



STATE OF NEW JERSEY

In the Matter of Samuel Doherty,
Ocean County, Department of
Corrections

CSC Docket No. 2023-630
OAL Docket No. CSV 08819-22

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: DECEMBER 18, 2024

The appeal of Samuel Doherty, County Correctional Police Officer, Ocean County, Department of Corrections, 90 calendar day suspension, on charges, was heard by Administrative Law Judge Deirdre Hartman-Zohlman (ALJ), who rendered her initial decision on November 12, 2024. Exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on December 18, 2024 adopted the ALJ's Findings of Facts and Conclusions of Law and her recommendation to uphold the 90 calendar day suspension.

As indicated above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them unpersuasive. The main contention in the exceptions is that the penalty imposed was too severe. The Commission rejects this contention.

Regarding the penalty, in her initial decision, the ALJ stated:

The unrefuted facts are clear: Doherty possessed a cell phone in the secure area of the jail while on duty. While he did so unintentionally, the phone was left in a bathroom near the dining hall, where a non-officer found it and reported its presence. This was an area where trustee inmates had access and could have found the phone.

One of the central purposes of the policy for the prohibition of unsanctioned phones in the jail is that they create a potentially life-

threatening danger if they were to end up in the hands of an inmate. Although Doherty's actions were inadvertent, the consequences of his actions demonstrate the real and potential dangers that the presence of unsanctioned cell phones creates. Lastly, Doherty was aware of the policy and signed an acknowledgment of it on June 1, 2021.

Although Doherty does not have any prior discipline, his position involved public safety, and his actions had the potential to cause great risk of harm. Grievous harm has previously occurred when a cell phone has gotten into the hands of an inmate at this jail. Respondent has addressed the serious concerns of unsanctioned cell phones and has explicitly included in the policy a disciplinary schedule for violations of this policy, a progressive disciplinary schedule—starting with 90 days for the first infraction, 180 days for a second infraction, and removal for a third infraction.

I **CONCLUDE** that considering principles of progressive discipline, the imposition of a 90-day suspension without pay is appropriate for the sustained charges

In its *de novo* review, the Commission initially notes that it is not bound by the appointing authority's penalty schedule in determining the proper penalty. *See In the Matter of Gregory McDaniel*, Docket No. A-5583-02T2 (App. Div. May 24, 2004); *In the Matter of Leonard Wilson* (MSB, decided April 6, 2005); *In the Matter of Patricia Everingham* (MSB, decided March 13, 2003); *In the Matter of George Roskilly* (MSB, decided November 20, 2002). Nevertheless, it agrees with both the appointing authority and the ALJ that a 90 calendar day suspension is warranted.

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." In this regard, the Commission emphasizes that a law enforcement 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 this matter, the Commission agrees with the ALJ who cogently detailed the serious potential consequences for the appellant's misconduct, even if unintentional. Thus, a significant disciplinary penalty is justified as both the safety and security of the facility, its employees and the inmates were potentially imperiled. Moreover, the appellant, as a law enforcement officer, is held to a higher standard. Accordingly, the imposition of a 90 calendar day suspension will serve as sufficient reminder to the appellant as to the significance of his misconduct and that any future infractions may lead to more severe disciplinary penalties. Accordingly, the Commission finds the 90 calendar day suspension imposed neither disproportionate to the offense nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore upholds the 90 calendar day suspension and dismisses the appeal of Samuel Doherty.

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 18TH DAY OF DECEMBER, 2024



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 08819-22

AGENCY DKT. NO. 2023-630

**IN THE MATTER OF SAMUEL DOHERTY,
OCEAN COUNTY, DEPARTMENT OF
CORRECTIONS.**

Michael P. DeRose, Esq., for appellant Samuel Doherty (Crivelli, Barbati & DeRose, L.L.C., attorneys)

Robert D. Budesza, Esq., for respondent Ocean County Department of Corrections (Berry, Sahradnik, Kotzas & Benson, P.C., attorneys)

Record closed: October 11, 2024

Decided: November 12, 2024

BEFORE DEIRDRE HARTMAN-ZOHLMAN, ALJ:

STATEMENT OF THE CASE

Appellant Samuel Doherty (Doherty), a correction officer for respondent County of Ocean, Department of Corrections (County), appeals a Final Notice of Disciplinary Action dated September 7, 2022, instituting a 90-day suspension for violations of N.J.A.C. 4A:2-2.3(a)(2), Insubordination; N.J.A.C. 4A:2.3(a)(7), Neglect of Duty; and N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal

Electronic Devices. Doherty challenges the discipline imposed and seeks a lesser penalty.

