



STATE OF NEW JERSEY

In the Matter of Theodore Christie,
Mercer County Corrections Center

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-96
OAL Docket No. CSV 06605-21

ISSUED: AUGUST 2, 2023

The appeal of Theodore Christie, County Correctional Police Officer, Mercer County Corrections Center, eight working day suspension, on charges, was heard by Administrative Law Judge Joan M. Burke (ALJ), who rendered her initial decision on July 5, 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, the Civil Service Commission (Commission), at its meeting on August 2, 2023, adopted the ALJ's Findings of Facts and Conclusions of the ALJ but modified the eight working day suspension to a five working day suspension.

As indicated above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds most do not require extensive comment. Nevertheless, the Commission makes the following comments. In his exceptions, the appellant argues that, in essence, that the appointing authority did not sustain its burden of proof as he had a "reasonable" excuse for his lateness. The Commission is not persuaded. In this regard, the ALJ stated:

It is undisputed that appellant was late 58 minutes to his shift on December 17, 2019. The evidence also shows that the appellant has a history of lateness as documented in his disciplinary record. (reference omitted). Since 2017, the appellant has been disciplined over six times for lateness. The disciplines consisted of a written reprimand, four days suspension in 2017 for lateness, five days suspension in 2018 for lateness and in 2020 a three-day suspension for lateness. (reference

omitted). Appellant argues that because of an extraordinary number of hours worked “demonstrate that officers, like Christie have chronic sleep deprivation due to the inadequate staffing level in place at the Correction Center.” I am not convinced by this argument. There was no corroboration that Christie was sleep deprived. Moreover, Christie admitted that he overslept and nowhere stated he was sleep deprived. In addition, he testified that he had a strategy on how to work, preferring the 3 p.m. to 11 p.m. and the 11 p.m. to 7 a.m. shifts to work. His lateness on December 17, 2019, was not the first but the third infraction. I therefore **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that the appellant’s conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(4) (chronic or excessive lateness), and that such charge must be **SUSTAINED**.

Upon its *de novo* review of the record, the Commission concurs with the ALJ’s findings and nothing in the exceptions is persuasive in showing those findings were arbitrary, capricious or unreasonable, or not based on the credible evidence in the record.

Similar to its assessment of the charges, the Commission’s review of the penalty is also *de novo*. 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). In this regard, the Commission emphasizes that a County 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).

The Commission agrees that the misconduct supports as disciplinary suspension in this matter. However, while the Commission acknowledges that the appellant has prior similar disciplines, there are mitigating factors in this matter which warrant consideration. Most important in that respect is the fact that some of those factors are outside of the appellant’s control, such as the evidence that the appointing authority is significantly understaffed and requires employees to undertake mandatory additional shifts. While this does not excuse the appellant’s lateness, it provides context and support for a slight reduction in penalty. As such, the Commission imposes a five-working day suspension which should impress upon

the appellant the inappropriate nature of his misconduct and serve as a warning that any future misconduct will be met with more severe discipline, up to and including removal from employment.

Since the suspension has been modified, the appellant is entitled to three working days of back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10. However, he 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 penalty was modified by the Commission, charges were sustained, and discipline was imposed. Consequently, as 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 disciplining the appellant was justified. The Commission therefore modifies the eight working day suspension to a five working day suspension. The Commission further orders that the appellant be granted three 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 pursuant to *N.J.A.C.* 4A:2-2.12.

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 2ND DAY OF AUGUST, 2023



Allison Chris Myers
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 06605-21

AGENCY DKT. NO. 2022-96

**IN THE MATTER OF
THEODORE CHRISTIE,
MERCER COUNTY
CORRECTION CENTER.**

David Beckett, Esq., for appellant, Theodore Christie (Beckett and Paris, LLC,
attorneys)

Michael A. Amantia, Esq., for respondent, Mercer County (Paul R. Adezio, Mercer
County Counsel, attorneys)

Record Closed: May 26, 2023

Decided: July 5, 2023

BEFORE JOAN M. BURKE, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The appellant, Theodore Christie, appeals the disciplinary action by respondent Mercer County (County) seeking the imposition of a major discipline, namely an eight-day suspension. The appellant is a county correction officer (CO) with the Mercer County Correction Center (Correction Center).

On December 19, 2019, 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 N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-7, unreasonable excuse for lateness of more than fifteen minutes (Step 3); The County sought a suspension of eight working days.

The appellant attended the departmental hearing on May 13, 2021, and a Final Notice of Disciplinary Action (FNDA) was issued by the Correction Center on June 24, 2021, sustaining the charges on the December 19, 2019, PNDA. The appellant filed a timely notice of appeal, and the matter was transmitted to the Office of Administrative Law, where it was filed on August 4, 2021. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15; N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13.

