



STATE OF NEW JERSEY

In the Matter of Michael Gramaglia,
Ocean County, Department of
Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-1741
OAL Docket No. CSV 02124-23

ISSUED: FEBRUARY 26, 2025

The appeal of Michael Gramaglia, 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 January 27, 2025. 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 February 26, 2025, 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 appellant's exceptions is that the ALJ improperly dismissed his claims that the charges were untimely filed pursuant to *N.J.S.A. 40A:14-147*, known as the "45-day rule." Initially, the Commission notes that the ALJ indicated that she procedurally dismissed this claim since the appellant did not raise it until after the hearing was concluded. The Commission need not decide whether that action was proper, since the ALJ also substantively analyzed whether the statute was violated. She ultimately properly concluded that the appointing authority was entitled to perform a thorough investigation into the alleged misconduct, and thereafter, brought the charges well within 45 days of the conclusion of that investigation. She also properly noted that the underlying charges lodged under Title 4A would not be subject to dismissal under the statute. See *e.g.*, *Hendricks v. Venettone*, Docket No. A-1245-91T5 (App. Div. October 29, 1992); *In the Matter of Bruce McGarvey v. Township of Moorestown*, Docket No. A-684-98T1 (App. Div. June 22, 2000); *McElwee v. Borough*

of *Fieldsboro*, 400 N.J. Super. 388 (App. Div. 2008). See also, *In the Matter of Christopher Mercardo* (CSC, decided April 18, 2012); *In the Matter of Claudy Augustin* (MSB, decided April 23, 2008). The Commission finds nothing in the record or the appellant's exceptions to reject the ALJ's conclusion on that issue.

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

The unrefuted facts are clear: Gramaglia possessed and used a cell phone in the secure area of the jail while on duty. He did so intentionally, while in the secure area of the jail, in violation of the policy prohibiting same. 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 Gramaglia's phone remained with him, there are real and potential dangers that the presence of unsanctioned cell phones creates. Lastly, Gramaglia was aware of the policy and signed an acknowledgment of it.

Although Gramaglia does not have any prior major discipline, his position involved public safety, and his actions had the potential to cause great risk of harm. Grievous harm has previously occurred through the use of a phone by 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 ninety-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. 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 Michael Gramaglia.

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 26TH DAY OF FEBRUARY, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02124-23

AGENCY DKT. NO. 2023-1741

**IN THE MATTER OF MICHAEL GRAMAGLIA,
OCEAN COUNTY,
DEPARTMENT OF CORRECTIONS.**

Michael P. DeRose, Esq., for appellant Michael Gramaglia (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: December 19, 2024

Decided: January 27, 2025

BEFORE DEIRDRE HARTMAN-ZOHLMAN, ALJ:

STATEMENT OF THE CASE

Appellant Michael Gramaglia (Gramaglia), a corrections officer for respondent County of Ocean, Department of Corrections (County), appeals a Final Notice of Disciplinary Action dated February 6, 2023, instituting a ninety-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. Gramaglia challenges the discipline imposed and seeks a lesser penalty.

PROCEDURAL HISTORY

On December 12, 2022, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against the appellant. Appellant requested a departmental hearing, which was held on January 19, 2023. Respondent issued a Final Notice of Disciplinary Action (FNDA) (31-B) on February 6, 2023, sustaining the charges in the PNDA and suspending appellant for ninety days from February 16, 2023, through May 16, 2023. Gramaglia filed an appeal on February 15, 2023, 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 March 8, 2023, for a hearing 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 matter was heard at the OAL offices located in Quakerbridge on May 6, 2024. The record closed on December 19, 2024, following receipt of multiple 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 is employed by respondent as a correctional police corporal at the Ocean County Correctional Facility (jail) and has been employed since January 2016.
2. On September 8, 2022, Captain Michael Archibald was reviewing video recordings of various areas within the jail in connection with an unrelated matter. (R-3.) During this review, Archibald observed Gramaglia in East Control using an electronic device on September 7, 2022, August 31, 2022, September 10, 2022, and September 13, 2022. (Ibid.) The September 10, 2022, video was the "clearest view." (Ibid.) Specifically, Gramaglia was

viewed on video footage "putting his feet up on the counter, laying back in the chair, and manipulating an electronic device in his hands . . ." for over fifteen minutes. (Ibid.)

