



## STATE OF NEW JERSEY

In the Matter of Andrea Panera,  
South Woods State Prison,  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-76  
OAL Docket No. CSR 06245-21

ISSUED: DECEMBER 18, 2024

The appeal of Andrea Panera, Senior Correctional Police Officer, South Woods State Prison, Department of Corrections, removal, effective June 29, 2021, on charges, was heard by Administrative Law Judge Kathleen M. Calemme (ALJ), who rendered her initial decision on November 12, 2024. 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 18, 2024 adopted the ALJ's Findings of Facts and Conclusions of Law and her recommendation to uphold the removal.

As indicated above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them unpersuasive. The main contention in the exceptions was that the ALJ erred in finding the appointing authority's main witness credible. In this regard, the appellant argues that the witness was inconsistent between her testimony and written statements.

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

In this matter, only the credibility of the testimony of Panera and Coursey were in issue. Petitioner argued that inconsistencies between Coursey's two written statements as compared to her testimony about Panera's actions in throwing the first punch should undermine Coursey's credibility. Petitioner further argued that Coursey's testimony emphasizing how calm she remained in trying to persuade

Panera to leave was not believable. While inconsistencies were noted, they were not germane to the sustained charges against Panera.

Whether Panera punched Coursey in the face by leaning over her desk or jumping over her desk, or whether she simply grabbed Coursey's finger to remove it from her own face are not material to the sustained charges. It is undisputed that Coursey asked Panera to leave, whether her tone was calm is not relevant. Coursey's conduct is not at issue because Panera never maintained that Coursey prevented her from leaving. Further, there is no dispute that Coursey was in her office working when Panera entered uninvited, unannounced, and for no legitimate reason.

Panera's testimony was motivated by her desire to return to her position as a SCPO. Panera either invented an excuse as a cover for her going into Coursey's office or she entered the office for the sole purpose of making a copy. The record does not contain the document that Panera was allegedly copying. It was not discovered during the investigation. Based on Panera's description of the document, the investigation found no evidence of its existence. Her reasoning for not using a closer copier machine was that she was "killing two birds with one stone" because she was going to Medical anyway to get the small size gloves. As Panera testified the gloves were not stored in Room 1042, so she could have gotten her gloves and never entered Coursey's office. Accordingly, her excuse for entering Coursey's office is not credible. If she simply wanted to make a copy, she would have excused herself and left the office as soon as she realized the copier had been moved. Her copier excuse rings hollow due to the immediate aggression she exhibited upon her entry into Room 1042. Therefore, I **FIND** Panera's justification for entering Coursey's office to make a copy is implausible under the totality of the circumstances, especially because of her own admitted behavior of mumbling under her breath and becoming defensive when she discovered there was no copier in the room. If Panera had made an honest mistake in entering Room 1042, she would have turned around and left.

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 v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). The Commission finds no persuasive evidence in the appellant's exceptions or the record to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As noted above, the ALJ took the appointing authority's main witness's inconsistencies into account and did not find them germane, and specifically otherwise found the appellant's excuses "implausible." Accordingly, the Commission has no reason to discount those determinations and adopts the findings and conclusions made therefrom.

The appellant also argues that the penalty of removal is too harsh. The Commission disagrees. 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 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 her initial decision, the ALJ found:

I understand that the penalty of removal is substantial. However, I am satisfied that appellant's actions herein were egregious. As a law enforcement corrections officer, appellant is held to a higher standard of conduct. She represents law and order to the citizenry and must present an image of personal integrity and dependability. [citation omitted].

Appellant's primary duty is to enforce and uphold the law and she must constantly exercise tact, restraint and good judgment.

In this situation, appellant did not exercise tact, restraint and reasonable judgment, and she did not attempt to defuse a situation, which in fact, did escalate. Her conduct was abusive and violent towards a civilian employee entrusted to her care. Such action is unacceptable. In a corrections setting, an officer must control her behavior and her emotions. After assaulting a civilian employee without provocation, it is not possible to see how the respondent could continue to allow appellant to remain in her position. Therefore, I **CONCLUDE** that progressive discipline is not warranted due to the severity of the misconduct and removal is the appropriate penalty.

