections Officer Chad Tracy had been employed as a correction officer for eighteen and a half years. With no prior disciplinary history. "I became humbled after this incident."

Tracy remembers the incident date as December 29, 2017. "I live it every day." Tracy testified that both Strittmatter and Bleeker would make fun of him every day in the jail and called him a "faggot" and "p*ssy [sic]." Everyone uses those names in the jail because that's the environment "only the strong survive." They also use the term "n*gg*r [sic]" and "sp*k [sic]" which was offensive because his girlfriend/wife was working at the hospital, and she was Spanish.

On the date of the incident, there was an active shooter alert. Bleeker walked to the unit with Strittmatter. Strittmatter said Tracy was talking behind everybody's back and at that point Tracy "made some poor decisions." "I gave him my back and wanted to leave." Tracy claims that Strittmatter said "look at me Tracy" and Tracy wanted to leave but he couldn't because of his duty as a corrections officer.

Tracy admitted that he was talking loudly and did not call him a "p*ssy [sic]" nor a "faggot" on that day. However, on prior occasions he did refer to Strittmatter in that fashion. "The State of New Jersey" said it's not appropriate to use that language "but it happens." Tracy expressed that Strittmatter was trying to provoke him, so Tracy exclaimed to Strittmatter that "that's probably why you got your teeth knocked out." It was at that point that the incident deescalated, and Tracy was having shortness of breath. At no time did Tracy ever try to knock Strittmatter's teeth out.

Interestingly, Tracy testified that when the Department of Corrections wants to get rid of an officer, they usually use the closed-circuit video as evidence. Here they did

not. Although Tracy admitted that “some of their testimony was true.” Tracy did use the phrase “suck his d*ck [sic]” but really meant it as a “kiss *ss [sic]” to administrator Grant.

On cross-examination, Tracy admitted that he did know the story of how the officer had false teeth and that the officer’s father knocked his teeth out. Tracy also admitted that this was the second time he was written up for calling someone a “p*ssy [sic]” and “faggot.” However, in this environment only the “strongest survive.”

FINDINGS OF FACT

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible 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 witness’ story considering its rationality, internal consistency, and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

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

The testimony of the respondent’s witnesses was especially credible and persuasive. Their testimony was clear, concise and was reinforced by the manner in which it was delivered. It was obvious that they all had concerns about the incident and the actions of Tracy on that date. Also, they had concerns for the lack of respect for his fellow officers.

Conversely, Tracy's testimony was not credible. Tracy's own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. Tracy admits to using inappropriate language toward other officers. His attempt to skew his testimony regarding knocking the officer's teeth out was unsuccessful. Also, I question his alleged belief and self-proscribed race-based motivation for his firing.

Regarding the issue of Tracy's attempt to shift the blame for this incident on his employer is unavailing and deeply concerns the undersigned. This testimony was not realistic and frankly unbelievable when compared to the unbiased testimony of the other officers.

Tracy attempted to "sell" his version of the facts to the undersigned. Not only was his recitation of the reasoning of his actions not credible, but it is also not realistic to believe. He minimized his actions to such a degree and explained it in such a way that almost justifies it to himself. It was clear that Tracy has a lack of understanding of his profession as well as no respect for the law in the State of New Jersey. This testimony further detracted from any modicum of credibility.

After hearing the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, that on December 29, 2017, Tracy used disgraceful language toward other corrections officers and referred to one of the officers with a homophobic slur.

CONCLUSIONS OF LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. 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 Cnty. 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). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A.11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2- 2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Civil Service Commission requires the OAL to conduct a hearing de novo 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). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts 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 respondent sustained charges of violations of: N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause; HRB 84-17 as amended (C-4) Verbal Abuse of inmate, patient client, resident or employee; C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure, order or administrative decision; D-7 - violation of administrative procedure and/or regulations involving safety and security.

Respondent sustained charges against appellant for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber,

156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, 63 N.J. Super. at 140.