3. On September 26, 2022, the September 10, 2022, video footage was reviewed by Archibald, Lieutenant Horan, and Sergeant Dishon. (R-4.)
4. On September 30, 2022, Sergeants Dishon and Nolan met with Gramaglia and served him with a disciplinary charge for a violation of the Personal Electronic Device Policy. (R-5.)
5. Via a memorandum dated October 25, 2022, Gramaglia was advised that an Internal Affairs investigation had been initiated and that Gramaglia was scheduled to be interviewed on November 16, 2022. (R-13.) Gramaglia's interview was subsequently rescheduled to November 29, 2022, to accommodate Gramaglia's attorney's schedule. (R-14.) The internal affairs process includes a formal interview of the appellant and numerous reports prepared and submitted through the chain of command for review and approvals prior to a final determination and filing of formal charges.
6. On November 29, 2022, Gramaglia was interviewed in the presence of his attorney after a pre-interview advisory was signed. (R-6.) During the interview, Gramaglia admitted to bringing an electronic device into the secure area of the jail on September 10, 2022. (R-7.)
7. On December 8, 2022, Lieutenant Colangelo issued a memorandum to Gramaglia, indicating that "upon review of all reports, documents and statements," the investigation disclosed sufficient evidence to sustain a charge of a violation of the Personal Electronic Devices Policy. (R-8.)
8. 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-10.)

9. Appellant was aware that cellular phones are not permitted in the secure areas of the jail. He signed off on an acknowledgement of "Employee Rules and Regulations – Personal Electronic Devices" on May 18, 2021. (R-11.)
10. Appellant has no prior major disciplinary action.
11. Appellant was cooperative in the investigation.
12. Unsanctioned phones in the jail create a potential life-threatening danger if they were to end up in the hands of an inmate.
13. There was a prior incident in the jail wherein an inmate used a phone to communicate with an outside party, which resulted in the murder of a witness in a homicide trial.
14. Appellant was served with a PNDA on or about December 13, 2022. The PNDA charged Gramaglia with the following offenses under N.J.A.C. 4A:2-2.3(a): (2) Insubordination; (7) Neglect of Duty; and (12) Other Sufficient Cause: O.C. County Dept. of Corrections Policy 2.29—Personal Electronic Devices for possession of a cellular phone while on duty within the secure jail. (R-1.)
15. Gramaglia requested an administrative hearing, which was held on January 19, 2023.
16. Appellant received a FNDA on or about February 7, 2023. The FNDA sustained the charges against Gramaglia and imposed a suspension for ninety calendar days from February 16, 2023, through May 16, 2023. (R-9.)

LEGAL ANALYSIS AND CONCLUSIONS

Timing of the Presentation of Charges

Appellant argues the applicability of N.J.S.A. 30:8-18.2 and the failure to timely present the charges as grounds for this tribunal to grant the appeal. This argument fails on multiple fronts.

Gramaglia initially raised the issue of timeliness of the charges during opening statements at the hearing. The Uniform Administrative Procedure Rules ("UAPR") do not specifically address the pleading of an affirmative defense such as timeliness. Where the UAPR does not set forth a rule, "a judge may proceed in accordance with the New Jersey Court Rules." N.J.A.C. 1:1-1.3(a). Per the New Jersey Court Rules, an affirmative defense must be pleaded or timely raised or else it is deemed waived. Pressler & Verniero, Current N.J. Court Rules, cmt 1.2.1 on R. 4:5-4 (2024); see Cole v. Jersey City Med. Ctr., 215 N.J. 265, 281 (2013); Brown v. Brown, 208 N.J. Super. 372, 384, (App. Div. 1986) ("It is well settled that an affirmative defense is waived if not pleaded or otherwise timely raised.") (citing R. 4:6-7). The rules also deem "statute of limitations" to be an affirmative defense. R. 4:5-4; see also Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 500 (2006) ("The defense that a claim is time-barred must be raised by way of an affirmative defense, either in a pleading or by a timely motion, or it is waived."); see also, In re Reyes, CSV 07433-16, Initial Decision (March 28, 2017), <http://njlaw.rutgers.edu/collections/oal>, adopted, Comm'r (May 4, 2017) (failure to object under the forty-five-day rule at the time charges were brought has been deemed a waiver of the timeliness objection.) Ironically, Gramaglia's failure to timely assert this defense renders it waived.

According to N.J.S.A. 30:8-18.2, "Applicability of '45-day' rule for violation of internal rules to county correctional police officers,"

[a] person shall not be removed from employment or a position as a county correctional police officer, or suspended, fined or reduced in rank for a violation of the internal rules and regulations established for the conduct of employees of the

county corrections department, unless a complaint charging a violation of those rules and regulations is filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. A failure to comply with this section shall require a dismissal of the complaint. The 45-day time limit shall not apply if an investigation of a county correctional police officer for a violation of the internal rules and regulations of the county corrections department is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State; the 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement in this section for the filing of a complaint against a county correctional police officer shall not apply to a filing of a complaint by a private individual.

[Ibid.]

