



## STATE OF NEW JERSEY

In the Matter of S [REDACTED] E [REDACTED],  
Mercer County Correction Center

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-977  
OAL Docket No. CSV 10571-22

ISSUED: OCTOBER 16, 2024

The appeal of S [REDACTED] E [REDACTED], County Correctional Police Officer, Mercer County Correction Center, release at the end of the working test period (WTP), effective October 27, 2022, was before Administrative Law Judge Dean J. Buono (ALJ), who rendered his initial decision on September 11, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on October 16, 2024, adopted the ALJ's decision granting the appellant's motion for summary decision.

The Commission makes the following comments. The ALJ correctly indicated that since the basis for the appellant's release at the end of the working test period involved allegations of misconduct subject to disciplinary action that had not been adjudicated prior to the expiration of the WTP, the release of the appellant at the end of that period could not stand. In this regard, unsatisfactory job performance is the standard for a release at the end of the WTP. Where, as here, the alleged unsatisfactory performance is based on misconduct subject to disciplinary action and that disciplinary action has not yet been substantiated after the employee's due process rights are afforded, such alleged misconduct cannot be relied upon. However, given that the release was, in essence, procedurally deficient, it cannot be stated that the appointing authority acted in bad faith. Rather, it appears that its actions stemmed from its misunderstanding of the relationship between disciplinary actions and the standards for a release at the end the working test period. Therefore, while the Commission finds the release should be reversed, the appropriate remedy in this matter is not a grant of permanent status, especially since there are still outstanding allegations of misconduct related to job performance. Rather, the appropriate remedy

is that the appellant undergo a new WTP. During the new WTP, the appointing authority shall, as appropriate, go forward with any pending disciplinary actions and afford the appellant his full due process rights in that regard. Should any or all of those actions be sustained at the departmental level, the appointing authority should impose appropriate disciplinary penalties, and, if none result in disciplinary removal before the completion of the new WTP, it may thereafter rely on those actions in determining whether the appellant successfully completed his new WTP. If any of those disciplinary actions result in the appellant's disciplinary removal before the end of the new WTP, the appellant will then have the ability to appeal that removal to the Commission.

In non-disciplinary appeals, such as an appeal of a release at the end of the working test period, the standard for determining whether an appellant is entitled to back pay or counsel fees is governed by *N.J.A.C. 4A:2-4.3(c)* and *N.J.A.C. 4A:2-1.5(b)*. *N.J.A.C. 4A:2-1.5(b)* provides, in pertinent part, that back pay and counsel fees for appeals that are not based on disciplinary action or the challenge of the good faith of a layoff "may be granted . . . where the Commission finds sufficient cause based on the particular case." In this case, it was found that the appellant is not entitled to a permanent appointment since the appointing authority's release was based on its misapplication of the controlling regulatory standards, and was not made in bad faith. Therefore, sufficient cause has not been demonstrated in this matter to award back pay or counsel fees. See e.g., *In the Matter of Melvin Robinson* (MSB, decided December 21, 2005), *In the Matter of Rocky Rembert* (MSB, decided December 3, 2003).

### ORDER

The Civil Service Commission finds that the action of the appointing authority in releasing the appellant at the end of the working test period was not justified. The Commission therefore reverses that action and grants the appeal of S [REDACTED] E [REDACTED]. The Commission further orders that the appellant be granted a new working test period.

Back pay and counsel fees are denied.

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 16<sup>TH</sup> DAY OF OCTOBER, 2024

*Allison Chris Myers*

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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**

**SUMMARY DECISION**

OAL DKT. NO. CSV 10571-22

AGENCY DKT. NO. 2023-977

IN THE MATTER OF S [REDACTED] E [REDACTED],  
MERCER COUNTY CORRECTION CENTER.

