



## STATE OF NEW JERSEY

In the Matter of Jose Lopez,  
Northern State Prison, Department  
of Corrections

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2021-1133  
OAL Docket No. CSR 02540-21

**ISSUED: SEPTEMBER 25, 2024**

The appeal of Jose Lopez, Senior Correctional Police Officer, Northern State Prison, Department of Corrections, removal, effective January 19, 2021, on charges, was heard by Administrative Law Judge Jude-Anthony Tiscornia (ALJ), who rendered her initial decision on August 28, 2024. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was 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 and reply, the Civil Service Commission (Commission), at its meeting on July 3, 2024 adopted the ALJ's Findings of Facts and Conclusions of Law and his recommendation to reverse the removal.

The Commission makes the following comments. The burden of proof in a disciplinary matter is on the appointing authority to show by a preponderance of the credible evidence in the record that the proffered charges are sustainable. For the reasons expressed by the ALJ in the initial decision, the Commission agrees that the appointing authority has fallen short of this burden in this matter.

In this regard, the appointing authority's exceptions that the appellant was required to administer Narcan based on the testimony of its witnesses as well as its policies is unavailing. Indeed, in its exceptions it indicates the testimony of the facility's Training Lieutenant was: "if an inmate is non-responsive an officer *should* administer Narcan in case it is an opioid overdose . . . If an officer encounters an inmate who is not responsive, but unsure whether they are breathing, the officer *has to make that assessment*" (emphasis added). The Commission interprets the above not as an absolute that Narcan *must* be administered where an inmate is not responsive but breathing, as was the case here as the exceptions state that the

Lieutenant at the scene told the investigator that the inmate was "breathing and unresponsive, that he was mumbling words and 'not making sense'." More telling is the fact that this Lieutenant did not testify, where he could have confirmed that it would have been inappropriate for the appellant not to have administered Narcan based on the circumstances. Additionally, he apparently did not tell the investigator that he ordered the appellant to administer Narcan upon his arrival on the scene. Without such testimony, especially from a direct supervisory witness to the incident, the Commission cannot conclude that the appellant's inaction regarding Narcan was a violation. In fact, further information provided by that Lieutenant to the investigator belies the appointing authority's position that the appellant, as first to respond, should have administered Narcan. Specifically, according to the exceptions, the Lieutenant told the investigator that even upon the inmate being taken from the cell, he did not initially administer or order the use of Narcan, but rather, upon the *suggestion* of a later arriving Sergeant that Narcan should be used, it was administered. Clearly, if the ranking Lieutenant on the scene was not sure that Narcan needed to be administered, it is difficult to conclude that the appellant's non-administration upon arrival is worthy of sanction.

Further, the Commission rejects the appointing authority's exceptions arguing that the ALJ's lack of a full recitation of the charges is indicative of his error in not finding that such charges were sustained. The ALJ clearly stated the charges in the procedural history section, including those that fall under Title 4A of the New Jersey Administrative Code, including the charge of Other Sufficient Cause, under which violations of departmental policy and procedure are subsumed. The fact that the ALJ did not identify or specifically address each such alleged violations does not equate to ignorance of those charges or establish that there was credible evidence presented sufficient to sustain such charges. Significant in this regard, again, is information provided by the Lieutenant on the scene to the investigator. In its exceptions, the appointing authority indicated the Lieutenant stated to the investigator that he was not sure if the inmate "had an injury and did not want to move [the inmate] until medical staff arrived on scene." The Lieutenant further stated to the investigator that he "gave custody staff an order to move [the inmate], but only after medical staff advised them to do it." Given the above, it is unreasonable to conclude that the appellant failed to administer aid, when the Lieutenant on scene ordered staff not to move the inmate, and as previously discussed, did not administer or order Narcan to be administered until after suggestion from a subordinate Sergeant.

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 Jose Lopez. 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 25<sup>TH</sup> DAY OF SEPTEMBER, 2024



Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 02540-21

**IN THE MATTER OF JOSE LOPEZ,  
NORTHERN STATE PRISON.**

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**David J. Altieri, Esq.,** for appellant Jose Lopez (Galantucci & Patuto, attorneys)

**Gary W. Baldwin,** Deputy Attorney General, for respondent Northern State Prison  
(Matthew J. Platkin, Attorney General for the State of New Jersey, attorney)

Record Closed: August 12, 2024

Decided: August 28, 2024

**BEFORE JUDE-ANTHONY TISCORNIA, ALJ:**

**STATEMENT OF THE CASE**

On January 19, 2021, respondent New Jersey Department of Corrections removed appellant Jose Lopez from his position as a correction officer for allegedly failing to follow proper protocols, directives, procedures, or orders while responding to a medical emergency while working at Northern State Prison, contributing to an inmate's death. A preponderance of the evidence, however, does not exist that Lopez violated proper protocols, directives, procedures, or orders, or that he contributed to an inmate's death. Must Lopez be removed from his position? No. The appointing authority bears the burden of proof, N.J.A.C. 4A:2-1.4(a), by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

### **PROCEDURAL HISTORY**

The Department issued a Final Notice of Disciplinary Action (FNDA) on January 19, 2021, effective the same date. The FNDA sustained the following charges: N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; (a)(7), Neglect of duty; and (a)(12), Other sufficient cause. The Civil Service Commission received an appeal of the removal on February 17, 2021, with the appeal being perfected on February 24, 2021. The matter was filed simultaneously with the Civil Service Commission and the Office of Administrative Law under the expedited procedures of N.J.S.A. 40A:14-202(d) for 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 -23. A hearing was conducted on May 29, 2024. Final submissions were received by the undersigned on August 12, 2024, at which point the record was closed.

