

DECISION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2024-956
OAL Docket No. CSV 00765-24

ISSUED: OCTOBER 16, 2024

In this regard, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses. 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 her initial decision, the ALJ specifically found both appointing authority’s witnesses’ testimony not credible. In this regard, as to Superintendent David Chippendale’s testimony, the ALJ found:

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that the testimony of Chippendale was not credible and was not consistent with the facts and the documentation in this matter. Moreover, he contradicted himself several times in his testimony. . . .

The testimony from Chippendale regarding the May 5, 2023, incident was likewise not credible, and not supported by any documentary evidence. . . .

The ALJ similarly found the witness, nurse Nancy Giles, not credible, stating “the nurse seemed more concerned about getting the appellant in trouble than addressing the issue at hand, which was to get the resident reevaluated. The nurse was unclear on policies and protocols and her dislike for the appellant was clear by her demeanor and her description of him as ‘cocky.’ ”

While the exceptions challenge these credibility determinations, the Commission finds no persuasive evidence in the record to demonstrate that the ALJ’s credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious, unreasonable or otherwise in error. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from the first date of separation without pay until the date of reinstatement. Moreover, as the removal has been reversed, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority.

However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Zaire Bailey. The Commission further orders that the appellant be granted back pay, benefits, and seniority from the first date of separation without pay until the date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for the appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF OCTOBER, 2024

Allison Chris Myers

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 00765-24

AGENCY DKT. NO. 2024-956

**IN THE MATTER OF ZAIRE BAILEY,
MIDDLESEX COUNTY CORRECTIONAL
FACILITY.**

DeTravius Bethea, Esq., for appellant, Zaire Bailey (The Bethea Law Firm, LLC,
attorneys)

Allan C. Roth, Esq., for respondent, Middlesex County Correctional Facility
(Ruderman & Roth, attorneys)

BEFORE **SARAH G. CROWLEY**, ALJ:

Record Closed: July 19, 2024

Decided: July 31, 2024

STATEMENT OF CASE AND PROCEDURAL HISTORY

The appellant, Lieutenant Zaire Bailey (Bailey or appellant), was employed as a Supervising Juvenile Detention Officer for the Middlesex County Department of Corrections. He had been employed since 2012 and has had no prior disciplinary infractions. On May 6, 2023, he was served with a Preliminary Notice of Disciplinary Action (PNDA) and removed from his position. A Final Notice of Disciplinary Action (FNDA) was not served until November 11, 2023. There were three PNDAs identified

and moved into evidence at the hearing, all seeking different levels of discipline served within a two-day period. The appellant filed an appeal, and the matter was transmitted to the Office of Administrative Law as a contested matter on January 12, 2024. N.J.S.A. 52:14B-1 to -15; and N.J.S.A.52:14F-1 to -13. The matter was heard before the undersigned on July 15, 2024, and July 18, 2024. The respondent requested an adjournment to another date to call an additional witness, which was denied. The respondent's request to submit written closing briefs after receipt of transcripts was denied due to the significant delay that had already occurred in this case. Closing arguments were heard via Zoom on July 19, 2024, and the record closed at that time.

TESTIMONY AND FINDINGS OF FACT

For respondent

David Chippendale (Chippendale) is the Superintendent and is in charge of the Middlesex County Juvenile Detention Center (MCJDC). He testified that on March 27, 2023, there was a youth who was sent to the mental health unit due to some erratic behavior and suicidal idealizations. He was seen by a mental health professional at approximately 11:40 am. The youth was placed into a suicide gown/jacket (also commonly referred to as a "turtle suit" because it is padded and green) and placed on "close watch" at that time. The resident was naked under the suit. The policies and procedures at the MCJDC were identified and marked into evidence as R-3. The policies and procedures for the detention center consist of approximately 300 pages. The policies regarding close watch are found in section five and were identified by Chippendale. The policies do not mention a suicide suit, turtle suit or anything else relating to placing a youth in same during close watch. Chippendale testified that the youth in question was to be seen again and evaluated by mental health staff again later in the day but was to remain in the suit until re-evaluated. He testified that the mental health staff had left the MCJDC to go to the adult facility. It was unclear if they ever returned to the juvenile facility. The resident remained in the suit and on close watch all day. Mental health staff never returned to the MCJDC and the youth was never reevaluated.

