



## STATE OF NEW JERSEY

DECISION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Daniel Costello, Jr.  
Bergen County, Sheriff's Office

CSC Docket No. 2024-1335  
OAL Docket No. CSV 00397-24

ISSUED: AUGUST 13, 2025

The appeal of Daniel Costello, Jr., County Correctional Police Officer, Bergen County, Sheriff's Office, 60 working day suspension, on charges, was before by Administrative Law Judge Susana E. Guerrero (ALJ), who rendered her initial decision on June 27, 2025. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on August 13, 2025, adopted the ALJ's findings of facts and conclusions. However, it did not adopt her recommendation to modify the 60 working day suspension to a 10 working day suspension. Rather, the Commission imposed a five working day suspension.

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

I am persuaded that while there are some sustained violations that warrant discipline, the proposed penalty of a sixty-day suspension is excessive. Several charges here have not been sustained and those that have been sustained are not sufficiently egregious to warrant this level of discipline.

In determining the appropriate level of discipline, I take into account the fact that these events occurred during one shift only nearly eight years ago when Costello was still relatively new to the jail. Since that time, he has had no discipline and he has been promoted to the rank of sergeant. The County trusts Costello's abilities enough not only to promote him, but to assign him to supervise and oversee the same unit, S-1, which is one of the toughest at the jail since it houses high-security inmates. Also, when the County issued the charges and imposed a sixty-

day suspension, it never removed him from that assignment nor did he have to serve that suspension, which is unusual.

Although Costello did not comply with an SOP when he allowed two worker inmates out of their cells for more than four hours, and acted contrary to an Operational Directive when he gave them his leftovers, he testified credibly that this was customary in the jail at the time and there is no evidence that Costello did so for any inappropriate or questionable purpose.

Regarding Costello's failure disable the TCS when he left the station unattended on two occasions (once for only two minutes), he also testified credibly that Lower Control also monitors and controls the TCS at S-1, and that an inmate gaining access to the TCS in S-1 is not as easily achieved as Martorano made it appear in her testimony. While he did neglect his duty to disable the TCS every time he walked away from the station that evening, and that he should receive discipline for this, I am not convinced that his failure created a material safety risk.

Finally, it is undisputed that Costello failed to complete one and one-half post inspections, which are conducted every half hour, and one cell search. Costello did, however, perform most of the required post inspections that day. While Costello noted in the logbook that these post inspections were conducted, when they were not, I could not determine, based on the evidence presented, that Costello intentionally falsified the logbook as the County suggests. While I recognize the importance of maintaining accurate records, particularly in law enforcement, there is simply insufficient evidence here to determine that Costello's inaccurate documentation was intentional and not simply an oversight or error on his part.

Given these considerations, and the fact that Costello had one minor prior discipline, resulting in a five-day suspension, I **CONCLUDE** that progressive discipline is appropriate, and that a sixty-day suspension is excessive. I **CONCLUDE** that a more appropriate penalty here is a ten-day suspension.

Regarding the penalty, similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. 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." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 N.J. 474 (2007). Moreover, the Commission emphasizes that a Police 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).

The Commission is persuaded that the mitigating factors listed by the ALJ support a slightly further reduction in penalty. In this regard, given all of the circumstances, the Commission finds that a more appropriate penalty is a five working day suspension, which is considered minor discipline under Civil Service law and rules, rather than the 10 working day suspension recommended by the ALJ, which is considered major discipline.

Since the suspension has been modified, the appellant is entitled to 55 working days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, he is not entitled to counsel fees. N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth at N.J.A.C. 4A:2-2.12, counsel fees must be denied.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. However, it modifies the suspension to a five working day suspension. The Commission further orders that the appellant be granted 55 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in N.J.A.C. 4A:2-2.10. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority.

However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 13<sup>TH</sup> DAY OF AUGUST, 2025



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Allison Chris Myers  
Chairperson  
Civil Service Commission

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and  
Correspondence

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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 00397-24

AGENCY DKT. NO. 2024-1335

**IN THE MATTER DANIEL COSTELLO, JR.,  
COUNTY OF BERGEN, SHERIFF'S  
DEPARTMENT.**

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**Matthew J. Troiano, Esq.**, for appellant Daniel Costello, Jr. (Einhorn, Barbarito, Frost, Botwinick, Nunn & Musmanno, attorneys)

**Brian M. Hak, Esq.**, for respondent Bergen County (Eric M. Bernstein & Associates, attorneys)

Record Closed: May 13, 2025

Decided: June 27, 2025

**BEFORE SUSANA E. GUERRERO, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Daniel Costello, Jr. (Costello or appellant), a correction officer employed by the County of Bergen, Sheriff's Department (the County), appeals a sixty-day suspension imposed by the County due to his performance on May 27, 2017.