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Stuart J. Alterman, Esq., for appellant S [REDACTED] E [REDACTED] (Alterman & Associates, LLC, attorneys)

Michael Anthony Amantia, Assistant County Counsel, for respondent Mercer County Correction Center (Paul R. Adezio, Mercer County Counsel, attorney)

Record Closed: May 6, 2024

Decided: September 11, 2024

BEFORE DEAN J. BUONO, ALJ:

**STATEMENT OF THE CASE**

Appellant S [REDACTED] E [REDACTED] (E [REDACTED]) appeals his termination by respondent Mercer County Correction Center (MCCC) at the end of his one-year working test period due to unsatisfactory performance as a county correctional police officer.

### **PROCEDURAL HISTORY**

On October 27, 2022, the MCCC notified B [REDACTED] of his termination due to unsatisfactory performance during his one-year working test period. B [REDACTED] filed a timely appeal of his termination with the Civil Service Commission, which on November 28, 2022, transmitted the appeal to the Office of Administrative Law for a hearing.

After the transmittal, B [REDACTED] filed a "motion to dismiss administrative charges for violating New Jersey Attorney General Guidelines related to [I]nternal [A]ffairs and/or to dismiss all rule and regulation charges under the 45-day rule." B [REDACTED] motion is more properly characterized and will be treated as a motion for summary decision dismissing the charges against him.

### **FACTUAL DISCUSSION**

The following relevant facts are not in dispute. B [REDACTED] began his one-year working test period as a correction officer for the MCCC on October 29, 2021. He received a satisfactory six-month progress report. In the next three months, however, the MCCC issued B [REDACTED] three Preliminary Notices of Disciplinary Action (PNDA) for alleged misconduct.

First, on May 25, 2022, the MCCC issued a PNDA to B [REDACTED] for minor discipline on a charge of being "absent from work as scheduled without permission and without proper notice of intended absence. (No call-no show.)" The MCCC informed him of his right to a departmental hearing to contest the charge.

Second, on June 3, 2022, the MCCC issued a PNDA to B [REDACTED] seeking his removal on various disciplinary charges because he allegedly "failed to perform security checks and falsely entered these checks, as being performed, into the living unit logbook" and he was allegedly "observed on the video surveillance system sitting at the officers' desk and appeared to be sleeping during the noted security checks." For these alleged infractions, the MCCC charged him with "incompetency, inefficiency or failure to perform duties," "conduct unbecoming a public employee," "neglect of duty," and "other

sufficient cause" for violating the MCCC's internal rules and regulations. The PNDA included information about B [REDACTED] right to a departmental hearing to contest the charges and his removal.

Third, on July 18, 2022, the MCCC issued a PNDA to B [REDACTED] for minor discipline on a charge of being "absent from work as scheduled without permission and without proper notice of intended absence. (Late call off.)" The MCCC informed him of his right to a departmental hearing to contest the charge.

B [REDACTED] requested a departmental hearing to contest the charges and proposed discipline in all three PNDAs. The parties agreed to adjourn the disciplinary hearing to January 2023, several months after B [REDACTED] working test period was set to end.

In the meantime, on October 27, 2022, the MCCC notified B [REDACTED] of his termination due to unsatisfactory performance during his one-year working test period. The MCCC's explanation for B [REDACTED] unsatisfactory rating was that he

has been charged with several infractions during his 12-month working test period. They are:

- Absent from work as scheduled without permission and without proper notice of intended absence (no call/no show).
- Absent from work as scheduled without permission and without proper notice of intended absence (late call off).
- Neglect of duty; sleeping on duty; falsification; violation of administrative procedures and/or regulations involving safety and security.

Thus, this explanation includes the same charges levied against B [REDACTED] in the three PNDAs, his appeals of which were then pending. The MCCC notified B [REDACTED] of his right to appeal his working-test-period termination to the Civil Service Commission. B [REDACTED] filed a timely appeal with the Civil Service Commission, which

on November 28, 2022, transmitted the appeal to the Office of Administrative Law for a hearing.