### **FACTUAL FINDINGS**

On June 13, 2020, Lopez was working in his capacity as a correction officer at Northern State Prison on the overnight shift. During his shift, Lopez responded to a call regarding an inmate who was in distress in a cell within the prison. Lopez arrived at the door of the cell and attempted to verbally engage with the inmate, who appeared to be conscious but was not responding intelligibly. Prior to this incident, Lopez had been instructed that no officer may enter a cell without a supervisor's authorization on "third shift," which is a term used to describe the overnight shift.

Lopez's supervisor, Lieutenant Solari-Stone, arrived at the entrance to the cell shortly after Lopez, who was still attempting to communicate with the inmate. Solari-Stone ordered Lopez to "wait for medical." Officer Lopez complied with the order given by his superior officer, and medical arrived on scene a few minutes later. The inmate was tended to by medical staff, but he ultimately died. His cause of death was testicular cancer.

I **FIND** that Lopez responded appropriately to the above-described call during his shift on June 13, 2020, in conformance with his duties, and that he obeyed a lawful order from his supervisor.

Notwithstanding the finding above, the Department has taken the position that the circumstances that occurred on June 13, 2020, required Lopez to administer Naloxone to the distressed inmate. Naloxone is a drug that is used when a patient is in respiratory or cardiac distress from known opiate use. There were no facts presented by the Department that would tend to show that Lopez knew or should have known that the inmate had engaged in opioid use, and the Department presented no evidence to show that opioids were involved in the underlying incident whatsoever. Thus, I **FIND** that opioids and opioid use were not involved in the underlying incident.

### **Standard of Review**

The burden of persuasion rests with the agency to prove violations of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in proceedings before an administrative agency. Atkinson v. Parsekian, 37 N.J. 143 (1962). An appeal requires the Office of Administrative Law to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty, if necessary. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris Cnty. Bd. of Soc. Servs., 197 N.J. Super. 307 (App. Div. 1984).

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Civil Service Act and its associated regulations govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the employee is guilty of the charges brought against him/her and, if so, the

appropriate penalty that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

This case is particularly sensitive because it involves a law enforcement official.

[A] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents 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).]

In the case at bar, the Department sustained the following charges in the FNDA: N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; (a)(7), Neglect of duty; and (a)(12), Other sufficient cause. To support these charges, the Department argues that Lopez should have administered Naloxone, an anti-opioid drug. I **CONCLUDE** that there is no credible evidence in the record that shows that Lopez committed any transgression by not administering Naloxone to an inmate suffering from cancer with no known opioid use, especially given that the administration of any such drug would have been over a direct order of a supervisor.

Based on the foregoing, I **CONCLUDE** that the Department has failed to prove by a preponderance of the credible evidence that the removal of Lopez was proper or warranted, or in any way appropriate.

### **ORDER**

Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of the New Jersey Department of Corrections removing appellant Jose Lopez from his position of correction officer is hereby **REVERSED**.



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.

August 28, 2024  
DATE

  
JUDE ANTHONY TISCORNIA, ALJ

Date Received at Agency:

8/28/24

Date Mailed to Parties:

8/28/24

id

**APPENDIX**

**Witnesses**

**For Appellant**

None

**For Respondent**

Brian Comer  
Scott Kiesling  
Patrick Miller

**Exhibits**

**For Appellant**

A-1 (P-1) IMP for General Assignment Officers  
A-2 (P-2) Ibrahim Sacin Certification  
A-3 (P-3) Tiago Patusco Certification

**For Respondent**

R-1 (J-1) PNDA dated, July 21, 2020  
R-2 (J-2) FNDA dated, January 19, 2021  
R-3 (J-3) SID Report dated, June 13, 2020  
R-4 (J-4) SID Supplemental Report, dated, August 20, 2020  
R-5 (J-5) Autopsy Report dated, August 20, 2020  
R-6 (J-6) DOC Inmate Management Preliminary Incident Report  
Dated, June 13, 2020  
R-7 (J-7) Special Custody Report By OFC Lopez dated, June 13, 2020  
R-8 (J-8) Lopez Training Summary Report  
R-9 (J-9) NSP IMP Emergency Response

- R-10 (J-10) NSP IMP Departmentally Assigned First Aid Equipment CPR Mask  
Kit Naloxone (Narcan) Kit
- R-11(J-11) NJDOC Law Enforcement Personnel Rules and Regulations
- R-12 (J-12) NJDOC Instructional Unit Naloxone Administration
- R-13 (J-13) HRB 84-17
- R-14 (J-14) Lopez Work History
- R-15 (J-15) DOC NSP Video Surveillance