### **PROCEDURAL HISTORY**

The County served appellant with a Final Notice of Disciplinary Action (FNDA) dated November 21, 2023, imposing a sixty-day suspension.

The New Jersey Civil Service Commission (the Commission) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on January 5, 2024, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The hearing scheduled for November 18 and 21, 2024, was adjourned at the request of appellant. The hearing was ultimately held on February 12, 2025, and the parties were given an opportunity to file post-hearing briefs. The briefs were received on May 13, 2025, at which time the record closed.

### **FACTUAL DISCUSSION AND FINDINGS OF FACT**

Costello has been employed by the Bergen County Sheriff's Office since 2014. The incidents at issue occurred on May 27, 2017, while Costello worked as a correction officer at the Bergen County Jail. Costello had one minor discipline prior to May 27, 2017, for which he received a five-day suspension. He has since been promoted to the rank of sergeant and has been responsible for supervising and overseeing the South-1 Housing Unit (S-1) and the other South units since summer 2024.

On May 27, 2017, Costello was assigned to S-1, which houses high-security inmates. He was scheduled to work the 3:00 p.m. to 11:00 p.m. shift, but left at around 9:00 p.m. since he worked overtime prior to the start of his shift. He had been assigned to S-1 for a couple of months.

The County alleges that Costello violated several Standard Operating Procedures (SOPs), Rules and Regulations, Operational Directives and Memoranda while stationed at S-1 on May 27, 2017. An investigation into the events of that day was triggered by allegations made by an inmate, Inmate T., on or around June 1, 2017. Inmate T. reported to Warden Nicholas Grella (Grella), who was a Captain at the time, that on May 27, 2017, he witnessed Costello allow Inmate R. to go into the storage room and retrieve a bag of

commissary that did not belong to him, and that Costello said that he had to appear busy and go into another room so that Inmate R. could take the commissary. Upon receiving this allegation, Grella reviewed surveillance video from May 27, 2017, prepared a memorandum with his findings, and on June 6, 2017, he referred the matter to Internal Affairs for investigation.

The matter was investigated by Detective Jaime Martorano (Martorano). As part of her investigation, Martorano reviewed Grella's memo, Inmate T.'s letter, Costello's S-1 logbook entries, and video surveillance of S-1 for May 27, 2017. She also interviewed Inmate T., Inmate R., Inmate S. (R.'s cellmate), and Costello. She testified that Costello admitted that there were violations, but that he tried to downplay their seriousness. She subsequently prepared a report in late 2017 that led to the filing of a PNDA.

The respondent served the appellant with a PNDA in November 2017 but did not file an FNDA for another six years. The FNDA specifically identifies twelve separate incidents that support the charges filed against Costello. Martorano was the respondent's only witness at the hearing.

The twelve incidents alleged in the FNDA are addressed separately below:

Allowing Inmates to be out of their cells for extended periods of time

Respondent alleges that Costello let inmates remain out of their cells for excessive periods of time on May 27, 2017. Martorano testified that when Costello arrived for duty at 3:00 p.m. on May 27, 2017, there were high security inmates out of their cells who were not due to be out until 5:00 p.m. She testified that Costello violated SOPs when he left the inmates out of their cells for his entire shift even though high security inmates are allowed to be out for only four hours. CD-SOP-15-4.37 provides that high security inmates receive four hours of "out of cell time" per day. Martorano did not specify what inmates Costello allegedly allowed out for extended periods but Costello testified that the inmates who were out were Inmate R. and Inmate M., who were inmate workers in the unit. As workers, these inmates cleaned, served food, retrieved supplies, and assisted the officers. Costello testified that these inmates were given their time out during the 3:00

pm shift and that they were already out when he arrived at S-1. He testified that it was common practice at the facility to allow workers out of their cells for longer than four hours. I **FIND** that on May 27, 2017, Costello allowed two high security inmates who were workers to be out of their cells during the entirety of his shift, which is more than the four hours permitted by CD-SOP-15-4.37. I also **FIND** that Costello testified credibly that, at the time, it was common practice at the jail to allow inmate workers out of their cells for longer than the four hours. A memorandum issued by Grella to all corrections personnel, with the "effective date" of March 27, 2017 acknowledges and addresses the "practice of allowing" S-1 inmate workers to remain out of their cells for extended periods of time.