Chippendale testified that he received a call at approximately 6:20 p.m. from the nursing staff who advised him that the resident was no longer in the suit and that Lieutenant Bailey had returned clothes to the youth. He was now in T-shirt and boxer shorts, but otherwise remained on close watch. The nursing staff advised that Bailey reported that the youth was cold and there was no one to provide any information about why he was still in the suit or how long he was to remain in the suit. The resident had been in the jacket since 11:40 a.m. and had not been reevaluated by mental health staff since that time. Chippendale testified that although the policies relating to close watch do not mention the jacket and the return of the clothing was against protocol. He could not identify where this protocol was memorialized. It is not in the 300-page policy manual for the detention center. When Chippendale was questioned about why the youth remained in the jacket with no clothing for over six hours without a reevaluation, he testified that they try to "wear them down." This statement is troubling on many levels, and it is unclear why they would try to "wear down" a youth in crisis or leave him in such a jacket for over six hours without any re-evaluation. Chippendale could not identify any specific policies or protocols that were violated but was adamant that Bailey was not authorized to remove the jacket and only a mental health professional could make this determination. Chippendale conceded that he took no steps to have the youth reevaluated by mental health staff or to have him returned to the jacket, after being advised of this at 6:20 p.m. It is undisputed that he remained on close watch, and Bailey did not do anything otherwise inconsistent with the close watch policies in the policies manual.

Chippendale asked Nurse Nancy Giles to prepare a report and to reach out to Lieutenant Battle who signed off on the incident report which was entered into evidence as Exhibit 6. The report indicates that the youth was removed from the turtle suit at approximately 6:00 p.m. by Bailey but he remained on close watch. There were no further evaluations ordered for the youth and he was not returned to the turtle suit. No further incidents are reported with respect to the youth in question. The incident report is two paragraphs long. No other investigation was undertaken, and no other action was taken at that time. Chippendale spoke to Bailey two days later on March 29, 2023, about the incident. The interview is not memorialized in any way. Chippendale testified that Bailey advised Chippendale that he reported the matter to the Department of Children and

Families, Division of Child Protection and Permanency (DCP&P) as abuse and neglect. When he questioned Bailey about why he removed the turtle suit, Bailey advised him that the youth was cold, and he was not aware of any reason not to return his clothes to him. Bailey advised him that it was time for showering and getting ready for bed, so he gave him clothes to put on. There was no internal affairs investigation and no report generated regarding any potential discipline at that time. Chippendale identified the provision in the policy manual which references internal investigations but conceded that no such investigation was conducted. There is one incident report which is two paragraphs long, which indicates that appellant advised that, "no one communicated what was going on with the kid" so he gave him his clothes back. The report identified as C-6 states that this is not the "standard protocol" and that the resident should have been "re-evaluated" by mental health before his clothes were returned. There is no reference to any specific rule in this report or the disciplinary notices. Chippendale testified that they did not bring any charges at the time of the initial infraction because they were waiting to see what the DCP&P investigation revealed. The charges were brought prior to the issuance of the Division findings in July.

Chippendale testified that on May 5, 2024, Bailey had gone to the North Brunswick Police Department and filed a report regarding an alleged criminal infraction which occurred in the juvenile detention center. Chippendale testified that this was against the policies and procedures regarding the chain of command. Chippendale claims that Bailey should have gone through Officer Bender in the adult correction facility to file such a report with local law enforcement. He identified a one-page memo from January 2021, which references a new juvenile complaint process. There are no other details regarding what this process is, and it is not mentioned anywhere in the Middlesex County Juvenile Detention Center Policies and Procedures Manual. Chippendale referenced the Chain of Command policies in (1.34), in support of this charge. However, none of these policies address the filing of criminal complaints with local law enforcement. Chippendale testified that they all go through training, and he "believed" that Bailey was sent to this training. There was no evidence submitted regarding what if any training Bailey had received on this issue, or what the policy was, as it is not set forth anywhere in the policies or any other documents. Chippendale discussed this matter with the warden who directed him to terminate Bailey and to cite the March incident as well as this one.

Chippendale testified that he was the head of the Division of Investigations identified in the Detention Center Policies and Procedures Manual, Section 1.37. Section 1.37.2.3 provides that, "The Division of Investigation is responsible for the investigation and review of all allegations of misconduct by members of the department of youth services." The policy refers to the Division of Investigation or officers temporarily assigned to the function. Pursuant to Section 1.37.2.7, "all complaints shall be referred to the Division of Investigation and shall be investigated." The investigation procedures are laid out in the policy and require, among other things, a complete investigation, including notification and interview with the employee and a report prepared. Chippendale testified that he was in the investigation unit and none of the protocols in Section 1.37 were followed in connection with either of the infractions of the appellant. One incident report were completed after the March 27, 2023, incident, and no investigation or further action taken. Following the May 5, 2023, incident, there was no investigation, no interviews and no report relating to the May 5, 2023, incident. Chippendale identified the provision regarding investigations in the policies and procedures manual and conceded that none of the provisions were followed in connection with the discipline and removal of the appellant.

