

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00757-24

AGENCY DKT. NO. 2024-1395

**IN THE MATTER OF BARBARA CAREY,
MERCER COUNTY CORRECTION CENTER.**

Wayne S. Browne, Esq., for appellant Barbara Carey (Alterman and Associates, LLC)

Aqua Etuk, Assistant County Counsel, for respondent Mercer County Correction Center (Paul R. Adezio, Mercer County Counsel)

Record Closed: April 16, 2025

Decided: May 19, 2025

BEFORE **MAMTA PATEL**, ALJ:

STATEMENT OF THE CASE

On August 22, 2022, appellant Barbara Carey, correctional police officer (CPO), left her assigned post and took an unauthorized three-hour break, putting staff and inmates at risk. Must Carey be disciplined? Yes. Conduct that undermines public respect and confidence in the operation of services while endangering staff and inmates is conduct unbecoming and is subject to discipline. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

PROCEDURAL HISTORY

On September 23, 2022, the Mercer County Correction Center (Mercer County or MCCC) issued Carey a Preliminary Notice of Disciplinary Action. The notice specifies that on August 22, 2022, Carey was assigned to the 11:00 p.m. to 7:00 a.m. (midnight) shift as a property officer but abandoned her post between 1:00 a.m. and 4:00 a.m., contrary to her break schedule. Additionally, the notice states that Carey neglected to stock the property room and failed to inform her supervisor that no property was available. Furthermore, the notice indicates that Carey did not assist on a night when MCCC was already short-staffed. Finally, the notice specifies that when Carey was ordered to write a report regarding her whereabouts, she claimed she felt sick and left work. However, Carey did not have sufficient sick leave and was docked 1.55 hours. (J-1.)

As a result, Mercer County charged Carey with incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12) for violations of the Mercer County Table of Offenses and Penalties, A4 chronic or excessive absenteeism from work without pay, Step 1; B1 neglect of duty, loafing, idleness, or willful failure to devote attention to tasks that would not result in causing danger to persons or property, Step 1; and Section D(6), administrative procedures and/or regulations involving safety and security. (J-1.)

Carey sought a departmental hearing at MCCC, which took place on October 25, 2023, where she presented her defense with the help of union representation. After the hearing, on December 22, 2023, MCCC issued a Final Notice of Disciplinary Action, upholding the charges of conduct unbecoming for abandoning her post on August 22, 2022, during the 11:00 p.m. to 7:00 a.m. shift, in violation of N.J.A.C. 4A:2-2.3(a)(6), and for other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12) for violations of the Mercer County Table of Offenses and Penalties, Section D(6), concerning administrative procedures and/or regulations involving safety and security, resulting in a fifteen-day suspension from work without pay. (J-2.)

The final notice also upheld the charges of incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and violations of the Mercer County Table of Offenses and Penalties, including neglect of duty, loafing, idleness, or willful failure to devote attention to tasks that would not result in causing danger to persons or property, Section B(1), for which Carey received a Written Reprimand. (J-2.)

On December 27, 2023, Carey appealed the determination.

On January 12, 2024, the Civil Service Commission transmitted this case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 14 and 23, 2025, I held the hearing.

On April 16, 2025, the parties submitted written summations, and I closed the record.

DISCUSSION AND FINDINGS OF FACT

The MCCC is a maximum-security jail that houses inmates who have been convicted and sentenced, as well as individuals awaiting trial. The inmate population includes those serving time for nonviolent offenses, such as traffic violations, and those convicted of more serious crimes, including murder. The MCCC consists of both an old jail and a new section. The old and new jail house approximately five hundred inmates. In August 2022, the old jail accommodated approximately 168 inmates located in the left and right wings and the upper and lower levels. Generally, one officer oversees a unit that houses approximately forty-two inmates.

On August 22, 2022, Sergeant Chad Frascella, now a lieutenant, was scheduled to work A Tour from 11:00 p.m. to 7:00 a.m. (midnight shift) and oversaw the old jail as

the receiving and discharge (R&D) officer, reporting to Lieutenant A. Villella, the shift commander. Frascella's duties included making rounds to check on and count the inmates, ensuring that orders were followed, and coordinating break schedules for every officer to maintain adequate post coverage. Each shift begins with a lineup of the staff on duty, involving an inspection to ensure that the officers are in proper uniform, a review of staffing levels, and communication of any announcements that the officers on duty need to know (e.g., inmates on suicide watch, scheduled trips, etc.). On August 22, 2022, Carey, a CPO since September 2014, was assigned as the property officer, a position she was awarded based on her seniority. (J-3.) Carey reported to her shift and post without incident.