On September 16, 2021, the County filed a motion for summary decision. On November 22, 2021, the appellant filed a response to the motion. The motion for summary decision was handled by the Hon. Susan Scarola, ALJ (Ret., on recall) who denied the motion. A settlement conference was scheduled on February 2, 2022. After additional status conferences a hearing was held on January 26, 2023, via Zoom. The matter was left open for closing summaries. The documents were received on May 26, 2023, and the matter closed then.

FACTUAL DISCUSSION

The following facts are undisputed:

1. The appellant began his employment as a CO for the County on September 8, 2014.
2. An employee faces discipline if he arrives late for work with no reasonable excuse in accordance with the applicable regulations and the collectively bargained-for Table of Offenses and Penalties.

3. On December 17, 2019, the appellant's shift duty commenced at 2300 hours (11:00 p.m.). The appellant reported for duty at 2358, almost one hour after the start of his scheduled shift.

Summary of Testimony and Documentary Evidence

For respondent

Michael Kownacki (Kownacki) testified that he is captain of the Correction Center Department. As captain, one of his duties is to oversee the disciplinary process. There are written policies that govern officers and superior officers. These written policies are called standard operating procedures or SOPs. Timeliness in reporting to duty is governed by the lateness policy. This is found in SOP 136. A lateness is considered to be when an officer is not lined up at the start of his shift. There are three shifts; 7 a.m. to 3 p.m.; 3 p.m. to 11 p.m.; 11 p.m. to 7 a.m. There is no grace period for lateness.

If an officer is not lined up at the start of his shift, he is considered to be late. Reasons for lateness are usually written on the late slip. Depending on the type of lateness it may result in a disciplinary action. KRONOS was the recording system in 2019, at the time of the alleged conduct in this matter. On December 17, 2019, the appellant reported to work at 23:58 or 11:58. He was fifty-eight minutes late. (R-2.) This is in violation of the lateness policy. A late slip or Mercer County Correction Center Attendance & Overtime Record was completed. (R-3). Written on this slip at the area stated "REASON"- was "Refused." Captain Kownacki testified that the appellant refused to sign. Captain Kownacki testified that this was the third infraction for the appellant. Based on the Table of Offense, the appellant is in violation of A-7, unreasonable excuse for lateness of more than fifteen minutes. (R-7.) Because this was a third infraction, the penalty was eight working days suspension. ibid

On cross-examination, Captain Kownacki admitted that he was not there when the appellant came to work and did not speak with the shift commander who had completed the late slip. He did not investigate the situation and had no personal knowledge of what

had occurred. Captain Kownacki admitted that no other officer was paid overtime for this lateness of shift. He admitted that only an unreasonable excuse for lateness is charged. He admitted that working a double shift is a long day. He disagreed that in 2019 there was a shortage of officers working at the correction's center. He also disagreed with the large number of double shifts worked by officers. He said an officer working over 3,000 hours for the year in the jail is not extraordinary.

For appellant

Theodore Christie (appellant, Christie) testified that he has worked for the Correction Center since 2014. In 2019 he worked the 11 p.m. to 7a.m. shift. He usually has Thursdays and Fridays as his days off. He was shown his wage summary. (A- 1.) This is broken down into time worked; holidays; comp time; docked hours; regular hours; and overtime hours worked. Christie worked approximately 1,181 hours in overtime and 1,700 regular hours. (See A-2.) Overtime is either mandatory or voluntary. Overtime is done when there is no staff for the shift. When that happens, he could be stuck working a double shift. According to Christie, when you are low on the seniority list, you get stuck first with mandatory overtime or double shifts.

On December 17, 2019, Christie reported to work late. He admitted to oversleeping. He testified that he did not call to say he was late because he received a call from the control that asked him about coming in. He informed them that he was on his way and that he had overslept. When he walked in, Christie said hello and went to his post. No one asked him to sign a late slip or what was his reason. He admitted giving the reason when they had called him. There was no further discussion when he got to work.

The 11 p.m. to 7a.m. shift is mostly receiving inmates from police departments. Christie testified that on average 15 inmates (could range between 30 and 50) would show up each evening for intake. The procedure would be that when the inmates get to the facility, they would be placed in the Receiving and Discharge area. He would address them individually. After which, they would pat search each individual; and are then seen by a medical staff, usually a nurse, to be cleared. After they are all seen by the nurse—

then each person would be processed individually. They would be put in the sally port with other inmates with a packet to complete. Once the inmates have completed the packet they are then processed. Processing includes entering their names into the AMES and CCIS systems. After this is done, they would be stripped searched and new clothing from the correction center would be given them; their old clothes would be bagged and placed in the property room. The individuals would then be fingerprinted; given an opportunity to make a phone call; photographed and given a wristband, identification card and they are then escorted up to medical or placed in a holding cell. This area, R&D is one of the more active and stressful jobs in the jail. Christie has also worked at other units such as housing and work units.