Allowing an inmate to take another inmate's commissary

Costello is charged with giving Inmate R. permission to receive a bag of commissary from another inmate. Martorano testified that her review of surveillance footage confirmed that Costello allowed Inmate R. to receive another inmate's bag of commissary that had been left in the S-1 storage room. The S-1 storage room is also referred to as the interview room, dayroom, and property storage room. Costello was aware that Inmate L. was being released and asked to give the items in his commissary to Inmate R. once he left. The commissary consisted of snack foods, and Costello testified that he had no reason to believe that it was being bartered between inmates, and did not believe that it would be a violation of any rule to allow Inmate R. to receive these items from an inmate who was being released.

Martorano testified that Costello violated a directive that prohibits the selling or trading of commissary, and that because commissary is for "personal use," it cannot be given away. CD-SOP-07-2.19 indicates that commissary is "intended for personal usage, and not for inmates/detainees to lend, sell or exert influence or authority over other inmates/detainees." Costello disagreed that commissary could never be given away by an inmate being released, and testified credibly that he has seen this many times. I **FIND** that Costello did not participate in the selling or trading of commissary, nor the improper exertion of influence or authority over another inmate. I also **FIND** that while Costello was aware that an inmate who was being discharged left his commissary for another inmate to use, the record is inconclusive that Costello acted improperly or violated any directive,



rule or regulation by permitting this to occur. Further, Martorano agreed that her investigation did not find that Costello ever told Inmate T. that he would walk away and pretend he did not see the exchange of commissary between the inmates, as Inmate T. had alleged.

#### Improperly Providing Inmates with Food

The County charges Costello with providing high security inmates with food from the officer's dining room. Martorano testified that this is not permitted and violates Operational Directive CD-OD-16-16 Ordering/Distribution of Inmate/Detainee Meals. CD-OD-16-16 specifically states that "Food Servers are compensated by being paid or receiving time off of their sentence. Food is not a reward or compensation for working."

Costello testified that on May 27, 2017 he had leftovers from his previous shift and that he gave them to worker Inmates R. and M. at the end of the night. He testified that this was common practice at the jail, and this testimony was not rebutted by the County. I **FIND** that Costello did not comply with CD-OD-16-16 when he gave two inmate workers his leftovers on May 27, 2017. However, I also **FIND** that Costello did not knowingly or intentionally violate any policy, rule or regulation when he gave the inmates his leftovers, and that at the time it was common practice for officers to give inmate workers leftovers.

#### Allowing the dayroom to remain unsecured and allowing inmates to enter unattended

The County charges Costello with improperly allowing the interview room to remain unsecured during his entire shift and for allowing inmates to enter that room unattended, where they took items out of the officer's refrigerator.<sup>1</sup> The County also charges Costello with allowing the dayroom storage room to remain unsecured and unattended for one hour while Inmate R. entered the room.

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<sup>1</sup> Specifically, the County alleges that Costello: "allow[ed] the dayroom interview room (where the razor collection bucket was located) to remain unsecured for his entire shift;" "allow[ed] inmates to enter the dayroom interview room . . . unattended . . . [where they] took utensils and unknown items out of the officer's refrigerator;" "allow[ed] the dayroom storage room to remain unsecure and unattended (for approximately one [1] hour) while he entered the officer's bathroom, conducted two (2) post checks and entered the multipurpose room. While the storage room was unattended, Inmate R. entered the room."

Martorano testified that she viewed video surveillance of two inmates enter the interview room and take items out of the refrigerator, which is only for the officers' use. She testified that allowing these inmates to use it shows favoritism and can cause problems among inmates. She testified that inmates are not permitted in the interview room unattended, in part, because that is where the razor collection bucket is located and this creates a security concern. Costello testified that the interview room is essentially used as a storage room for supplies and that the refrigerator was not just used by officers but was also used to store juices and milk to be distributed to inmates. He also testified credibly that it was typical for workers to access the room and secure supplies with the officer's knowledge, as part of their duties. I **FIND** that while Costello allowed the interview room to remain unlocked and the door open during his shift, the record is inconclusive whether this constitutes a violation of any SOP, rule or regulation. The County did not point to any policy or rule requiring that the interview room be locked at all times, and Costello testified credibly that worker inmates have access to this room, store items in the room, and have access to items through the officer's authorization. Even though the razor bucket was located inside the interview room, I **CANNOT FIND** that Costello neglected his duties or acted improperly by allowing inmate workers access to the room. The County did not present evidence that Costello failed to properly monitor inmates' access to the interview room, or that any inmate took items from the interview room without authorization. I **FIND** that the evidence does not preponderate that Costello improperly allowed inmates unauthorized access to the interview room, nor that any items in the interview room were improperly taken.