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a corrections officer cursing demeaning and using homophobic slurs while on duty in the course of his governmental function. Tracy’s actions by cursing, demeaning and using homophobic slurs toward the officers is intolerable and unacceptable. **I CONCLUDE** that appellant’s actions constitute unbecoming conduct. The charges of violating conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6) are hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause). Specifically, appellant is charged with violations of the Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; E-2 - intentional use or misuse of authority or position. It is noted that the Preliminary and Final Notices of Disciplinary Action (R-1 and R-2) indicate the sustained charges. **I CONCLUDE** that consideration of the charge constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) will be limited to the regulations, rules and general orders specifically enumerated in the Final Notice of Disciplinary Action. (R-2.)

The charge of “other sufficient cause,” in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violations of Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure; and E-2 - intentional use or misuse of authority or position will be addressed separately.

PENALTY

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. 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 Cnty. 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). A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A.11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2- 2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Merit System Board requires the OAL to conduct a hearing de novus 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). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). 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).

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980); In re Herrmann,

192 N.J. 19, 33–34 (2007). Progressive discipline is not a “fixed and immutable rule to be followed without question.” Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid. (Appellant also cites In re Stallworth, 208 N.J. 182, 195–96 (2011), and Feldman v. Irvington Fire Department, 162 N.J. Super. 177 (App. Div. 1978), to support progressive discipline, particularly consideration of the mitigating factors.)

The respondent seeks to impose major discipline, namely, removal, on the appellant for violations of N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause; HRB 84-17 as amended (C-4) Verbal Abuse of inmate, patient client, resident or employee; C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure, order or administrative decision; D-7 - violation of administrative procedure and/or regulations involving safety and security.

The respondent relies principally on the egregiousness of appellant’s conduct and the policies and procedures that appellant failed to adhere to in asserting that progressive discipline is not warranted, and that termination is appropriate for this discipline, particularly because the respondent operates as a paramilitary organization, and, as such, rules and regulations are to be strictly followed. Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority are not to be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The charges are particularly egregious, in that a law enforcement officer is held to a higher standard of conduct than other employees, and is expected to act in a responsible manner, honestly, and with integrity, fidelity, and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. E. Jersey State Prison, 97 N.J.A.R.2d (CSV) 166. It is well settled that suspension or removal may be justified where the misconduct

Department of Corrections Human Resources Bulletin 84-17:C-11 conduct unbecoming an employee was discussed at length above. Again, it is difficult to contemplate a more basic example of conduct that could destroy public respect in the delivery of governmental services than the image of a corrections officer cursing, demeaning and using homophobic slurs toward them. Finally, to use the type of language Tracy used is intolerable. **I CONCLUDE** that appellant's actions constitute unbecoming conduct. The charges of violating Department of Corrections Human Resources Bulletin 84-17: C-11 - conduct unbecoming an employee are hereby **SUSTAINED**.

Department of Corrections Human Resources Bulletin 84-17: E-1 - violation of a rule, regulation, policy, procedure. Here, it is uncontroverted that Tracy violated numerous rules, regulations, policies and procedures of the Department of Corrections. **I CONCLUDE** that appellant's actions constitute a violation. The charges of violating Department of Corrections Human Resources Bulletin 84-17: E-1 - violation of a rule, regulation, policy, procedure is hereby **SUSTAINED**.

Department of Corrections Human Resources Bulletin HRB 84-17 as amended (C-4) Verbal Abuse of inmate, patient client, resident or employee; C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure, order or administrative decision; D-7 - violation of administrative procedure and/or regulations involving safety and security. As stated above, I will refrain from repeating the same analysis as above but the actions of respondent in using the language he did to the individuals he did is intolerable according to the law. **I CONCLUDE** that the respondent has met its burden of proof on the charges of violating Department of Corrections Human Resources Bulletin 84-17: C-4, C-11 and E-1 and are hereby **SUSTAINED**. However, as for Human Resources Bulletin HRB 84-17 D-7 - violation of administrative procedure and/or regulations involving safety and security there has been no evidence presented to that effect as such **I CONCLUDE** that the respondent failed to meet their burden because no evidence was presented to support that allegation.

occurred off duty; were it otherwise, "the desired goal of upholding the morale and discipline of the force, as well as maintaining public respect for its officers, would be undermined." In re Emmons, 63 N.J. Super. 140.

