



STATE OF NEW JERSEY

In the Matter of Lonzell Neal, Ocean
County, Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2024-226

OAL Docket No. CSV 07048-23

ISSUED: FEBRUARY 26, 2025

The appeal of Lonzell Neal, 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 February 3, 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 should not have found him untruthful as he did not believe he was in a secure area.¹ In this regard, the ALJ found:

¹ In this matter, as in what is essentially a companion case, *In the Matter of Michael Gramaglia* (CSC, decided February 26, 2025), the appellant argued to the ALJ that the charges should have been dismissed pursuant to N.J.S.A. 40A:14-147, the "45-day rule." In both matters, the ALJ procedurally rejected that argument finding that the appellants did not raise it until after the hearings. Regardless, she addressed the merits of the claims, finding in both cases that there was no violation since the appointing authority was entitled to perform investigations into the alleged misconduct, and thereafter, brought the charges well within 45 days of the conclusion of the investigations. She also properly noted that the underlying charges lodged under Title 4A would not be subject to dismissal under the statute. In the exceptions filed in *Gramaglia*, Gramaglia, represented by the same attorney as in this matter, argued that the ALJ's procedural dismissal of that claim was improper. In *Gramaglia*, the Commission found that it did not need to make a finding regarding that procedural dismissal, since the ALJ properly found no violation based on the facts in the record. Even though not

As the fact finder, I had the opportunity to hear the testimony of the witnesses and review the documentary evidence. Neal testified that he did not think center control was inside the security perimeter of the jail. (footnote omitted). Neal's testimony was self-serving and not believable based upon his over-ten-year employment in the jail. Moreover, it contradicts the warden's testimony that it is common knowledge that center control is inside the security perimeter of the jail, and it contradicts the sign on the doors to center control that states in large, all capital and bold print, **"NO WEAPONS OR ELECTRONIC DEVICES BEYOND THIS POINT."** (R-10.)

Clearly, the ALJ indicates that she found the appellant's testimony on the issue "self-serving and not believable." In this regard, 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 of her findings and conclusions made therefrom were arbitrary, capricious or unreasonable.

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

The facts herein are clear: Neal possessed a cell phone in the secure area of the jail while on duty—a clear violation of jail policy. 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 Neal asserts that he was unaware he was in a secure area of the jail, I find this testimony not credible, and the potential consequences of his actions demonstrate a complete disregard for the potential dangers that the presence of unsanctioned cell phones creates. Lastly, Neal was aware of the policy and signed an acknowledgment of it on July 14, 2021.

raised in the exceptions filed in this matter, as in *Gramaglia*, the Commission finds the ALJ's findings on the merits of that argument proper.

Although Neal does not have any prior major disciplinary history, his position involves public safety, and his actions had the potential to cause great risk of harm. Grievous harm has previously occurred when a phone was used 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 Lonzell Neal.

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
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 07048-23

AGENCY DKT. NO. 2024-226

**IN THE MATTER OF LONZELL NEAL,
OCEAN COUNTY,
DEPARTMENT OF CORRECTIONS.**

Michael P. DeRose, Esq., for appellant Lonzell Neal (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: February 3, 2025

BEFORE DEIRDRE HARTMAN-ZOHLMAN, ALJ:

STATEMENT OF THE CASE

Appellant Lonzell Neal (Neal), a corrections officer for respondent County of Ocean, Department of Corrections (County), appeals a Final Notice of Disciplinary Action dated July 24, 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. Neal challenges the discipline imposed and seeks a lesser penalty.

PROCEDURAL HISTORY

On May 19, 2023, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against Neal. Neal requested a departmental hearing, which was held on May 7, 2024. Respondent issued a Final Notice of Disciplinary Action (FNDA) (31-B) on July 24, 2023, sustaining the charges in the PNDA and suspending appellant for ninety days from August 29, 2023, through November 25, 2023. Neal filed an appeal on August 1, 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 August 3, 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 in person at the OAL offices located in Quakerbridge on May 7, 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. The appellant has been employed by respondent as a correctional police officer at the Ocean County Correctional Facility (jail) since April 2013.
2. "Center control" has been part of his assigned post since January 2023.
3. It is "common knowledge" that center control is inside the security perimeter of the jail.
4. On March 28, 2023, while on duty in center control, the appellant was in possession of his cellular phone. (R-2.)

5. The jail has signs posted on all sliding doors entering the jail, including the entrance to center control, that state in large, all capital and bold print: **"NO WEAPONS OR ELECTRONIC DEVICES BEYOND THIS POINT [and] INDIVIDUALS BRINGING CONTRABAND INTO THIS FACILITY SUBJECT TO ARREST AND PROSECUTION."** (R-10.)
6. By memorandum, dated April 6, 2023, Neal was placed on notice that an Internal Affairs investigation had commenced into his unsanctioned use of a personal electronic device in violation of jail policy. (R-11.)
7. Neal's interview with Internal Affairs was scheduled in April 2023, but it was postponed at his attorney's request and rescheduled until May 2023. (R-12.)
8. On May 11, 2023, Lieutenant Colangelo issued a memorandum to Neal, indicating that after reviewing all reports, documents, and statements, the investigation disclosed sufficient evidence to sustain a charge of a violation of the Personal Electronic Devices Policy. (R-13.)
9. The jail has a policy entitled "Personal Electronic Devices." The policy prohibits both the possession and use of personal electronic devices, including cellular phones, inside the security perimeter of the jail. Additionally, the policy provides that a violation "shall result in disciplinary action, as follows: 1st infraction, 90 day suspension; 2nd infraction, 180 day suspension and 3rd infraction, termination." (R-8.)
10. The 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 July 14, 2021. (R-9.)
11. The appellant has no prior major disciplinary history.