In this matter, the Commission agrees with the ALJ that the appellant's infractions are egregious and finds that they are inimical to what the public expects from a law enforcement officer, who is held to a higher standard. The appellant's "abusive and violent" actions toward a civilian employee cannot be tolerated. As such, a penalty less than removal would serve to undermine the public trust. Accordingly, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

#### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Andrea Panera.

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 18<sup>TH</sup> DAY OF DECEMBER, 2024



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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 06245-21

AGENCY DKT. NO. N/A

2022-76

**IN THE MATTER OF ANDREA  
PANERA, SOUTH WOODS STATE  
PRISON.**

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**Nathan J. Mammarella, Esq.**, for appellant Andrea Panera (Rosenberg Perry & Associates, LLC, attorneys)

**Kathryn B. Moynihan**, Deputy Attorney General, for respondent South Woods State Prison, New Jersey Department of Corrections (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: October 25, 2024

Decided: November 12, 2024

**BEFORE KATHLEEN M. CALEMMO, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Andrea Panera (Panera), a Senior Corrections Police Officer (SCPO) at South Woods State Prison (South Woods), appealed her removal by the respondent, New Jersey Department of Corrections (DOC). DOC removed appellant following a physical altercation between Panera and civilian Nurse Technician Shaina Coursey (Coursey) that occurred at the facility during work hours.

The sustained charges in the Final Notice of Disciplinary Action (FNDA) were for violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; Human Resources Bulletin (HRB) C-5, inappropriate physical contact of mistreatment of an employee; HRB C-7, fighting or creating a disturbance on state property; HRB C-8, falsification; HRB C-11, conduct unbecoming a public employee; HRB D-7, violation of administrative procedures and/or regulations involving safety and security; and HRB E-1, violation of a rule, regulation, policy, procedure, order or administrative decision. (R-1.)

### **PROCEDURAL HISTORY**

On March 10, 2021, the DOC issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications. (R-1.) Appellant did not request a departmental hearing. On June 29, 2021, the respondent issued the FNDA removing appellant from employment. (R-2.) Appellant filed a direct filing removal appeal to the Office of Administrative Law (OAL), where it was filed on July 28, 2021, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The appeal was perfected on July 14, 2021. By letter, dated January 6, 2022, appellant waived her right to be returned to pay status under N.J.S.A. 40A:14-201.

After a telephone conference held on May 5, 2022, I entered an order placing the matter on the inactive list at the request of appellant's attorney because appellant was defending criminal charges in Municipal Court stemming from the same incident. While facing criminal charges, appellant could not adequately defend this action or engage in discovery. By letter, dated November 16, 2023, I was advised that the criminal charges against appellant were dismissed.

The hearing dates were scheduled for June 3, 2024, and June 14, 2024. The June 14, 2024, hearing date was postponed due to witness unavailability and was rescheduled for July 19, 2024.

On or about June 20, 2024, I was informed by the OAL's Division of Support services, that the Court Smart System used to record hearings failed to record the June 3, 2024, hearing. The procedure for recreating records parallels New Jersey Court Rule 2:5-3(f). The parties were given the option of rehearing the testimony from June 3, 2024, or recreating the record through written submissions. On July 18, 2024, the parties after consultation submitted summaries of the testimony presented, including any objections and rulings thereon, and exhibits moved into evidence. (R-T and P-T.) These submissions accurately reconstructed the record.

After the July 19, 2024, hearing, the parties requested time to obtain a transcript and submit closing submissions. I closed the record after receipt of the last summation brief on October 25, 2024.

### **FACTUAL DISCUSSION**

The following is not in dispute. Therefore, it is **FOUND** as **FACT**:

At the time of this incident, March 22, 2020, Panera was a SCPO at South Woods. Panera had been employed by the DOC at South Woods since 2011. Coursey had been working as a civilian phlebotomist for the DOC since 2013. From 2018 through the date of the incident, she had been assigned to the medical area in South Wood's Facility 3. Her office was Room 1042.

Prior to the incident, Panera and Coursey described a professional cordial relationship when they saw each other intermittently at work. Panera was romantically involved with a fellow officer, SCPO Raymond Smith, who was also friends with Coursey. Every other weekend, SCPO Smith was assigned to the medical area in Facility 3, where he worked with Coursey. They also interacted on Smith's podcast. In November 2019, Coursey appeared as a guest on Smith's podcast for a discussion on topics from finances to interracial relationships. Coursey, who is African American like Smith, expressed her opinion that she is against interracial relationships. Smith's interracial relationship with



Panera was not discussed. Smith also asked Coursey for her help with another podcast that was recorded in February 2020 on mental health issues in the black community.