The forty-five-day rule, as it is commonly known, applies only to alleged violations of internal rules and regulations and not to the general causes for major discipline listed under N.J.A.C. 4A:2-2.3(a). McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388 (App. Div. 2008). A complaint charging a violation of internal rules and regulations may be dismissed if an appointing authority unnecessarily delays an investigation or fails to file the complaint within forty-five days of obtaining sufficient information.

Appellant cites Aristizibal v. City of Atl. City, 380 N.J. Super. 405 (Law Div. 2005), where the court held that Atlantic City violated the forty-five-day rule under N.J.S.A. 40A:14-147ⁱ by failing to start an investigation into alleged violations of police department rules and regulations until seventy-two days after an incident in which over 100 police officers called out sick from work as part of a labor dispute. Aristizibal articulates the intent of the forty-five-day rule, which embodies underlying principles of sufficiency of information, reasonableness of delay, date of filing, and undue prejudice to the officer. Id. at 427–28.

ⁱ N.J.S.A. 40A:14-147 applies a forty-five-day rule to charges brought against law enforcement officers for violations of internal unit rules or regulations outside of the correctional facility context. It is analogous to and similarly worded to N.J.S.A. 30:8-18.2.

The Appellate Division often applies the principles laid out in Aristizibal when interpreting forty-five-day rules in law enforcement discipline cases. In In the Matter of Peter Farlow, a corrections lieutenant at Camden County Correctional Facility was terminated for conduct unbecoming, discrimination that affects Equal Employment Opportunity, including sexual harassment, and other sufficient cause for violating the facility's rules of conduct under N.J.A.C. 4A:2-2.3(a). In re Farlow, CSR 01795-15, Initial Decision (June 13, 2016), adopted, Comm'r (August 15, 2016), <http://njlaw.rutgers.edu/collections/oal>. Before the OAL, the lieutenant argued that the facility failed to adhere to the forty-five-day rule. The ALJ noted that the forty-five-day rule is intended to prevent an appointing authority from "unduly and prejudicially delaying the imposition of disciplinary action." The statute permits an appointing authority to conduct "a proper investigation into a matter to determine whether disciplinary charges are necessary and appropriate," using the "sufficient information" benchmark to begin the forty-five-day period. "Normal and necessary investigation" may exceed forty-five days, but the appointing authority must then bring charges once it has sufficient information to do so and promptly forward the information "to the person responsible for filing the complaint." The ALJ likened the matter to Aristizibal, finding in Farlow that there was similarly "no extraordinary circumstances or complicated event that justified the delay," only the need to conduct due diligence to determine whether charges could be brought. The delay in bringing charges against Farlow "resulted from the investigatory process," not from extraordinary or complicated circumstances. On appeal, the decision was affirmed in an unpublished opinion. In re Farlow, 2019 N.J. Super. Unpub. LEXIS 173 (App. Div. Jan. 24, 2019), at *9. The Appellate Division agreed that "the charges were not untimely" under the forty-five-day rule. Id. at *8. The investigation was conducted "as a matter of fairness and good management practice" prior to bringing charges, as the charges were then properly filed within forty-five days of receipt of the investigation report. Ibid.

The Civil Service Commission also addressed the forty-five-day rule in In the Matter of Shante Curry, 2020 N.J. CSC LEXIS 887 (August 19, 2020), at **2–3. In Curry, a correctional police officer in Essex County was charged with conduct unbecoming and other sufficient cause for violating the facility's rules of conduct under N.J.A.C. 4A:2-2.3(a) after allegedly misusing Family and Medical Leave Act ("FMLA") sick time. Id. at *1. On

February 27, 2020, the officer had her mother call the facility after the designated start of the officer's shift time to indicate that the officer would be out due to travel. Id. at **1–2. On April 13, 2020, the officer was served a Preliminary Notice of Disciplinary Action related to the incident. Id. at *2. The officer argued in her Request for Interim Relief that the forty-five-day rule should have applied from the time of the phone call of February 27 and thus that she should have received the PNDA no later than April 11. Id. at *3. The investigation report indicated that “a potential FMLA violation” was referred to Internal Affairs on March 4. Id. at *7. On March 16, the Internal Affairs investigator contacted the officer for her travel itinerary, which the officer's union representatives provided on March 25. Ibid. The investigator concluded the investigation on April 2. Thus, the Civil Service Commission concluded that April 2 was the date on which there was “sufficient information” and the beginning of the forty-five-day period, making the April 13 PNDA timely. Id. at *7–8.