12. The appellant was cooperative in the investigation.
13. Unsanctioned phones in the jail create a potential life-threatening danger if they were to end up in the hands of an inmate.
14. 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.
15. The appellant was served with a PNDA on or about May 19, 2023. The PNDA charged Neal 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.)
16. Neal requested a departmental hearing, which was held on May 7, 2024. (R-7.)
17. The appellant was served with an FNDA on or about July 24, 2023. The FNDA sustained the charges against Neal and imposed a suspension of ninety calendar days from August 29, 2023, through November 24, 2023. (R-7.)

Additional Findings of Fact

It is the obligation of the fact finder to weigh the credibility of the witnesses before deciding. To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the opportunity to hear the testimony of the witnesses and review the documentary evidence. Neal testified that he did not think center control was inside the security perimeter of the jail.¹ Neal's testimony was self-serving and not believable based upon his over-ten-year employment in the jail. Moreover, it contradicts the warden's testimony that it is common knowledge that center control is inside the security perimeter of the jail, and it contradicts the sign on the doors to center control that states in large, all capital and bold print, "**NO WEAPONS OR ELECTRONIC DEVICES BEYOND THIS POINT.**" (R-10.)

Based upon the above, I also **FIND** the following as an additional **FACT**:

1. Neal was not truthful in testifying that he did not think center control was inside the security perimeter of the jail.

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.

Neal did not raise the issue of timeliness of the charges until post-hearing briefs. 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

¹ Intent to possess an electronic device, or knowledge of the secure area of the jail, are not consequential to substantiation of a violation of the policy. However, since appellant argues same in vindication of the charges and in mitigation of the penalty, it is addressed herein.

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, Neal’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:14-147² 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.

The Appellate Division often applies the principles laid out in Aristizibal when interpreting forty-five-day rules in law enforcement discipline cases. In In re 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

² 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.

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.

Here, Neal asserts that knowledge of the infraction itself on March 28, 2023, constituted “sufficient information” to begin the forty-five-day period. Neal also points out that, because he was the only individual interviewed by Internal Affairs, there was no basis for the delay in filing charges. However, 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. Neal was advised on April 6, 2023, that an investigation had commenced into his unsanctioned use of a cell phone. Internal Affairs scheduled an interview with Neal in April 2023 and delayed same until May at his attorney’s request. Shortly thereafter, Neal was informed of the substantiated findings by memo on May 11, 2023. The PNDA was filed and served on May 19, 2023.

Based on the timeline, the charges against Neal were properly filed without violating the forty-five-day rule. The investigation commenced on April 6—the week following information of a violation. Throughout the investigation process and prior to the filing of the PNDA, Neal was fully informed of the investigation by written notice of the investigation. Although the notice specifies the allegation of a violation of facility policy, that does not preclude respondent from a full, formal investigation. As in Farlow, the delay in bringing charges resulted from the delay in interviewing Neal, 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 Neal lost any evidence, was deprived of any potentially exculpatory evidence, or not provided due process. Using the language of Farlow, interviewing Neal 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 May

11, 2023—one week 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, Neal'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 Neal 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

The 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, the 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

The appellant was found to be insubordinate. The New Jersey Administrative Code does not define insubordination. See N.J.A.C. 4A:1-1.3. 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 Neal admittedly, intentionally possessed his cell phone in the jail. His assertion that he was unaware that center control was in a secure area, which I found untruthful, is inconsequential to substantiation of the charge. 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, Neal 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. Neal possessed a cell phone while on duty in the secure area of the jail in violation of the County's policy. Therefore, I **CONCLUDE** that the respondent has proven by a preponderance of the evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty.

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

The subsection of "other sufficient cause" is considered the catchall provision of the regulation. Other sufficient cause is conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Asbury Park v. Dep't of Civ. Serv., 17 N.J. 419 (1955). Here, the County specifically references its policy on personal electronic devices. The policy prohibits both the possession and use of personal electronic devices, including cellular phones. Appellant signed an acknowledgment of the policy. He thereafter admitted possessing a cell phone while on duty, and he possessed same while 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 facts herein are clear: Neal possessed a cell phone in the secure area of the jail while on duty—a clear violation of jail policy. 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 Neal asserts that he was unaware he was in a secure area of the jail, I find this testimony not credible, and the potential consequences of his actions demonstrate a complete disregard for the potential dangers that the presence of unsanctioned cell phones creates. Lastly, Neal was aware of the policy and signed an acknowledgment of it on July 14, 2021.

Although Neal does not have any prior major disciplinary history, his position involves public safety, and his actions had the potential to cause great risk of harm. Grievous harm has previously occurred when a phone was used 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 **ORDERED** that the charges as set forth above are **SUSTAINED**.

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. 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.

February 3, 2025

DATE



DEIRDRE HARTMAN-ZOHLMAN, ALJ

Date Received at Agency:

February 3, 2025

Date Mailed to Parties:

February 3, 2025

DHZ/sg/jm

APPENDIX

Witnesses

For appellant:

Lonzell Neal

For respondent:

Joseph H. Vicari

Exhibits

For appellant:

None

For respondent:

- R-1 Preliminary Notice of Disciplinary Action (31-A)
- R-2 Operations report
- R-3 Notice of investigation
- R-4 Notice of investigation results
- R-5 Pre-Interview Advisory
- R-6 Report of Investigation
- R-7 Cover letter and Final Notice of Employee Disciplinary Action, dated July 24, 2023
- R-8 Policies and Procedures Manual
- R-9 Training Records
- R-10 Sign
- R-11 Memorandum, dated April 6, 2023
- R-12 Emails
- R-13 Memorandum, dated May 11, 2023