Frascella testified that officers are contractually entitled to two half-hour breaks during an eight-hour shift, and twenty-six posts (assignments) must be covered during the midnight shift. On August 22, 2022, three or four posts were closed due to absences, complicating the coordination of breaks and overall coverage in the jail. (J-3.) Frascella explained that maintaining appropriate staffing levels is crucial for the facility's safety and security, as well as ensuring sufficient staff to respond to an incident.

As the property officer, Carey's assignment is governed by MCCC Standards and Operating Procedures 293 (SOP 293). Carey is responsible for securing the property of newly committed inmates, providing showers for new commitments, and distributing admission kits that include bedding, clothing, towels, soap, and shoes. Carey is responsible for ensuring the property room has sufficient supplies for distribution to new commitments. Additionally, Carey manages the distribution of property for discharged inmates. Furthermore, Frascella can utilize Carey to relieve officers in the R&D area during breaks. (J-5.)

Carey testified that after the lineup, she went to the property room and the laundry area to check on supplies but found none to restock the property room. This information was never communicated to Frascella. It is undisputed that Frascella then called Carey to monitor an inmate in the medical unit, where she remained from approximately 11:30 p.m. to 12:00 a.m. Subsequently, Frascella ordered Carey to have an inmate clean the sally port that another inmate had soiled. (J-7.)

The MCCC Standards and Operating Procedures 007 (SOP 007) state that officers must remain "within the institution" during breaks. SOP 007 specifies that breaks can only be taken in the "Officers Dining Room, the alternate break room," and the "Resource Room." It prohibits officers from leaving the building without a supervisor's permission. Additionally, SOP 007 requires officers to adhere to break schedules and return from breaks at the designated time. (J-4.)

The MCCC Standards and Operating Procedures 238 (SOP 238) prohibit officers from leaving their posts without prior permission. SOP 238 emphasizes that the safety and security of the prison, inmates, and staff are paramount. (J-6.)

Carey testified that at 1:00 a.m., she went on break. Without seeking permission or notifying anyone, Carey went to her car to take a break and returned at 4:00 a.m. (J-7; J-11.)

At approximately 4:00 a.m., the Trenton Police Department arrived with five new commitments. Frascella walked past the property room, and when he did not see Carey, he thought she might have been called to relieve another officer by Villella. Frascella then called Villella to ask who was assigned as the property officer. Villella responded that it was Carey. Frascella contacted Carey over the radio to inquire about her location and informed her that they had five new commitments. While in the property room, he noticed it was disorganized and understocked. When Carey reported to the property room, Frascella asked her if she had been pulled for another assignment. Carey responded no, other than the two times he had temporarily reassigned her earlier during the shift. Without further elaboration, Carey told Frascella that she had been on a break from 1:00 a.m. to 4:00 a.m. in her car. Frascella also asked why the property room was not stocked, to which she replied that it was because they didn't have any supplies. Frascella then instructed Carey to write a report regarding her whereabouts and work timeline during the shift. Carey stated she was going to the medical unit to check her blood pressure. Frascella had to pull another officer to assist with the new commitments. (J-11.)

Carey testified that she had been in her car during her break and was awakened by the sound of the gates opening. She was returning to the jail when Frascella called for her over the radio. Carey testified that she was not feeling well before the start of her shift but did not take time off because she did not have enough sick leave available. However, on August 22, 2022, despite having at least two prior opportunities to inform Frascella during other assignments before her break, Carey failed to mention that she was feeling unwell or provide evidence of a medical accommodation that authorized extended break times.

Frascella testified that there have been a few occasions in the past when officers unintentionally fell asleep during their breaks on the midnight shift, and discipline was not enforced. However, the officers took responsibility for their mistakes and expressed sincere apologies.

Carey testified that she did not intend to fall asleep for three hours. Additionally, she felt better after returning from her break. However, upon her return to the property room, when Frascella inquired about her whereabouts and requested a report, Carey stated that she began to feel ill again. She informed him that she was going to the medical center to check her blood pressure. (J-8.) Carey indicated that she spoke to Villella, explaining that she was leaving because she was not feeling well. (J-9.)

Carey left before the end of her shift. After leaving work and while driving home, Carey testified that she suffered a "panic attack" and drove herself to the hospital. Carey provided an "AFTER VISIT SUMMARY" report, which included only the reasons for the visit and a diagnosis of "high blood pressure disorder" and "nontraceable episodic" headache. (J-10 and P-1.) Although the facts in the document establish that Carey went to the emergency room, they fall short of providing sufficient credible evidence to support a finding of any significant illness that could justify a defense for her conduct.