Respondent sustained charges against appellant for Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a Corrections Officer cursing, demeaning and using homophobic slurs toward them. Finally, to use the type of language Tracy used is intolerable. **I CONCLUDE** that appellant's actions constitute unbecoming conduct. The charges of violating Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)(6) are hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause). Specifically, appellant is charged with violations of the Department of Corrections Human Resources Bulletin 84-17: C-11 Conduct Unbecoming an Employee; E-1 Violation of a Rule, Regulation, Policy, Procedure, and D-7 - violation of administrative procedure and/or regulations involving safety and security.

It is noted that the Preliminary and Final Notices of Disciplinary Action indicate the sustained charges. I **CONCLUDE** that consideration of the charge constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause) will be limited to the regulations, rules and general orders specifically enumerated in the Final Notice of Disciplinary Action.

The charge of "other sufficient cause," in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically, violations of Department of Corrections Human Resources Bulletin 84-17: C-11 Conduct Unbecoming an Employee; E-1 Violation of a Rule, Regulation, Policy, Procedure; D-7 - violation of administrative procedure and/or regulations involving safety and security. I will address each separately.

Department of Corrections Human Resources Bulletin 84-17: C-11 Conduct Unbecoming an Employee was discussed at length above. Again, it is difficult to contemplate a more basic example of conduct that could destroy public respect in the delivery of governmental services than the image of a Corrections Officer cursing, demeaning and using slurs toward other officers. Finally, to use the type of language he used toward other officers in public is intolerable. I **CONCLUDE** that appellant's actions constitute unbecoming conduct. The charges of violating Department of Corrections Human Resources Bulletin 84-17: C-11 Conduct Unbecoming an Employee are hereby **SUSTAINED**.

Department of Corrections Human Resources Bulletin 84-17: E-1 violation of a Rule, Regulation, Policy, Procedure. Here, it is uncontroverted that Tracy violated numerous rules, regulations, policies and procedures of the Department of Corrections. I **CONCLUDE** that appellant's actions constitute a violation. The charges of violating Department of Corrections Human Resources Bulletin 84-17: E-1 violation of a Rule, Regulation, Policy, Procedure is hereby **SUSTAINED**.

Department of Corrections Human Resources Bulletin 84-17: D-7 violation of an administrative procedure and/or regulations involving safety and security. Here, it is obvious that using this type of language in a facility could potentially risk the safety and security of the institution. Particularly in an institution regulated by the Department of

Corrections. However, respondent failed to present any evidence to that effect even in their closing summation. I will not subjugate myself to speculation or innuendo on my behalf to what could have or may happen. Therefore, **I CONCLUDE** that the charge of violating Department of Corrections Human Resources Bulletin 84-17: D-7 violation of a Rule, Regulation, Policy, Procedure is hereby **DISMISSED**.

PENALTY

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980); In re Herrmann, 192 N.J. 19, 33-34 (2007). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid. (Appellant also cites In re Stallworth, 208 N.J. 182, 195-96 (2011), and Feldman v. Irvington Fire Department, 162 N.J. Super. 177 (App. Div. 1978), to support progressive discipline, particularly consideration of the mitigating factors.)

The Facility seeks to impose major discipline, namely, removal, on the appellant for violations of N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause; HRB 84-17 as amended (C-4) Verbal Abuse of inmate, patient client, resident or employee; C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure, order or administrative decision; D-7 - violation of administrative procedure and/or regulations involving safety and security.