On March 22, 2020, Lieutenant Ramone Dunns assigned Panera to the front house lobby area. She was assigned as an extra officer, meaning she assisted when other officers went on break, lunch, or needed to be out of the area. Lieutenant Dunns confirmed that Panera did not need his permission to leave the area, take a break, or go to lunch.

At around noon, Panera left the lobby area and went to Facility 3, where she intended to have lunch. The cafeteria in Facility 3 was commonly used for meals on Sundays. According to Panera, she intended to stop at the medical area to pick up small latex gloves and make a copy of a document which allegedly contained information about a possible twelve-hour rotation schedule due to the COVID-19 epidemic. Panera acknowledged that there were gloves located throughout the facility but small gloves were only available in the Medical Area. She also knew that there were other copiers available for her use, located near the front lobby where she was stationed. However, Panera claimed that she intended to use the copier located in Room 1042 because it was on her way to the cafeteria and she needed to go there for the small gloves. According to Coursey, there was no copier in her office on March 22, 2020; it had been moved six months earlier.

When Panera entered the medical area, at approximately 12:00 p.m. on March 22, 2020, SCPO Brian Curtis was the officer assigned to the area. He was stationed outside Coursey's office. Panera greeted SCPO Curtis. Inmates were waxing the floor in this area, so she walked around and retrieved the small gloves. Then she opened the door to Room 1042, entered, and allowed the door to shut behind her. Coursey was seated at her desk. There were no cameras inside Room 1042. After Panera entered Coursey's office, the only witnesses to the verbal exchange and physical altercation were Panera and Coursey. Panera testified that upon entering the room, she immediately noticed the copier was gone. She mumbled an expletive under her breath and perceived attitude directed at her from Coursey. Panera admitted to exchanging words with Coursey about her friendliness with SCPO Smith. While their accounts of how the fight started differed,

there is no dispute that the sounds emanating from Room 1042, alerted SCPO Curtis to enter the room, physically separate them, and call for assistance.

The investigation of the altercation was assigned to Jennifer Pesce, of the Special Investigations Division (SID) at South Woods, who prepared a Criminal Investigation Report. (R-3.) Pesce conducted the investigation and the interviews. After Pesce and two other SID officers responded to Facility 3, they established a crime scene and took photographs of Room 1042 and Panera's and Coursey's injuries. Panera sustained a laceration on the top right side of her head that required medical attention. She was immediately transported to Inspira Medical Center Urgent Care, where she received ten staples to close the gash to her head. Coursey sustained a scratch to her face and had some of her hair pulled out.

After the incident, Coursey remained in Room 1042 with Lieutenant Colleen Redmond and provided the following written statement before she left to seek medical attention:

I Shaina Coursey a Tech in Facility Three at SWSP was sitting in my office when Officer Andrea Panera who is a Master Center GA walked into my office "Room Number 1042" saying, "Since you and Raymond want to make me look stupid, you can come get his shit out of my house!" I responded, "Panera can you please leave my officer [sic], I have no idea what you are talking about!" Officer Panera then said, "Since you want to help him with his podcast, you can go get a UHAUL and help him get his shit!" I said, "Panera I am asking you to please leave my office now, I have no clue what you are talking about!" Officer Panera said, "No! Fuck you! Do something about it!" Then I said, "You need to leave! This is crazy, Raymond and I are just friends!" Officer Panera then said "Bitch fuck you!" Then leaned over the desk and assaulted me with a punch. Fearing for my safety and well being, I proceeded to defend myself. Officer B. Curtis opened the door and proceeded to separate us.

Injuries sustained during the altercation, 4 box braids pulled out, abrasion to forehead and scratch to right side of my face.

[R-3, page 2.]

Pesci's interviews began around 3:15 p.m. on March 22, 2020. She included synopsis of the interviews in her written report. (R-3.) SCPO Curtis stated he heard yelling coming from inside Room 1042. When he opened the door, he saw Panera and Coursey actively engaged in a physical altercation. He claimed he observed Panera fall backwards and hit her head on the door, with Coursey falling on top of her while they continued to fight as they fell to the ground. Curtis attempted to separate them by pulling Coursey off Panera.