In an attempt to explain her conduct, Carey testified that she is a single parent who cares for a disabled child and was tired from working both mandatory and voluntary overtime while not feeling well. Carey further testified that on September 5, 2022, she was scheduled to have a fibroid removed. However, no hospital report was submitted into

evidence, nor did any hospital personnel or physician testify on Carey's behalf to clarify how any medical issue impacted her conduct on August 22, 2022.

Carey testified that she spoke to Villella, who stated that she would have the charges dismissed. Although Villella did not testify, she wrote a report. In her report, she noted that Carey was on a break for three "straight hours while the jail was short officers with posts closed, which compromised the safety and security of the institution." (J-12.) She did not write that Carey would not be charged.

Frascella was a reliable and trustworthy witness, and his testimony was consistent with his incident report. Carey, on the other hand, was less credible. Consequently, I **FIND** that on August 22, 2022, Carey took an unauthorized, extended break outside the facility without informing anyone of her break, thereby risking the safety and security of the facility, inmates, and staff. I also **FIND** that due to Carey's absence, Frascella was left scrambling to put together five bedrolls for the new commitments. With the facility already short-staffed, he had to shuffle other officers around to complete the intake process, a job that Carey was responsible for performing.

DISCUSSION AND CONCLUSIONS OF LAW

I.

As a threshold issue, Carey argues that the charges against her must be dismissed because the MCCC failed to conduct an internal affairs investigation. This argument, however, lacks merit. Procedural violations made by the appointing authority at the departmental level are considered cured through the de novo hearing received at the OAL. Ensslin v. Twp. of North Bergen, 275 N.J. Super. 352, 361 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995); In re Darcy, 114 N.J. Super. 454 (App. Div. 1971). Since Carey received this de novo hearing, I **CONCLUDE** that any alleged failure has been cured by this hearing.

II.

The Civil Service Act governs the rights and duties of civil service employees under N.J.S.A. 11A:1-1 to 11A:12-6 and N.J.A.C. 4A:2-1.1 to 4A:2-6.3. Civil service employees who commit wrongful acts related to their duties or provide other causes may be subject to major discipline under N.J.S.A. 11A:2-6 and N.J.A.C. 4A:2-2.3(a).

The issues to be determined at the de novo hearing are whether Carey is guilty of the charges brought against her, subject to this appeal, and, if so, the appropriate penalty. The appointing authority bears the burden of proving the charges by a preponderance of credible evidence. In re Revocation of the License of Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The Charges

Carey was charged with N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violating MCCC's administrative procedures and/or regulations D6 related to safety and security.

Law enforcement employees, such as correction officers, represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public" Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In paramilitary-like settings, such as police departments and prisons, it is paramount to maintain strict discipline among employees. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

SOP 007 states that officers must remain "within the institution" during breaks. In this case, Carey left her assigned post without notifying anyone and fell asleep in her car from 1:00 a.m. to 4:00 a.m. Carey not only took an unauthorized extended break but also left the building for her break and did so in her car, which is not in any of the designated areas where officers are permitted to take breaks. In doing so, Carey violated the SOP.

SOP 293 governs Carey's duties and responsibilities as the property officer and states that she is responsible for stocking the property room and distributing the property to inmates upon admission. During her absence, her responsibilities in the property room were neglected. The room was disorganized and not stocked, violating the SOP. Instead of taking responsibility for her absence and assisting, when Frascella ordered Carey to write a report regarding her whereabouts, she initially felt better after returning from her extended nap; however, she fell ill again and left. Although Frascella managed to collect the property needed for distribution to the five new commitments, he had to pull another officer from a different area due to the facility being short-staffed.

SOP 238 governs the conduct of CPOs and emphasizes the paramount importance of safety and security in the prison, for both inmates and staff. Carey violated SOP 238 when she took a three-hour break and was absent from her assigned post without authorization. During this time, no one knew her whereabouts, demonstrating a callous disregard for the safety and security of the facility and its inmates.

Taken together, Carey's actions breached the implicit standard of good behavior expected of a correctional police officer. By removing herself from her assigned post for three hours, going to an undesignated break area without receiving prior approval or informing her supervisor, and failing to maintain the property room, I **CONCLUDE** that Carey engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and N.J.A.C. 4A:2-2.3(a)(12) for her violation of the SOP.

Penalty

The only remaining issue concerns the penalty that should be imposed. New Jersey case law recognizes and accepts the concept of progressive discipline, which promotes uniformity and proportionality in the discipline of public employees. See In re Herrmann, 192 N.J. 19, 33 (2007); In re Restrepo, Dep't of Corr., 449 N.J. Super. 409, 424 (App. Div. 2017). Several factors must be considered in determining the appropriateness of a penalty, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Dev. Ctr., 96 N.J.A.R.2d (CSV) 463. Major discipline may include suspension, removal, or

demotion, depending on the incident complained of and the employee's record. West New York v. Bock, 38 N.J. 500, 522–24 (1962).