The Facility relies principally on the egregiousness of appellant's conduct and the policies and procedures that appellant failed to adhere to in asserting that progressive discipline is not warranted, and that termination is appropriate for this discipline,

particularly because the Facility is operated as a paramilitary organization, and, as such, rules and regulations are to be strictly followed. Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority are not to be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The charges are particularly egregious, in that a law-enforcement officer is held to a higher standard of conduct than other employees, and is expected to act in a responsible manner, honestly, and with integrity, fidelity, and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. E. Jersey State Prison, 97 N.J.A.R.2d (CSV) 166.

Appellant seeks a reduction of the penalty from termination to suspension, based on the mitigating circumstances, urging that his conduct was acceptable in a correctional institution. Appellant cites numerous cases in support of progressive discipline and cases about civilian civil-service employees who avoided removal.

Here, the Department seeks removal of the appellant because of the underlying conduct. The appellant has been employed as a correction officer since 2005. Appellant does not have any other disciplinary history.

The aggravating factors are significant: appellant used foul language in a correctional institution, he referred to several corrections officers in a demeaning homosexual reference, he threatened another officer that he was going to knock his teeth out.

Having weighed the aggravating and mitigating factors and the proofs presented, I **CONCLUDE** that appellant's misconduct was so egregious as to warrant removal, and respondent's action of removing the appellant from his position is appropriate. Appellant failed to adhere to the code of conduct, which applies while on and off duty. Appellant violated these rules of conduct. Appellant also failed to conduct himself in the

manner required for the special position of trust he holds as a correction officer with police powers.

I **CONCLUDE** that the action of the appointing authority removing appellant for his actions should be affirmed.

DECISION AND ORDER

I **ORDER** that the charges of N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) - Other Sufficient Cause; HRB 84-17 as amended (C-4) Verbal Abuse of inmate, patient client, resident or employee; C-11 - conduct unbecoming an employee; E-1 - violation of a rule, regulation, policy, procedure, order or administrative decision be **SUSTAINED**. I **FURTHER ORDER** that the charge of HRB D-7 violation of administrative procedure and/or regulations involving safety and security be hereby **DISMISSED**. I **FURTHER ORDER** respondent's action terminating appellant is hereby **SUSTAINED** and his appeal be **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 20, 2023 _____

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/cb

APPENDIX

WITNESSES

For appellant

Chad Tracy
Senior Corrections Officer Glendaliz Vega

For respondent

Senior Corrections Officer John Strittmatter
Senior Corrections Officer Damon Bleeker
Reuben Baca

EXHIBITS

For appellant

None

For respondent

- R-1 Final Notice of Disciplinary Action, dated January 17, 2019
- R-2 Preliminary Notice of Disciplinary Action, dated September 4, 2018
- R-3 Final Notice of Disciplinary Action, dated July 31, 2018
- R-4 Preliminary Notice of Disciplinary Action, dated February 9, 2018
- R-5 Special Custody Report of SCO Strittmatter
- R-6 EED Interview Statements, SCO John Strittmatter
- R-7 Special Custody Report, SCO Bleeker
- R-8 EED Interview Statements, SCO Damon Bleeker
- R-9 Special Custody Report, SCO Matthew Smith, dated December 29, 2017
- R-10 Special Custody Report, SCO Matthew Smith, dated April 6, 2018
- R-11 Investigation Report
- R-12 EED Interview, Mr. Chad Tracy
- R-13 Policy Number ADM.005-001, Prohibiting Discrimination in the Workplace

- R-14 Acknowledgements of Receipt of Policy Prohibiting Discrimination in the Workplace
- R-15 Law Enforcement Rules and Regulations
- R-16 Law Enforcement Rules and Regulations – Receipt of manual
- R-17 Prevention of Violence in the Workplace
- R-18 Prevention of Violence in the Workplace Policy – receipt
- R-19 Record of Past Disciplines
- R-20 New Jersey DOC Disciplinary Action Policy
- R-21 NJ DOC Disciplinary Action Policy – Receipt