#### Failing to Disable the TCS

Martorano testified that Costello failed to "code out," or disable, the Touch Screen Control System (TCS), in violation of an SOP requiring the disabling of the touch screen computer when walking away from the station. The TCS locks and unlocks the unit's doors, turns on lights, phones, etc. The County asserts that Costello failed to disable the TCS when he left the officer's station unattended during his shift. The County cites to SOP CD-SOP-09-4.26 which provides: "At no time should an active (logged-on) TCS be unattended by sworn correctional staff"; and "When leaving the Officers' control station

for any non-emergency activity, the Unit Officer will disable the TCS by leaving it in a stand-by mode.” Martorano expressed concern that an inmate would be able to access the control and open cell doors. She testified that Costello failed to disable the TCS while he was in the bathroom for less than two minutes, and another time when he was walking around the floor.

While Costello concedes that he did not log out of TCS every time he left the desk, he testified that the Lower Control officer is responsible for operating the screen for the S-1 officer. Lower Control is located directly behind the S-1 officer’s desk, and there was a Lower Control officer immediately behind the S-1 station that day. Costello testified that it is the responsibility of the Lower Control officer to maintain control of the S-1 touchscreen for unit operations and that the S-1 officer cannot override or operate that system at all. He testified that a Lower Control SOP indicates that it will remain the responsibility of the Lower Control officer to maintain control of the S-1 Housing Unit touch screen for unit operations, however, the appellant did not provide a copy of this SOP at the hearing.

I **FIND** that even if Lower Control maintains oversight and control over the TCS at S-1, Costello was still required to log out of the TCS when leaving the station unattended pursuant to CD-SOP-09-4.26. I also **FIND** that Costello neglected his duty by failing to disable the TCS, as required by CD-SOP-09-4.26, on two separate occasions on May 27, 2017. The record is unclear how long the TCS remained active and unattended, and I also **FIND** that while Costello did not disable the TCS twice, any unauthorized access to the TCS by an inmate was also being monitored and controlled by Lower Control, which is stationed near S-1 and also shares that responsibility.

#### Failing to Conduct and Properly Document Post Inspections and Cell Searches

The County charged Costello with failing to conduct several post inspections as required by CD-SOP-09-4.28, and for documenting post inspections that were never conducted, in violation of CD-SOP-4.04, which requires that logbooks be accurate and complete. The County also charged Costello with failing to conduct the assigned evening

cell searches and failing to document in the S-1 logbook why he was unable to conduct these searches, in violation of CD-SOP-4.04.

Martorano testified that her review of the surveillance videos show that Costello failed to conduct the required post checks every thirty minutes. She testified that post checks require the officer to walk the entirety of the unit to get a visual of each cell, the common areas, and shower areas. While she agreed that Costello performed the majority of the required post checks, she testified that he documented a check at 1540 of the second tier only, which is not a complete post check; and that he documented but did not actually conduct the checks at 1830 and 1930. Martorano testified that when she first questioned Costello, he acknowledged that every post check was not completed and told her that administration informed the officers not to worry if they did not have enough time to complete all post checks. CD-SOP-09-4.28 states that a proper post inspection requires the officer to walk the entire unit, and that inspections be conducted at least every thirty minutes.

Costello testified that he typically does walk around and conducts these checks every thirty minutes but concedes that on this day he missed one and a half checks between 3:00 p.m. and 9:00 p.m. He testified that he did not recall whether there was a mention of a post check in the logbook that was not done. Costello testified that he did not recall doing, or not doing, post inspections that evening and that the officers were told that if they were busy at the time a thirty-minute post check was due, the officer did not have to do it. I **FIND** that while Costello completed the majority of the required post inspections on May 27, 2017, he failed to conduct one and one-half, and that this constituted a violation of CD-SOP-09-4.28. While the County asserts that he failed to complete two and a half, it did not present surveillance video or any other evidence, apart from Martorano's testimony, to demonstrate Costello's failure to conduct these checks at those specific times. I also **FIND** that Costello did not comply with CD-SOP-4.04 when he inaccurately documented that he completed the one and a half post checks that were never completed, however the evidence does not preponderate that this was done with intent to deceive or falsify.

Martorano also testified that Costello did not conduct his evening cell searches, despite reporting that he had done so. Officers are given three cells or bunks to search by the center command officer. Martorano maintains that when questioned about this, Costello acknowledged that he did not conduct the evening cell searches.