Police officers are held to a higher standard than other public employees and must act as ambassadors to the public in “personal integrity and dependability.” In re Phillips, 117 N.J. 567, 576 (1990) (quoting Moorestown, 89 N.J. Super. at 566); see also Bowden v. Bayside State Prison (Dep’t of Corr.), 268 N.J. Super. 301, 305–06 (App. Div. 1993) (Correctional officers must maintain order and discipline to safely run a prison or jail.). As stated by the court in In re Emmons, conduct that tends to destroy public respect for municipal employees and confidence in the operation of public services is deemed conduct unbecoming and is subject to discipline.

Carey was hired in 2014. During her ten years of employment with MCCC, she has faced discipline for multiple violations of time and attendance, with penalties ranging from a written reprimand to an eleven-day suspension. (J-16.) Additionally, Carey received a one-day suspension for a previous violation of administrative procedures and safety and security regulations due to her failure to sign out at the end of her shift. (J-15.)

Moreover, on August 22, 2022, Carey's actions did not meet the high standards required of police officers. On that day, Carey left her assigned post for three hours without prior authorization or notifying anyone of her whereabouts. Additionally, Carey's absence resulted in her failure to restock the property room, which forced Frascella to assume her responsibilities and reassign another officer to assist him, particularly on a day when the facility was short-staffed. Despite Carey's testimony that she was not feeling well, the summary report was vague and failed to confirm any medical issue.

Therefore, considering the impact on the institution regarding Carey's misconduct, the gravity of the offense, and Carey's previous disciplinary record, I **CONCLUDE** that Carey must be suspended.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Carey is suspended for fifteen working days.

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 case. 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 under 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 the other parties.

May 19, 2025

DATE



MAMTA PATEL, ALJ

Date Received at Agency:

Date Mailed to Parties:

MP/sw/jm

APPENDIX

Witnesses

For Appellant:

Barbara Carey, Appellant

For Respondent:

Chad Frascella, Lieutenant, Mercer County Correction Center

Exhibits

Joint:

- J-1 09/23/2022 Preliminary Notice of Disciplinary Action, p. 1
- J-2 12/23/2023 Final Notice of Disciplinary Action, pp. 2–3
- J-3 August 22, 2022, A-Tour Check-in Log, p. 4
- J-4 MCCC Standard Operating Procedures 007, p. 5
- J-5 MCCC Standard Operating Procedures 293, pp. 6–7
- J-6 MCCC Standard Operating Procedures 238, pp. 8–11
- J-7 08/22/2022 Incident Report, Barbara Carey, p. 12
- J-8 08/22/2022 Incident Report, Barbara Carey (4:05 a.m.), pp. 13–14
- J-9 08/22/2022 Incident Report, Barbara Carey (5:00 a.m.), p. 15
- J-10 08/23/2022 Incident Report, Barbara Carey, p. 16
- J-11 08/22/2022 Incident Report, Sgt. Frascella, pp. 17–18
- J-12 09/30/2022 Incident Report, Lt. Villella, p. 19
- J-13 Employee Timesheet: Week of 08/13/2022 – 08/26/2022, pp. 20–21
- J-14 Mercer County Public Safety Table of Offenses and Penalties – Correction Officer, pp. 22–26
- J-15 September 18, 2016, Final Notice of Minor Disciplinary Action, pp. 27–28
- J-16 Employee Disciplinary History, pp. 29–30
- J-17 MCCC 08/22/2022 SV: 00.21 Intake
- J-18 MCCC 08/22/2022 SV: 00.26 R&D Floor
- J-19 MCCC 08/22/2022 SV: 00.37 Sally Port

J-20 MCCC 08/22/2022 SV: 00.39 Search Area
J-21 MCCC 08/22/2022 SV: 00.46 Ramp
J-22 MCCC 08/22/2022 SV: 03.56 Search Area
J-23 MCCC 08/22/2022 SV: 03.58 Ramp
J-24 MCCC 08/22/2022 SV: 04.08 R&D Intake
J-25 MCCC 08/22/2022 SV: 05.14 Master Control

For Appellant:

P-1 After Visit Summary, from RWJ Barnabas, dated August 22, 2022, pp. 1
P-2 Carey timesheets, from July 16, 2022, through August 26, 2022, pp. 2–5

For Respondent:

None