The FNDA charges violations of: N.J.A.C. 4A:2-2.3(a)1 - Incompetency, Inefficient, or Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)2 - Insubordination; and N.J.A.C. 4A:2-2.3(a)6 - Conduct Unbecoming a Public Employee.

The description provides as follows:

On or about March 27, 2023, Mr. Bailey failed to correctly perform his duties knowing a resident of the facility was placed on a "close watch" status, was placed in a safety suit, and was being held in the holding area to protect the resident from harming himself or others. Despite the resident's status, Mr. Bailey, without authority, provided the resident with clothing/linens and/or other items in violation of the County's policies and procedures.

Furthermore, on or about May 5, 2023, Mr. Bailey failed to notify the Administration of the Department of Corrections and

Youth Services that he believed a crime was committed on the County's property and it was against an employee, in violation of the County's policies and procedures regarding Charge Responsibility, Chain of Command, and Standards of Conduct of Employee.

There are no specific policies or procedures cited in the three PNDAs or the FNDA. Bailey was removed on May 5, 2024, following a Loudermill hearing. No department hearing was conducted, and the FNDA was not issued until November 17, 2023. Chippendale did not know why there was such a delay.

Nancy Giles

Nancy Giles (Giles) is employed by NaphCare who is contracted to provide nursing services to the MCJDC. She was a Licensed Practical Nurse (LPN) at the time of the infraction by the appellant on March 27, 2023. She identified the policy and procedure manuals that had been marked into evidence by the respondent as C-3. She discussed the different policies for Special and Close Watch. She was also asked to identify the NaphCare policies which addressed policies and procedures. Some were entitled "Health Care Juvenile Policies," and others were entitled "Health Care Policies." Ms. Giles was uncertain if they all applied to the juvenile facility or to all health care facilities. The policies, like the Middlesex County policies reference close watch and special watch of individuals. Ms. Giles testified that you were not supposed to remove a youth from the jacket without a directive from a mental health staff member. However, she could not identify any provisions which addressed these protocols. Ms. Giles identified a document marked into evidence as B-10 which was entitled Mental Health watch Memo dated March 27, 2023, which indicated that the youth had been placed on "close watch." The document does not have any further directive about protocols that apply to this youth other than the watch. She testified that the mental health professional had left the building and was not there at 6:00 p.m. when the suit was removed. The youth had not been reevaluated since 11:40 a.m. After she reported the event to Chippendale, he directed her to talk to the shift commander and to write an incident report. She testified that when she asked Bailey about why he returned the clothing to the resident, he was "cocky" to her and said no one knew what was going on. She did not reach out to mental health to

have the resident reevaluated and she did not return the youth to the turtle suit. The resident remained on close watch before and after the removal of the suit. The mental health person did not return to the building that evening.

FINDINGS OF FACT

The resolution of the claims made by the appellant requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experiences 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 considering its rationality, internal consistency and the way it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone, or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that the testimony of Chippendale was not credible and was not consistent with the facts and the documentation in this matter. Moreover, he contradicted himself several times in his testimony. The respondent has provided no rational explanation for the failure to bring any charges following the incident which they now describe as egregious. Moreover, he provided no explanation as to why a youth was confined to a suicide jacket for over six hours with no plan for reevaluation by a mental health staff. Even more troubling was Chippendale's testimony that the resident was placed in the turtle suit indefinitely to "wear him down." Finally, after being advised of the allegedly egregious act of removing the youth from the turtle suit, Chippendale made no efforts to

have him reevaluated by mental health staff or returned to the suit. Chippendale conducted no investigation and took no action at that time. It was clear from his testimony and his demeanor that he was not happy with the appellant for reporting the incident to the DCP&P. In addition to the testimony, which was not credible, Chippendale was unable to identify any policies that were violated by the conduct of the appellant. There was no specific policy with respect to the turtle suit and the respondent has failed to demonstrate a violation of any policy or protocol by a preponderance of credible evidence by his removal of same after six hours.