PROCEDURAL HISTORY

On May 11, 2022, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against Doherty. Doherty waived a departmental hearing. Respondent issued a Final Notice of Disciplinary Action (FNDA) (31-B) on September 7, 2022, sustaining some of the charges in the PNDA and suspending appellant for 90 days from September 14, 2022, through December 12, 2022. Doherty filed an appeal on September 15, 2022, with the Civil Service Commission Division of Appeals and Regulatory Affairs. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on October 3, 2022, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was heard in person at the OAL on May 6, 2024. The record closed on October 11, 2024, following receipt of closing submissions.

UNDISPUTED FINDINGS OF FACT

The following information was derived from the testimony and evidence and determined to be undisputed. I thus **FIND** as **FACT** the following:

1. Appellant has been employed by respondent as a correctional police officer at the Ocean County Correctional Facility (jail) since January 2016.
2. On March 26, 2022, Doherty arrived at work ahead of his shift and was sharing content on his cell phone with fellow officers in an unsecure area of the jail. Upon realizing it was time for his shift to begin, in haste, he inadvertently placed the phone in his pocket prior to swiping into work for his shift.
3. While on duty, appellant was in possession of his cellular phone in the secure area of the jail. Specifically, during his shift, appellant entered a

bathroom outside of the officer dining room and, at that time, first realized his phone was in his pocket. He placed the phone on top of the paper towel dispenser while he used the bathroom facility. Doherty intended to return the phone to his personal locker thereafter; however, he received a call for a health and welfare check and hurriedly exited the bathroom without the phone. The phone remained on top of the paper towel dispenser. (R-3.)

4. Appellant's phone was thereafter discovered by an employee of the Gourmet Dining Services (GDS). (R-6.)
5. "Trustee inmates," inmates entrusted to clean the jail, have access to the bathroom outside the officer dining room, where appellant left his phone.
6. The jail has a policy regarding personal electronic devices. The policy prohibits both the possession and use of personal electronic devices, including cellular phones. Additionally, the policy provides that a violation "shall result in disciplinary action, as follows: 1st infraction, 90 day suspension; 2nd infraction, 180 day suspension and 3rd infraction, termination." (R-8.)
7. Appellant was aware that cellular phones are not permitted in the secure areas of the jail. He signed off on an acknowledgment of "Employee Rules and Regulations—Personal Electronic Devices" on June 1, 2021. (R-9.)
8. Appellant was cooperative, remorseful and apologetic in the investigation. (R-3.)
9. Appellant has no prior disciplinary history.
10. Unsanctioned phones in the jail create a potentially life-threatening danger if they were to end up in the hands of an inmate.

11. There was a prior incident in the jail wherein an inmate obtained possession of an unsanctioned cell phone and used it to communicate with an outside party, which resulted in the murder of a witness in a homicide trial.
12. Appellant was served with a Preliminary Notice of Disciplinary Action on or about May 16, 2022. The PNDA charged Doherty with the following offenses under N.J.A.C. 4A:2-2.3(a): (2) Insubordination; (6) Conduct Unbecoming a Public Employee; (7) Neglect of Duty; (8) Misuse of Public Property, including motor vehicles; and (12) Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices for possession of a cellular phone while on duty within the secure jail. (R-1.)
13. Doherty waived a departmental hearing.
14. Appellant received a Final Notice of Disciplinary Action on or about September 7, 2022. The FNDA sustained the following charges against Doherty: Insubordination, Neglect of Duty, and Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices. Appellant was suspended ninety (90) calendar days from September 12, 2022, through December 12, 2022. (R-7.)

LEGAL ANALYSIS AND CONCLUSIONS

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The appointing authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423

(Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

As a correction officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). They represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

The charges sustained against appellant in the FNDA were violations of N.J.A.C. 4A:2-2.3(a)(2), Insubordination; N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty; and N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices for possession of a cellular phone while on duty within the secure jail.

1. N.J.A.C. 4A:2-2.3(a)(2), Insubordination

Appellant was found to be insubordinate. The New Jersey Administrative Code does not define insubordination. See N.J.A.C. 4A:1-1.3. However, case law generally interprets the term to mean the refusal to obey an order of a supervisor. Insubordination can be defined as intentional disobedience or refusal to accept reasonable orders, assaulting or resisting authority, disrespecting or using insulting or abusive language toward a supervisor. “Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department.” Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971). According to Webster’s II New College Dictionary (1995), “insubordination” refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. The evidence bears that Doherty unintentionally possessed his cell phone in the jail, and there was no evidence that he used it. When questioned about it, he was cooperative and forthcoming. There was no refusal to obey an order, no intentional action to disregard the cell-phone policy, and no “act” of non-compliance. Therefore, I **CONCLUDE** that

respondent has not proven by a preponderance of the credible evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(2), Insubordination.