After the transmittal, B [REDACTED] filed a "motion to dismiss administrative charges for violating New Jersey Attorney General Guidelines related to [I]nternal [A]ffairs and/or to dismiss all rule and regulation charges under the 45-day rule." Of particular note in his supporting brief, B [REDACTED] argues that the MCCC's working-test-period-termination action against him should be dismissed because the MCCC deprived him of his right to appeal the disciplinary actions against him. In this regard, the MCCC had issued three PNDAs to B [REDACTED]; he requested a departmental hearing to contest all of the charges; and a departmental hearing was scheduled but never held because, before he could fully pursue his disciplinary appeal rights under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3, the MCCC terminated him under N.J.A.C. 4A:2-4 for the same reasons stated in the PNDAs.

In opposition, the MCCC contends that the appointing authority complied with the working-test-period requirements and properly terminated B [REDACTED] for his unsatisfactory performance during the working test period. According to the MCCC, B [REDACTED] "was a probationary employee. His performance was reviewed after six months and then at the end of the year. His performance was deemed unsatisfactory. His employment was terminated. No hearing was held on the underlying disciplinary charges. They were not dismissed; they remain open."

The MCCC also explains that B [REDACTED] "was terminated, not because a hearing officer determined that [he] committed offenses deemed worthy of termination. [The MCCC] ended [his] employment because, at the end of the probationary year, [the MCCC] deemed [B [REDACTED]] performance unsatisfactory." And "[a]ssuming the truth of the allegations contained in the PNDAs, the Respondent was justified in terminating a probationary employee who fell asleep at his post at the Correction Center and then falsified logbooks to cover up his neglect."

### **LEGAL ARGUMENT AND CONCLUSION**

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Brill, 142 N.J. at 540 (citations omitted).]

Here, while B [REDACTED] stylizes his motion as a “motion to dismiss” the charges against him, his motion is more properly characterized and treated as a motion for summary decision dismissing the charges against him. This is so because he seeks to resolve this case without a hearing, and he essentially argues that the papers that have been filed, including numerous exhibits and the affidavits filed by him and the president of his union, show that there are no genuine issues of material fact regarding the impropriety of the MCCC’s action under N.J.A.C. 4A:2-4 and that this action must be dismissed as a matter of law because the MCCC initiated disciplinary actions against him before his working test period ended, but circumvented the disciplinary appeals procedures under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3 by releasing him at the end of the working test period, but before his scheduled departmental hearing to contest the

three PNDAs. Thus, despite entitling his submission as a "motion to dismiss," B [REDACTED] has filed what is really a motion for summary decision under N.J.A.C. 1:1-12.5, and his motion should be assessed under those standards.

The civil service regulations, N.J.A.C. 4A:1-1.1 to 10-3.2, are designed "to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services." N.J.A.C. 4A:1-1.1. These rules recognize that "[a]n employee may be separated for unsatisfactory performance at the end of the working test period" and that "[a]n employee may be disciplined during the working test period."<sup>1</sup> N.J.A.C. 4A:4-5.4(a), (b).

The appeal procedures under N.J.A.C. 4A:2-4.1 to -4.3 apply to an employee who is terminated for unsatisfactory performance at the end of the working test period. The major-discipline appeal procedures under N.J.A.C. 4A:2-2.1 to -2.13 apply to an employee whom an appointing authority seeks to remove for disciplinary reasons before the end of the working test period. And the appeal procedures under N.J.A.C. 4A:2-3.1 to -3.7 govern minor-discipline appeals by a probationary employee.

The appeal procedures under N.J.A.C. 4A:2-4.1 to -4.3 are simple and straightforward. An employee who is released by his appointing authority due to unsatisfactory performance may ask the Civil Service Commission for a hearing before the Office of Administrative Law (OAL) to contest his termination. N.J.A.C. 4A:2-4.1; N.J.A.C. 4A:2-4.3. And at a hearing, "[t]he employee has the burden of proof to establish that the action was in bad faith." N.J.A.C. 4A:2-4.3(b).