The testimony from Chippendale regarding the May 5, 2023, incident was likewise not credible, and not supported by any documentary evidence. Chippendale claimed that the action of the appellant in reporting a criminal matter to the local authorities violated their policies relating to filing such reports and the chain of command policies. Yet, there was no incident report prepared or an investigation conducted into the incident. There were no specific policies which set forth the policy that was alleged to have been violated. And finally, removal of an individual for reporting a criminal matter to local authorities when the policies regarding such are not clear cannot be sustained. The respondent has not demonstrated a violation of the Chain of Command or any other policies with respect to the May 5, 2023, incident by a preponderance of credible evidence.

Accordingly, I **FIND** the following as FACT:

1. The appellant, Zaire Bailey was employed by the Middlesex County Corrections Center until May 6, 2023, when he was removed from his position.
2. Prior to his removal he had no prior disciplinary infractions. He has been employed since 2012 and had some earlier services as well prior to a temporary relocation to another state.
3. On March 27, 2023, appellant's shift commenced at 2:00 p.m.

4. A resident had been placed in a straitjacket (or "turtle suit") and put on close watch at 11:40 a.m.
5. The appellant inquired as to the status of the youth at approximately 6:00 p.m. and was told that mental health staff was supposed to return at some point in the evening.
6. After six hours in the suit and no direction from staff as to when mental health would be returning, the appellant removed the youth from the suit and gave him T-shirt and boxer shorts.
7. The resident was naked under the padded, sleeveless turtle suit.
8. When the superintendent was advised that the youth was taken out of the suit at 6:20 p.m., he took no steps to return the youth to the jacket or get a mental health evaluation.
9. The resident remained on close watch but was never reevaluated by mental health staff.
10. The appellant reported the incident to the Division of Child Protection and Permanency as potential abuse and neglect.
11. The Superintendent questioned the appellant about the incident two days later but conducted no investigation and did not prepare a report.
12. One two-paragraph incident report was prepared, and no charges brought at that time.
13. There are no policies or protocols which address the containment of a resident in a "turtle suit" or the appropriate duration of same in the policies and procedures of the facility or the NaphCare policies governing the nursing and mental health staff.

14. On May 5, 2023, the appellant filed a police report with the North Brunswick Police Department regarding an incident which occurred during his shift at the MCJDC.
15. The respondent has alleged that the filing of this complaint violated policies regarding such complaints and the chain of command policies.
16. No specific policies are identified with regard to the filing of such complaints.
17. No investigation into this incident was conducted and no report generated.
18. The appellant was Laudermined and removed from his position on May 6, 2023, citing the March 27, 2023, incident as well as the May 5, 2023, incident.
19. There was no departmental hearing conducted and the FNDA was issued on November 11, 2023.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, 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 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Co. Park Comm'n, 46 N.J. 138, 147 (1965). The Act states that State policy is to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline and termination of public employees.

N.J.A.C. 4A:2-2.3(a) provides that a public employee may be subject to major discipline for various offenses. The burden of proof is always on the appointing authority in disciplinary matters to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The employee's guilt of the charge(s) must be established by a preponderance of the competent, relevant and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1982). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may also be described as the greater weight of the credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47, 49 (1975). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

In this matter, the respondent seeks the removal of appellant as a result of incidents that occurred on March 27, 2023, and May 5, 2023. There was one short incident report regarding the events of March 27, 2023, and no disciplinary action was taken at that time. There was no investigation conducted regarding this incident and no other report generated. On May 5, 2023, the appellant filed a criminal complaint with the local police department following an incident in the facility. On May 6, 2023, the appellant was removed from his position without pay, citing both of the incidents. The respondent claims that the facts surrounding the March 27, 2023, event were so egregious that they merited immediate removal, yet they did nothing for five weeks. Moreover, they never had the resident reevaluated by mental health and did not return him to the suit. The respondent alleges that this conduct was a violation of policies and protocol, but they provide no such written policy or memorialization of this policy. I have found the testimony of Chippendale, as well as the nurse, on this issue not credible and not supported by any documentary evidence. If it was a breach of protocol to remove a suit from a youth after six hours, then why didn't Chippendale return the youth to the jacket when he was advised of the circumstances at 6:20 p.m. Moreover, the nurse seemed more concerned about

getting the appellant in trouble than addressing the issue at hand, which was to get the resident reevaluated. The nurse was unclear on policies and protocols and her dislike for the appellant was clear by her demeanor and her description of him as "cocky." It is likewise clear to the undersigned that the facility was aggrieved by the fact that the appellant filed an institutional abuse claim with the DCP&P.