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

Neglect of duty is an omission or a failure to perform a duty or negligent acts related to the official responsibilities of a civil servant. Neglect of duty does not require an intentional or willful act; it is negligence in performing or failing to perform a duty owed in one's job responsibilities. Here, Doherty had a duty to abide by the County's policy on personal electronic devices and to ensure that he did not possess a cell phone in the secure area of the jail. Admittedly, Doherty possessed a cell phone while on duty in the secure area of the jail in violation of the County's policy. Therefore, I **CONCLUDE** that the respondent has proven by a preponderance of the evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty.

3. N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause

The subsection of "other sufficient cause" is considered the catchall provision of the regulation. Other sufficient cause is conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Asbury Park v. Dep't of Civ. Serv., 17 N.J. 419 (1955). Here, the County specifically references its policy on personal electronic devices. The policy prohibits both the possession and use of personal electronic devices, including cellular phones. Appellant signed an acknowledgment of the policy within a year of the charge. Appellant admitted possessing a cell phone while on duty in the secure area of the jail in violation of the County's policy. Accordingly, I **CONCLUDE** that appellant did violate the policy for possession and use of electronic devices, including cell phones, and is therefore in violation of N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause.

Based on the above, I **CONCLUDE** that respondent has sustained its burden of proving that appellant violated N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty, and N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices, for possession of a cellular phone while on duty within the secure jail.

Penalty

The remaining issue is the penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Dev'l Ctr., 96 N.J.A.R.2d (CSV) 463.

"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). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes a risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty and N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices for possession of a cellular phone while on duty within the secure jail. Respondent seeks a 90-day suspension, consistent with the disciplinary schedule set forth in the written policy, acknowledged by the appellant.

The unrefuted facts are clear: Doherty possessed a cell phone in the secure area of the jail while on duty. While he did so unintentionally, the phone was left in a bathroom near the dining hall, where a non-officer found it and reported its presence. This was an area where trustee inmates had access and could have found the phone.

One of the central purposes of the policy for the prohibition of unsanctioned phones in the jail is that they create a potentially life-threatening danger if they were to end up in the hands of an inmate. Although Doherty's actions were inadvertent, the consequences of his actions demonstrate the real and potential dangers that the presence of unsanctioned cell phones creates. Lastly, Doherty was aware of the policy and signed an acknowledgment of it on June 1, 2021.

Although Doherty does not have any prior discipline, his position involved public safety, and his actions had the potential to cause great risk of harm. Grievous harm has previously occurred when a cell phone has gotten into the hands of an inmate at this jail. Respondent has addressed the serious concerns of unsanctioned cell phones and has explicitly included in the policy a disciplinary schedule for violations of this policy, a progressive disciplinary schedule—starting with 90 days for the first infraction, 180 days for a second infraction, and removal for a third infraction.

I **CONCLUDE** that considering principles of progressive discipline, the imposition of a 90-day suspension without pay is appropriate for the sustained charges of N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty, and N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause: O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices for possession of a cellular phone while on duty within the secure jail.

Therefore, I **CONCLUDE** that the penalty of a 90-day suspension without pay is **AFFIRMED**.

ORDER

It is hereby **ORDERED** that the charges of Neglect of Duty and Other Sufficient Cause, in accordance with O.C. Dept. of Corrections Policy 2.29—Personal Electronic Devices for possession of a cellular phone while on duty within the secure jail, are **AFFIRMED**. As the respondent has not met its burden of proving the charge of Insubordination, it is further **ORDERED** that the charge is **DISMISSED**.

It is also **ORDERED** that the penalty of a 90-day suspension without pay is **SUSTAINED**.

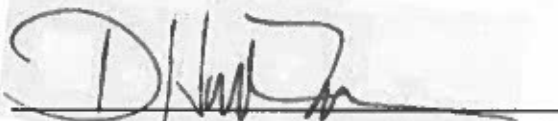
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

November 12, 2024

DATE



DEIRDRE HARTMAN-ZOHLMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

DHZ/kd/jm

APPENDIX

Witnesses

For appellant:

Samuel Doherty

For respondent:

Joseph Valenti

Exhibits

For appellant:

None

For respondent:

- R-1 Preliminary Notice of Disciplinary Action, dated May 11, 2022 (31-A)
- R-2 Notice of Employee Disciplinary Action, dated May 4, 2022
- R-3 Statement of Samuel Doherty
- R-4 Notice of Investigation
- R-5 Pre-Interview Advisory
- R-6 Report of Investigation
- R-7 Cover letter and Final Notice of Employee Disciplinary Action, dated September 7, 2022 (31-B)
- R-8 Policies and Procedures Manual
- R-9 Training records
- R-10 Sign