Christie testified that he overslept because he was tired. He likes the 11 p.m. to 7 a.m. shift because he has five children, so he likes to go home in the morning to assist with their care. He does not want to be stuck. Thus, his strategy is to work 3 p.m. to 11 p.m. followed by the 11 p.m. to 7 a.m. shift this way he would not be stuck covering the 7 a.m. to 3 p.m. shift. He lives in Willingboro for several reasons; the school system, the neighborhood is quieter and safer than where he grew up in Trenton. Christie's commute each day is forty minutes one way. Between commuting and working it is approximately eighteen hours per day.

On cross-examination Christie admitted that he had the opportunity for voluntary and mandatory overtime. Sometimes, it does not seem like a choice when there is a shortage. Christie said he is usually stuck is mandatory overtime because he is forced to work the shift. When they are looking for individuals to volunteer for overtime, they would go from the person with the highest seniority to the lowest. When it is mandatory overtime, they would go to the person with lowest seniority to the person with the highest. Christie did not have days off before the day he called out. Christie does not deny being late, but because of the mandatory overtime, he is asking for flexibility and not such a severe punishment.

Donald J. Ryland (Officer Ryland) testified that he is a correction officer since 1995. In addition, he is the president of the Local PBA 167. As such, he is familiar with the staffing levels at the facility. There are three tours of duty. There is the B-tour of duty

which is the 7 a.m. to 3 p.m. shift; the A tour of duty is the 11 p.m. to 7 a.m. shift. On the B-tour shift, officers are often needed to work this shift. Thus, officers are routinely stuck or have mandatory overtime. The correction center runs on excessive amount of overtime. The reason for this is the facility should have 212 officers to run the facility, however they usually have a shortage. In 2019 there were roughly 170 officers and when you take suspensions and sick leave, you are really down to about 120 to 125 officers running the facility, thereby resulting in mandatory overtime.

LEGAL ANALYSIS

The issue is whether the respondent has proven the charges by a preponderance of the credible evidence, or whether the appellant's lateness was inappropriately charged, and the incident of lateness was minimal and did not warrant major discipline.

I. Lateness Policy

The FNDA charges the appellant as follows:

As reported by Time and Attendance on December 17, 2019, [appellant] did report to work late for his tour of duty at 2358 (.97 [hour] late)

This late is a step 3 violation for unreasonable excuse for lateness of more than fifteen (15) minutes.

N.J.A.C. 4A:2-2.3(a) provides the general causes for which an employee may be subject to discipline; the specific violations alleged are N.J.A.C. 4A:2-2.3(a)4; chronic or excessive absenteeism or lateness; and N.J.A.C. 4A:2-2.3(a)12 other sufficient cause.

The Mercer County Correction Center Table of Offenses and Penalties sets forth a list of offenses and the penalties to be imposed for violations which depend upon the nature of the infraction and how many times it has occurred. Here, the violation alleged was for section A-7, "Unreasonable excuse for lateness of more than 15 minutes." The penalty sought was for a third infraction and required the imposition of major discipline, namely, an eight-day suspension.

Under N.J.A.C. 4A:2-2.3(a)(4), an employee may be subject to discipline for chronic or excessive conduct. 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. N. State Prison, 97 N.J.A.R.2d (CSV) 529, 531.

It is undisputed that appellant was late 58 minutes to his shift on December 17, 2019. The evidence also shows that the appellant has a history of lateness as documented in his disciplinary record. (R- 6.) Since 2017, the appellant has been disciplined over six times for lateness. The disciplines consisted of a written reprimand, four days suspension in 2017 for lateness, five days suspension in 2018 for lateness and in 2020 a three-day suspension for lateness. Ibid. Appellant argues that because of an extraordinary number of hours worked "demonstrate that officers, like Christie have chronic sleep deprivation due to the inadequate staffing level in place at the Correction Center." I am not convinced by this argument. There was no corroboration that Christie was sleep deprived. Moreover, Christie admitted that he overslept and nowhere stated he was sleep deprived. In addition, he testified that he had a strategy on how to work, preferring the 3 p.m.to 11 p.m. and the 11 p.m. to 7 a.m. shifts to work. His lateness on December 17, 2019, was not the first but the third infraction. I therefore **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(4) (chronic or excessive lateness), and that such charge must be **SUSTAINED**.

The appellant has further been charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause—specifically, violation of the MCCC Table of Offenses and Penalties A-7, unreasonable excuse for lateness of more than fifteen minutes.

Pursuant to MCCC SOP 136, Lateness, "all lateness regardless of degree, will be considered for disciplinary action." (R-5.) In addition:

[f]or each occurrence of lateness, the employee will receive a copy of the late slip that will serve as a warning notice. Beginning with the third lateness, the employee will be subject to the progressive disciplinary action as initiated by the Captain.