The policies of the facility are over 300 pages long, and none of them address the issue of the strait-jacket for the youth and the amount of time they should remain in same pending evaluation by mental health staff. The youth in this matter had been in the strait-jacket for over six hours. The appellant said the resident was freezing and made a decision to allow him to put on some clothes, which consisted of a T-shirt and boxer short. Moreover, the superintendent of the facility was advised that the jacket was removed at 6:20 p.m. and did not return him to the jacket or order an immediate evaluation. In the absence of the clear policy on this, and no directive given to appellant when he asked for some, I find the charges of incompetency, insubordination and conduct unbecoming relating to the March 27, 2023, incident, cannot be sustained. The respondent has not demonstrated a violation of any policies by a preponderance of credible evidence. Likewise, the charges of not following the proper chain of command on May 5, 2023, when filing a criminal complaint cannot be sustained. The policies are equally unclear on this issues, and the immediate termination under the circumstances was clearly retaliatory and cannot be sustained. None of the charges cited have been proven by a preponderance of credible evidence.

CONCLUSION AND ORDER

Accordingly, I **CONCLUDE** that the respondent failed to prove any of the charges by a preponderance of the evidence, and they are therefore **DISMISSED**. I further **CONCLUDE** that removing appellant based upon these incidents was retaliatory based upon the Department of Children and Families' complaint, as well as the criminal complaint that he filed with the local authorities on May 5, 2023. I further **CONCLUDE** that the failure to issue a FNDA for over six months following the issuance of the PNDA is a violation of N.J.A.C.4A: 2-2.5. I **CONCLUDE** that the appellant should be returned to his position and back pay to the date of his removal, with an offset for any mitigation.

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 31, 2024

DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SGC/lam

APPENDIX

WITNESSES

For appellant

None

For respondent

David Chippendale

Nancy Giles

EXHIBITS

For appellant

- Exhibit B-1 Juvenile Justice Commission Manual Standards for Juvenile Detention Facilities
- Exhibit B-4 Preliminary Notice of Disciplinary Action dated 5/5/23
- Exhibit B-5 Amended Preliminary Notice of Disciplinary action dated 5/6/23
- Exhibit B-10 Mental Health Watch Memo dated 3-37-23
- Exhibit B-13 Daily Resident Hygiene (Exhibit C-3)
- Exhibit B-14 Shower policy (Exhibit C-3)
- Exhibit B-15 Temporary Confinement Policy (Exhibit C-3)
- Exhibit B-16 Resident Rights Policy (Exhibit C-3)

For respondent

- Exhibit C-1 Amended Notice of Disciplinary Charges, dated June 21, 2023
- Exhibit C-2 Final Notice of Disciplinary Action, dated November 17, 2023
- Exhibit C-3 Middlesex County Juvenile Detention Center Policies and Procedures Manual
- Exhibit C-4 Incident Report, dated March 27, 2023, 11:40 a.m.
- Exhibit C-5 Incident Report dated March 27, 2023, 11:40 a.m.
- Exhibit C-6 Incident Report, dated March 27, 2023, 6:05 p.m.
- Exhibit C-7 NaphCare Health Care Policy and Procedure Manual

- Exhibit C-8 NaphCare Juvenile Health Care Policy and Procedure Manual
- Exhibit C-9 NaphCare Juvenile Health Care Policy and Procedure Manual
- Exhibit C-10 NaphCare Health Care Policy and Procedure Manual
- Exhibit C-11 NaphCare Health Care Policy and Procedure Manual
- Exhibit C-12 NaphCare Juvenile Health Care Policy and Procedure Manual
- Exhibit C-13 NaphCare Health Care Policy and Procedure Manual
- Exhibit C-14 Middlesex County Juvenile Detention Center Disaster
- Exhibit C-15 Chain of Command and Charge Responsibility Policy (Exhibit C-3)
- Exhibit C-16 Professional Conduct and Responsibility (Exhibit C-3)
- Exhibit C-17 Special Watch Policy (Exhibit C-3)
- Exhibit C-18 Letter from Department of Children and Families, dated July 13, 2023
- Exhibit C-19 Training Certificates
- Exhibit C-20 Memo from Bender May 8, 2023
- Exhibit C-21 Text Messages¹
- Exhibit C-22 Memo from Chippendale, dated December 30, 2020
- Exhibit C-23 Emails regarding the scheduling of hearing and issuance of FNDA
- Exhibit C- 24 Photograph of the "turtle suit"

¹ This Exhibit was identified and entered into evidence at the hearing. However, it was not in Exhibit Binder provided to the OAL and counsel for Respondent has responded to request to provide a copy of this Exhibit as of the date of the issuance of this decision.