The nurse assigned to the area was Krysten Pierce, RN. She also heard the yelling from inside Room 1042. When SCPO Curtis opened the door, she saw the women throwing punches at each other. Panera fell backwards and hit her head on the door, while Coursey fell on top of her. Curtis yelled at Pierce to call Facility 3 Control for assistance. Pierce advised SCPO Matish of the altercation and his need to respond for assistance. Before Matish arrived, the fighting had stopped and Panera and Coursey were standing up. Pierce and Curtis both indicated that the entire incident was approximately three minutes long.

Pierce and Curtis were the only staff members present during the altercation, however, there were four inmates assigned to the area doing janitorial work. No one witnessed what occurred after Panera entered Room 1042.

On January 21, 2021, Pierce and her team conducted a supplemental investigation and issued a supplemental report. (R-8.) As part of this investigation, Panera was interviewed on January 21, 2021. During the interview and while testifying, Panera stated that Coursey initiated the altercation because she approached her and pointed her finger in Panera's face, grazing her left cheek. Panera reacted by grabbing Coursey's finger and they began to scuffle. Pierce's synopsis of Panera's recorded interview indicated that Panera felt tension upon entering the room and seeing Coursey at her desk. Panera also mentioned that she immediately noticed there was no copier in the room. In response to Pierce's question, Panera claimed to have no idea why Coursey was so angry with her that day but assumed it was about Smith, whom Panera had been in a relationship with for about eight years.

Pierce and her team also conducted a video interview of Coursey on January 21, 2021. Coursey had provided a written statement immediately after the incident. She also provided another written statement one month later. (R-15.) Pierce's synopsis contained Coursey's claim that Panera entered her office yelling and immediately struck her in the face while she was seated at her desk with no warning. In her initial statement, Coursey wrote that "PANERA LEANED OVER THE DESK AND ASSULTED [SIC] ME WITH A PUNCH." (R-14.) In her second written statement, Coursey wrote that "Panera then jumped over the desk and punched me in the face." (R-15.) Pierce wrote in her report that from the picture of the crime scene, nothing on Coursey's desk appeared to be disturbed. (P-1.) Pierce also noted that Coursey repeatedly asked Panera to leave, while also claiming that she was only friends with Smith. As indicated, Coursey believed that Panera thought she was sleeping with Smith because of their working together on his podcast. It was also reported that Coursey had no clear recollection of the fight. Coursey only recalled being punched in the face by Panera while seated at her desk when Panera entered her office. Coursey's braids had been pulled out of her head and were lying on the floor. Coursey told Pierce that when the investigators came into her office to take pictures with her braids still lying on the floor, she felt humiliated and unprotected.

Pierce further investigated Panera's excuse for going to the medical area and entering Room 1042 on March 22, 2020. On January 23, 2021, ten months after the incident, Pesce received an email response from Sharay Redden, MSN, CCHP, RN, the Regional Nurse Manager for South Woods. In the email, Redden wrote that small latex gloves are located throughout the medical facility. (R-10.)

Pierce also sought information from Major Labonne about a Covid schedule that Panera had stated she wanted to copy. Major Labonne had no firsthand knowledge about any such schedule. His investigation revealed that there was consideration of changes but no new schedules were produced or put into effect. (R-16.)

On March 10, 2021, the DOC issued a PNDA after the SID investigation that substantiated Panera's misconduct in connection with the March 22, 2020, incident. (R-3.) Panera's misconduct was described as follows: "On March 22, 2020, you left your

assigned post without authorization, entered the institution and proceeded to another part of the facility to confront and assault a civilian medical technician.” It was further alleged that during the SID investigation, Panera made several untruthful statements regarding her justification for going to the medical area in Facility 3. Ibid.

On June 29, 2021, the DOC issued a FNDA and sustained charges: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; Human Resources Bulletin (HRB) C-5, inappropriate physical contact of mistreatment of an employee; HRB C-7, fighting or creating a disturbance on state property; HRB C-8, falsification; HRB C-11, conduct unbecoming a public employee; HRB D-7, violation of administrative procedures and/or regulations involving safety and security; and HRB E-1, violation of a rule, regulation, policy, procedure, order or administrative decision.