[R-5.]

On December 17, 2019, the appellant was late 58 minutes, and this constituted a Step 3 violation. Appellant testified that overslept. However, as discussed above, the appellant has a history of chronic lateness and has been disciplined for lateness approximately six times. I therefore **CONCLUDE** that the respondent has met its burden of proof and this charge is **SUSTAINED**.

The appellant was also charged with conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that 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. Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Such misconduct need not be "predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civ. Serv., 17 N.J. 419, 429 (1955)). Here there was no evidence presented by the respondent that appellant's lateness on December 17, 2019, impacted the morale of efficiency of the Correction Center. No other officer was called in to work the extra time. The appellant stated that he overslept and argues that because he has been working mandatory and voluntary overtime due to shortness of staffing at the Correction Center, this should be considered. Captain Kownacki admitted that he was not there when the appellant came to work and did not speak with the shift commander who

had completed the late slip. He did not investigate the situation and had no personal knowledge of what had occurred. Captain Kownacki admitted that no other officer was paid overtime for this lateness of shift. I therefore **CONCLUDE** that the County has not met its burden on the charge of conduct unbecoming a public employee. This charge is therefore **DISMISSED**.

PENALTY

The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Board must utilize the evaluation process set forth in Bock, 38 N.J. 500, and consider the employee's reasonably recent history of promotions, commendations, and the like (if any), as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30–33 (2007).

“Although we recognize that a tribunal may not consider an employee’s past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990). An employee’s poor disciplinary record can “support an appointing authority’s decision to rid itself of a problematic employee based on charges that, but for the past record, ordinarily would have resulted in a lesser sanction.” In re Stallworth, 208 N.J. 182, 196 (2011) (quoting In re Herrmann, 192 N.J. at 32).

Appellant was hired in 2014. Over his nine years of employment with the County, he has been disciplined more than twenty-one times. (R-6.) He has been disciplined for lateness over six times. In the current matter, appellant showed up to work on December 17, 2019, 58 minutes late. This lateness constitutes a third infraction on the Mercer

County Public Safety Table of Offenses and Penalties. While I am not unsympathetic to the appellant having five children and working many hours consisting of voluntary and mandatory overtime, habitual lateness cannot be tolerated. If correction officers are allowed to show up late without any legitimate reason or excuse it could have a deleterious effect on the overall operations of the Correction Center which could impact public safety.

I therefore **CONCLUDE** that the County has met its burden by a preponderance of the evidence, and a suspension of eight days is warranted.

ORDER

It is **ORDERED** that the action of the respondent in suspending the appellant for eight working days was justified and warranted. It is **ORDERED** that the charge of chronic or excessive absenteeism or lateness is **AFFIRMED**. The charge of other sufficient cause, specifically, violation of the Mercer County Correction Center Table of Offenses and Penalties: A-7, unreasonable excuse for lateness of more than fifteen minutes (Step 3) is **AFFIRMED**. The charge of conduct unbecoming a public employee is **DISMISSED**. The appellant's appeal is **DISMISSED**.

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

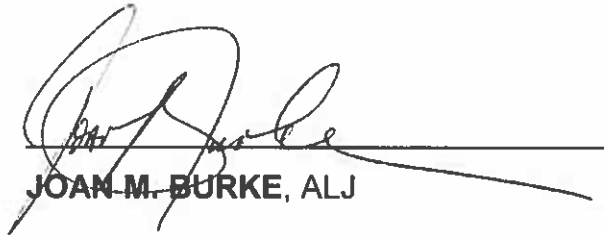
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise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

July 5, 2023 _____

DATE



JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JMB/jm

APPENDIX

WITNESSES

For Appellant

Theodore Christie, Jr.

Donald Ryland, President of PBA Local 167

For Respondent

Captain Michael Kownacki, Mercer County Correction Center

EXHIBITS

For Appellant

A-1 County of Mercer Wage Summary

A-2 Appellant's Pay Stub, December 6, 2019

A-3 Appellant's Pay Stub, December 20, 2019

Appellant's Summation Brief

For Respondent

R-1 Preliminary Notice of Disciplinary Action, December 19, 2019

R-2 iSeries Timekeeper Report, December 17, 2019

R-3 Attendance and Overtime Record, December 17, 2019

R-4 Time Attendance Records

R-5 Mercer County Corrections Center, Department of Public Safety
Standards and Operating Procedures 136: Lateness

R-6 Disciplinary History

R-7 Mercer County Public Safety- Table of Offenses and Penalties

R-8 Not in Evidence

R-9 Final Notice of Disciplinary Action, June 24, 2021

Respondent's Summation Brief