The disciplinary appeal procedures under N.J.A.C. 4A:2-2.1 to -2.13 are straightforward, yet more rigorous than the procedures under N.J.A.C. 4A:2-4.1 to -4.3. To begin, the disciplinary rules apply not "only to permanent employees in the career service" but also to "a person serving a working test period." N.J.A.C. 4A:2-2.1(a). Thus, a probationary employee may be subject to major discipline for several reasons

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<sup>1</sup> "Working test period" is "a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited." N.J.A.C. 4A:1-1.3.

during the working test period, including "incompetency, inefficiency or failure to perform duties," "conduct unbecoming a public employee," "neglect of duty," and "other sufficient cause." N.J.A.C. 4A:2-2.3(a). The major discipline that may result from such charges can include removal, disciplinary demotion, or a lengthy suspension. N.J.A.C. 4A:2-2.2(a).

Before an employee may be removed, demoted, or suspended on major disciplinary charges, however, there are procedures to which both the appointing authority and the employee must adhere. These procedures also provide a "law enforcement officer," which includes a correction officer, with specific rights and protections in removal appeals.

First, "[a]n employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline[.]" N.J.A.C. 4A:2-2.5(a). That "hearing shall be held before the appointing authority" and "[t]he parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses." N.J.A.C. 4A:2-2.6(a), (c).

Second, there are special rules for removal appeals by a "law enforcement officer," such as a correction officer. Thus, if a correction officer "requests a departmental hearing regarding his or her removal[,] the appointing authority shall conduct a hearing within 30 days of the removal's effective date, unless" the officer "agrees to waive his or her right to the hearing" or the officer and the appointing authority "agree to an adjournment of the hearing to a later date." N.J.A.C. 4A:2-2.13(b).

Third, "[t]he appointing authority shall issue a Final Notice of Disciplinary Action within 20 days of the hearing and serve the Final Notice to the appellant," and the officer, or appellant, "shall have 20 days from the date of receipt of the Final Notice to appeal the removal" by requesting a hearing before the OAL. N.J.A.C. 4A:2-2.13(d).

Finally, in a removal appeal, unlike a working-test-period-termination appeal, the appointing authority has the burden of proving the charges against the employee.<sup>2</sup> N.J.A.C. 4A:2-1.1; N.J.A.C. 4A:2-1.4(a); N.J.A.C. 4A:2-2.9.

The civil service rules also include procedures for minor discipline, which "is a formal written reprimand or a suspension or fine of five working days or less." N.J.A.C. 4A:2-3.1(a). While "[t]he causes for minor disciplinary actions shall be the same as for major disciplinary actions" and the minor-discipline rules also apply to "persons serving a working test period," the minor-discipline appeal procedures are less rigorous than the major-discipline appeal procedures. N.J.A.C. 4A:2-3.1(c), (e). Nonetheless, like for major discipline, an employee subject to minor discipline may "request a departmental hearing," "[t]he departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties," and "[t]he burden of proof shall be on the appointing authority." N.J.A.C. 4A:2-3.2(b).

The MCCC's termination action against B [REDACTED] under N.J.A.C. 4A:2-4 must be dismissed because the MCCC circumvented B [REDACTED] due-process rights under the major- and minor-discipline appeal rules at N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3. I must grant B [REDACTED] motion and dismiss the MCCC's termination action against him because the MCCC preempted B [REDACTED] disciplinary appeal rights by releasing him at the end of the working test period for reasons identical to those stated in the PNDAs, his appeals of which were pending at the time of his release.

Specifically, the MCCC violated B [REDACTED] due-process rights in the following manner: Before B [REDACTED] working test period ended on October 27, 2022, the MCCC instituted both minor and major disciplinary actions against him. He appealed the charges and discipline by requesting a departmental hearing, and a departmental hearing was scheduled for January 2023—a date to which the MCCC agreed even though it fell well past the last day of his working test period. Before B [REDACTED] received the departmental hearing and other disciplinary appeal rights to which he was

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<sup>2</sup> N.J.A.C. 4A:2-2.13 also includes what is known as the "180-day rule," under which the Commission, unless certain exceptions apply, must issue a final decision "within 180 calendar days from the date on which the officer or firefighter was initially suspended without pay" or the employee will be returned to pay status.

entitled, however, the MCCC undercut the disciplinary appeal process by instead terminating him at the end of his working test period for the very same reasons the MCCC listed in the three PNDAs and, thus, the very same charges B ██████ sought, but never got the chance, to contest through the disciplinary appeal process.