### **ADDITIONAL FINDINGS**

Petitioner correctly maintained that hearsay evidence was embedded in Pesce’s SID report. (R-3.) Petitioner also objected to the video statements of RN Pierce because her testimony was not subject to cross-examination. Hearsay evidence is admissible in the hearing of contested cases. However, it shall only be accorded whatever weight deemed appropriate considering the nature, character, and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). While hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b).

Our Supreme Court has found that the residuum rule, N.J.A.C. 1:1-15.5(a) and (b), permits hearsay evidence to corroborate or strengthen competent proof, so long as the final administrative decision is not based solely on hearsay evidence and contains “a residuum of legal and competent evidence in the record to support [the decision].” Weston v. State, 60 N.J. 36, 51 (1972).

Officer Curtis and RN Pierce provided statements to Pesce which she included in her report. (R-3.) Curtis and Pierce did not testify. Curtis and Pierce were stationed outside of Room 1042 at the time of the incident. Neither Curtis nor Pierce witnessed what occurred behind a closed door in Room 1042. Their statements taken from the investigation report were used by me as the trier of fact to place Panera at the scene, to gauge how long the door was closed, and to substantiate the magnitude of the physical altercation between Panera and Coursey. Their statements were corroborated by the testimony of Panera, who admitted that after she freely entered Coursey's office, a violent fight ensued, resulting in injuries to both parties. The entire incident was less than three minutes. Therefore, the statements attributable to Curtis and Pierce in the SID investigation report are admissible under the residuum rule.

Petitioner raised objections to RN Pierce's video statements and her statements contained in the SID report about her conversations with Coursey after the incident because Pierce was not subject to cross-examination. Those statements were given no weight. I do not find that they were relevant to this proceeding.

Pesce's supplemental investigation also raised a hearsay concern regarding Panera's justification for going to the medical area to retrieve small gloves. (R-8.) Pesce's email from Regional Nurse Manager Sharay Redden (R-10) only stated that "[t]ypically, small latex or nitrile gloves are readily available throughout the medical areas within the facility." The email was dated January 23, 2021, ten months after the incident and during a time when there were more COVID-19 precautions in place. Redden did not testify and was not subject to cross-examination. Respondent used the email statement to show that Panera's statement that she needed to go to the medical area in Facility 3 to retrieve small gloves was untruthful. The email statement is not supported by any corroborating proof in the record. Thus, it does not satisfy the residuum rule. Therefore, I **FIND** that the email does not support that Panera was untruthful during her SID interview about going to the medical area for small gloves.

It is also the obligation of the fact finder to weigh the credibility of the witnesses, and consider the witness' interest in the outcome, motive, or bias. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of

testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950).

In this matter, only the credibility of the testimony of Panera and Coursey were in issue. Petitioner argued that inconsistencies between Coursey's two written statements as compared to her testimony about Panera's actions in throwing the first punch should undermine Coursey's credibility. Petitioner further argued that Coursey's testimony emphasizing how calm she remained in trying to persuade Panera to leave was not believable. While inconsistencies were noted, they were not germane to the sustained charges against Panera.

Whether Panera punched Coursey in the face by leaning over her desk or jumping over her desk, or whether she simply grabbed Coursey's finger to remove it from her own face are not material to the sustained charges. It is undisputed that Coursey asked Panera to leave, whether her tone was calm is not relevant. Coursey's conduct is not at issue because Panera never maintained that Coursey prevented her from leaving. Further, there is no dispute that Coursey was in her office working when Panera entered uninvited, unannounced, and for no legitimate reason.

Panera's testimony was motivated by her desire to return to her position as a SCPO. Panera either invented an excuse as a cover for her going into Coursey's office or she entered the office for the sole purpose of making a copy. The record does not contain the document that Panera was allegedly copying. It was not discovered during the investigation. Based on Panera's description of the document, the investigation found no evidence of its existence. Her reasoning for not using a closer copier machine was that she was "killing two birds with one stone" because she was going to Medical anyway to get the small size gloves. As Panera testified the gloves were not stored in Room 1042, so she could have gotten her gloves and never entered Coursey's office. Accordingly, her excuse for entering Coursey's office is not credible. If she simply wanted to make a copy, she would have excused herself and left the office as soon as she realized the copier had been moved. Her copier excuse rings hollow due to the immediate

aggression she exhibited upon her entry into Room 1042. Therefore, I **FIND** Panera's justification for entering Coursey's office to make a copy is implausible under the totality of the circumstances, especially because of her own admitted behavior of mumbling under her breath and becoming defensive when she discovered there was no copier in the room. If Panera had made an honest mistake in entering Room 1042, she would have turned around and left.