Here, Gramaglia makes a similar argument to the officer in Curry, claiming that knowledge of the infraction itself on September 10 constituted “sufficient information” to begin the forty-five-day period. Gramaglia also argues that, because he was the only individual interviewed by Internal Affairs, there was no basis for the delay in filing charges. However, as evidenced by both Curry and Farlow, the forty-five-day rule does not encompass time spent on the ordinary course of a regular investigation into an infraction before filing a complaint charging a violation. Additionally, on September 30, 2022, Sergeants Dishon and Nolan met with Gramaglia and served him with a disciplinary charge for a violation of the Personal Electronic Device Policy. The notice specifies that on September 26, Sergeant Nolan and Lieutenant Horan reviewed video footage of the September 10 incident and that, based on the footage, Gramaglia “violated Policy No. 2.29 Personal Electronic devices and shall be disciplined.” The Internal Affairs interview with Gramaglia took place two months later, on November 29. Gramaglia was informed of the substantiated findings by memo on December 8. The PNDA was filed on December 12 and served on Gramaglia on December 13.

Based on the timeline, the charges against Gramaglia were properly filed without violating the forty-five-day rule. The investigation commenced on September 30—four days after Gramaglia's violation was discovered during a review of security camera

footage. Throughout the investigation process and prior to the filing of the PNDA, Gramaglia was fully informed of the investigation by actual notice of disciplinary action. The notice specifies the allegations of a violation of facility policy, but that does not preclude respondent from a full, formal investigation. As in Farlow, the delay in bringing charges resulted from the delay in interviewing Gramaglia, which appears to be a result of the investigatory process and of scheduling rather than any bad faith on behalf of either party. Additionally, like Farlow, there is no assertion that Gramaglia lost any evidence, was deprived of any potentially exculpatory evidence, or not provided due process. Using the language of Farlow, interviewing Gramaglia as part of the investigation appears to have been done out of “fairness and good management practice” despite the scheduling delay. Based on the investigation, the investigation was completed on December 8—only four days prior to the charges being filed. Therefore, the investigation did not violate the forty-five-day rule and need not be dismissed for untimeliness under the statute.

Based on the foregoing, I **CONCLUDE** that failure to timely assert this defense renders it waived. Moreover, assuming arguendo, that the defense was not waived, I **CONCLUDE** that the respondent did not violate the forty-five-day rule under N.J.S.A. 30:8-18.2. Thus, Gramaglia’s charges for violating the Ocean County Department of Corrections Policy 2.29—Personal Electronic Devices need not be dismissed under the statute. However, because Gramaglia was charged with both a violation of the internal rules and regulations as well as for general causes for major discipline listed under N.J.A.C. 4A:2-2.3(a), even if respondent violated the forty-five-day rule, which I find it did not, it would be limited in its application to the respondent’s internal rules and regulations and not to the charges of insubordination and neglect of duty.

The Charges

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. 4A:2-2.2.

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, or 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 Gramaglia intentionally possessed and used his cell phone in the jail,

in complete disregard of the cell-phone policy. Therefore, I **CONCLUDE** that respondent has 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, Gramaglia 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. Gramaglia not only possessed but used 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. Appellant admitted to 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)(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.

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. 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)(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. Respondent seeks a ninety-day suspension, consistent with the disciplinary schedule set forth in the written policy, acknowledged by the appellant.

The unrefuted facts are clear: Gramaglia possessed and used a cell phone in the secure area of the jail while on duty. He did so intentionally, while in the secure area of the jail, in violation of the policy prohibiting same. 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 Gramaglia's phone remained with him, there are real and potential dangers that the presence of unsanctioned cell phones creates. Lastly, Gramaglia was aware of the policy and signed an acknowledgment of it.

Although Gramaglia does not have any prior major discipline, his position involved public safety, and his actions had the potential to cause great risk of harm. Grievous harm has previously occurred through the use of a phone by 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 ninety-day suspension without pay is appropriate for the sustained charges 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.

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

ORDER

It is hereby **ORDERED** that the charges of Insubordination, 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**.

It is also **ORDERED** that the penalty of a ninety-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.

January 27, 2025

DATE



DEIRDRE HARTMAN-ZOHLMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

DHZ/sg/jm

APPENDIX

Witnesses

For appellant:

Michael Gramaglia

For respondent:

Michael Pluta

Joseph Valenti

Exhibits

For appellant:

None

For respondent:

- R-1 Preliminary Notice of Disciplinary Action (31-A)
- R-2 Notice of Employee Disciplinary Action
- R-3 Captain Haberbusch Report
- R-4 Sergeant Dishon Report
- R-5 Service of Charge
- R-6 Pre-Interview Advisory
- R-7 Report of Investigation
- R-8 Notice to Michael Gramaglia
- R-9 Cover letter and Final Notice of Disciplinary Action
- R-10 Policies and Procedures Manual
- R-11 Training Records
- R-12 Sign
- R-13 Memorandum, dated October 25, 2022
- R-14 Emails