The MCCC's actions in this regard run contrary to the civil service laws and B ██████ due-process rights under those laws. As outlined above, the major- and minor-discipline appeal rules apply to probationary employees like B ██████. Those rules entitled him to a departmental hearing on the charges, and the major-discipline appeal rules further entitled him to a final notice of disciplinary action after the departmental hearing, an appeal to the Civil Service Commission, and a hearing before the OAL—a hearing at which the MCCC would bear the burden of proof. He never got to exercise those rights because, while his departmental hearing was pending, the MCCC undermined the disciplinary appeal process by instead terminating him under the working-test-period rules for the exact reasons it filed the disciplinary actions against him.

It is clear from the MCCC's opposition brief that the appointing authority fails to recognize how its termination action under N.J.A.C. 4A:2-4 deprived B ██████ of his due-process rights under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3. First, the MCCC states that B ██████ "employment was terminated. No hearing was held on the underlying disciplinary charges. They were not dismissed; they remain open." That is precisely the problem here: "No hearing was held on the underlying disciplinary charges," which B ██████ appealed under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3, and the MCCC instead terminated him under N.J.A.C. 4A:2-4 for the same alleged infractions for which the MCCC issued PNDAs.

The MCCC's contention that "[a]ssuming the truth of the allegations contained in the PNDAs, the Respondent was justified in terminating a probationary employee who fell asleep at his post at the Correction Center and then falsified logbooks to cover up his neglect" is also disconcerting. The truth of allegations contained in a PNDA cannot be assumed. That is why an employee may appeal the allegations contained in a PNDA and why the burden of proof in a disciplinary appeal is on the appointing

authority. And that is how the MCCC's termination action under N.J.A.C. 4A:2-4 deprived B [REDACTED] of due process under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3.

I must grant B [REDACTED] motion because there are no genuine issues of material fact, and B [REDACTED] is entitled to prevail as a matter of law. The MCCC's working-test-period termination action under N.J.A.C. 4A:2-4 must be dismissed so that B [REDACTED] may pursue his disciplinary appeal rights under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3. The MCCC initiated the disciplinary process before the end of B [REDACTED] working test period but deprived him of his disciplinary appeal rights by releasing him at the end of his working test period for the same reasons the appointing authority took disciplinary action against him and while his appeals of those disciplinary actions were pending. The MCCC preempted his disciplinary due-process rights in such a way that the MCCC's termination action must be dismissed.

But because the termination action under N.J.A.C. 4A:2-4 is based on the same alleged misconduct as the disciplinary actions under N.J.A.C. 4A:2-2 and N.J.A.C. 4A:2-3, the MCCC's termination action should be dismissed without prejudice pending the results of B [REDACTED] disciplinary appeals. That is, the outcome of B [REDACTED] disciplinary appeals may or may not moot the MCCC's termination action under N.J.A.C. 4A:2-4.

Having reviewed the parties' submissions in support of and in opposition to the within motion, I **CONCLUDE** that no issues of material fact exist, and I must grant B [REDACTED] motion and dismiss the MCCC's termination action.

### **ORDER**

It is therefore hereby **ORDERED** that the appellant's motion for summary decision be and hereby is **GRANTED**. It is further **ORDERED** that this termination matter be **DISMISSED**.

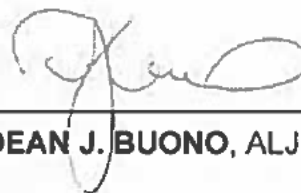
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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

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

September 11, 2024

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/onl

## **APPENDIX**

### **Exhibits**

#### **For Appellant:**

- Motion to Dismiss, dated March 5, 2024

#### **For Respondent:**

- Letter Brief in Opposition, dated May 6, 2024