The crux of the matter is that Panera against her training, the policy and procedures of the DOC, and the standards of professional conduct entered the office of a civilian medical technician and engaged in a physical altercation resulting in bodily injury. There was nothing stopping Panera from leaving the office except for her own emotions, and poor judgment. I **FIND** based on the record herein, it was Panera's duty, obligation, and responsibility to leave Coursey's office without incident.

### **LEGAL ANALYSIS AND CONCLUSION**

Appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated thereunder. A civil service employee who commits a wrongful act related to his 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 shoulders the burden of establishing the truth of the allegations by preponderance of 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 Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (situation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). See Lowe v Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).



As set forth in the FNDA, the sustained charges were as follows:

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

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. City of Atl. 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)).

Appellant’s status as a correction officer subjects her to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576–77 (1990). Law-enforcement employees, such as a correction officer, 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.” Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

The undisputed facts show that Panera without cause entered the office of a civilian medical technician and assaulted her. Panera was unable to control her emotions and engaged in a physical altercation that resulted in bodily harm to a civilian working in the prison.

As a senior correction officer, appellant represents law and order to the public and must present an image of personal integrity. On March 22, 2020, Coursey was seated at her desk doing her job when Panera entered her office without warning or justification and attacked her over a personal matter. The aftermaths of a physical bloody fight was witnessed by other officers, a nurse, and inmates in the area. There is no question that appellant's conduct violated the implicit standard of good behavior that one would expect from a senior correction officer.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in establishing a violation of N.J.A.C. 4A:2-2.3(a)(6)—conduct unbecoming a public employee.

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

Appellant has been charged with other sufficient cause, specifically, violations of HRB 84-17 As Amended—C(5) inappropriate physical contact of mistreatment of an employee; HRB C-7, fighting or creating a disturbance on state property; HRB C-8, falsification; HRB C-11, conduct unbecoming a public employee; HRB D-7, violation of administrative procedures and/or regulations involving safety and security; and HRB E-1, violation of a rule, regulation, policy, procedure, order or administrative decision.

Major Brian Labonne is the Regional Major at South Woods. He is responsible for the safe operation of the prison. Although he was not stationed at South Woods on March 22, 2020, he testified how Panera's conduct violated the rules, regulations, and policies that a SCPO is sworn to obey.

Article I, Section 2, under the Law Enforcement Rules and Regulations, Rules of Conduct (R-20), states that

No officer shall knowingly act in any way that might reasonably be expected to create an impression of suspicion among the public that an officer may be engaged in conduct violative of the public trust and an officer.

Panera's conduct in assaulting a civilian employee over a personal matter clearly violated the above code of conduct.

Article III, Section 2a states that no officer shall "[e]ngage in threatening or assaultive conduct." When Panera failed to leave Coursey's office she engaged in threatening and assaultive conduct in violation of this section.

Article III, Section 3 states that "[n]o officer shall act or behave, either in an official or private capacity, to the officer's discredit or to the discredit of the Department." Panera's conduct discredited herself and the Department when she assaulted an employee for no apparent reason while she was in her office doing her job.

Article III, Section 5, required Panera to maintain decorum, control her temper, and use discretion. Her conduct was the opposite of what was required under this provision.

Major Labonne testified that the General Custody Procedures (R-17) apply to all SCPO at South Woods. Under Section IV,(A)8, Panera was required to conduct herself in a professional manner and be courteous to civilian staff members. This provision was violated when Panera failed to show Coursey any curtesy for entering her office and failed to leave without incident.

Major Labonne also testified that Panera's unbecoming conduct violated the Handbook of Information and Rules, Section, (W)7. (R-19)

Finally, Major Labonne testified that HRB 84-17 (R-21) applied to all SCPO at South Woods. For the offenses committed by Panera removal is appropriate for a first infraction.

The offenses of "C(5) Inappropriate physical contact or mistreatment of an employee; C(7) Fighting or creating a disturbance on state property; and C(11) Conduct unbecoming an employee" were committed by Panera when she entered a civilian employee's office and assaulted her.

The offense of C(8) an intentional misstatement of material fact in connection with a SID investigation was committed by Panera when she created an unfounded excuse to justify her presence in Coursey's office.

As Major Labonne testified Panera's conduct violated the procedures, rules and regulations of the DOC and the facility. HBR - D(7) and E(1).

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in establishing a violation of N.J.A.C. 4A:2-2.3(a)(12)—other sufficient cause, specifically, violation of HRB 84-17 As Amended— C(5) inappropriate physical contact of mistreatment of an employee; HRB C-7, fighting or creating a disturbance on State property; HRB C-8, falsification; HRB C-11, conduct unbecoming a public employee; HRB D-7, violation of administrative procedures and/or regulations involving safety and security; and HRB E-1, violation of a rule, regulation, policy, procedure, order or administrative decision.

### **PENALTY**

The next question is the appropriate level of discipline. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered when determining the reasonableness of the penalty. West New York v. Bock, 38 N.J. 500 (1962). The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is that the nature, number, and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

In addition to considering an employee's prior disciplinary history, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Depending on the conduct complained of and the employee's disciplinary history, major discipline may

be imposed. Bock, 38 N.J. at 522–24. Major discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See, In re Herrmann, 192 N.J. 19 (2007) (Division of Youth and Family Services worker snapped lighter in front of five-year-old), in which the Court stated:

[J]udicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

[192 N.J. at 33.]

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 risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). Some offenses are so egregious in nature that dismissal is appropriate regardless of the employee's prior disciplinary history. In re Herrmann, 292 N.J. at 33-34; In re Carter, 191 N.J. at 486.

I understand that the penalty of removal is substantial. However, I am satisfied that appellant's actions herein were egregious. As a law enforcement corrections officer, appellant is held to a higher standard of conduct. She represents law and order to the citizenry and must present an image of personal integrity and dependability. Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Appellant's primary duty is to enforce and uphold the law and she must constantly exercise tact, restraint and good judgment.

In this situation, appellant did not exercise tact, restraint and reasonable judgment, and she did not attempt to defuse a situation, which in fact, did escalate. Her conduct was abusive and violent towards a civilian employee entrusted to her care. Such action is unacceptable. In a corrections setting, an officer must control her behavior and her emotions. After assaulting a civilian employee without provocation, it is not possible to see how the respondent could continue to allow appellant to remain in her position. Therefore, I **CONCLUDE** that progressive discipline is not warranted due to the severity of the misconduct and removal is the appropriate penalty.

### **ORDER**

I **ORDER** that the disciplinary action of the respondent, South Woods State Prison, New Jersey Department of Corrections, in removing appellant Andrea Panera from her position as a Senior Correctional Police Officer, is **AFFIRMED**, and that the within appeal is hereby **DENIED**.

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 12, 2024

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

CMB/tat

**APPENDIX**

**WITNESSES**

**For appellant**

Andrea Panera

**For respondent**

SID Investigator Jennifer Pesce

Lieutenant Colleen Redmond

Lieutenant Ramone Dunns

Major Brian Labonne

Shaina Coursey

Aquila Abdullah

**EXHIBITS**

**For appellant**

P-1 Office Photo

P-6 SID interview of Coursey

**For respondent**

R-1 PNDA

R-2 FNDA

R-3 SID Investigation Report

R-4 Miranda Warning

R-5 SID video recorded interview of Curtis

R-6 SID video recorded interview of Pierce

R-7 SID video recorded interview of Matish

R-8 Supplemental SID Investigation Report

R-9 Weingarten Administrative Rights

R-10 Email between Pesce and Redden dated, January 23, 2021



- R-11 Special Custody Report - Dunns
- R-12 Accident Investigation Report
- R-13 Special Custody Report – Redmond
- R-14 Coursey's March 22, 2020, statement
- R-15 Coursey's April 17, 2020, statement
- R-16 Email between Major Labonne and Pesce
- R-17 General Custody Procedures
- R-18 ADM. 010.001 Standards of Professional Conduct
- R-19 Handbook of Information and Rules for Employees
- R-20 Law Enforcement Personnel Rules and Regulations
- R-21 HRB 84-17 Table of Offenses and Penalties
- R-22 SID video recorded interview of Panera