Costello testified that he did searches of cells 19 and 20 in preparation for receiving two disciplinary inmates, but did not do searches of cells 32, 44, 55, as reflected in the Cell Search Report. He could not explain why the three cell searches were checked off on the report, and testified that he did not fill out the report. His testimony was not rebutted by the County. I **FIND** that the evidence preponderates that Costello failed to perform at least one of the three required cell searches. However, since the County did not offer sufficient evidence to demonstrate that Costello filled out the Cell Search Report, I **CANNOT FIND** that Costello falsely documented that he completed cell searches that he never performed.

#### Failing to Properly Inspect Inmate's Razor

The County charges Costello with failing to properly inspect a razor used by an inmate to ensure that it was intact prior to disposing of it in the razor bucket. CD-SOP-05-5.04 addresses the use and disposal of razors and requires the officer to "observe a fully intact (not defaced) razor" before depositing it into the razor bucket.

Martorano testified that officers have the discretion to allow inmates to use razors, but the officer must inspect the blade to ensure that it is intact before disposing of it into the razor bucket. She testified that Costello gave a razor to an inmate during his shift and that when the inmate returned the razor, Costello did not properly inspect it. She testified that Costello was behind the officers' station when the inmate walked by and that he "briefly held it up, placed it down" and then walked to the interview room to dispose of it in the bucket. She testified that due to the distance and because of how quickly the inmate held up the blade, she did not believe that Costello was able to properly inspect it to make sure it was intact. Costello testified that he was able to see the razor and the shaver, and denies that he failed to properly inspect the razor before disposing of it. I **FIND** that the evidence does not preponderate that Costello failed to properly inspect any

razor, or that he violated CD-SOP-05-5.04. The County did not present sufficient evidence to support Martorano's opinion, or this charge.

Events following May 27, 2017 prior to filing of PNDA

After receiving the allegations from an inmate that Costello helped facilitate the theft of commissary on May 27, 2017, Grella reviewed video surveillance from that day and prepared a memorandum dated June 1, 2017 in which he wrote that Costello's acts may violate BCSO Employee Rules and Regulation and SOPs. He also noted, however, that it is unclear whether Costello's actions are common practice at the facility. As part of her investigation, Martorano did not consider whether Costello's actions that day were common practice at the time, and she did not dispute Costello's claim that they were.

The investigation was first assigned to Martorano on June 6, 2017. She obtained Costello's logbook entries on June 9 and it took her several days, but under a month, to review surveillance video footage and summarize her observations. She also conducted inmate interviews as part of the investigation.

On August 24, 2017, ninety-nine days after the matter was assigned to Martorano for investigation, an Internal Affairs Complaint Notification Form was provided to Costello. This advised him that an internal affairs complaint had been made against him and that he would be contacted if an interview was needed. Costello was interviewed on or around October 4, 2017. According to Martorano's report, she then attempted to contact Inmate L. as part of this investigation but learned on October 17, 2017 that Inmate L. would be unavailable until January. While Martorano testified that she did not know how long it took her to complete the investigation, her report was finalized on November 13, 2017 and the PNDA, which was signed by an Executive Undersheriff, was issued on November 20, 2017, seven days later.

For reasons that are not entirely clear, the departmental hearing was not conducted until March 23, 2023, and the hearing officer's decision was not rendered for nearly eight months. The FNDA, which was signed by Warden Grella, was issued and served on November 22, 2023.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). 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). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (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). 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).

Costello asserts in his written summation that the charges against him should be dismissed because the County failed to issue a PNDA in a timely manner. He also maintains that the charges against him cannot be sustained and that the conduct that he was charged with occurred in the normal course of business at the facility. He also maintains that the County targeted him and charged him with conduct that others were regularly engaged in but not penalized for.

The County maintains that while Costello downplays the seriousness of the charges and claims they are a matter of common practice in the jail and that other officers who have committed the same violations either have not been disciplined or have received only minor discipline, he does admit to some of the most serious violations and

admits that his actions were contrary to the SOPs. The County highlights Costello's failure to log out of the TCS before leaving his station unattended; that he admits that he did not perform at least one and one-half post checks; and that he failed to conduct the required cell searches. The County argues that these failures alone justify a sixty-day suspension.

Did the County delay in investigating the matter and fail to issue the PNDA in a timely manner? If so, does this warrant dismissal of charges?

The appellant asserts in his post-hearing brief that the charges against him should be dismissed because the County did not call Grella as a witness to testify as to when he had sufficient information to file the PNDA. However, Grella signed the FNDA, not the PNDA. The PNDA appears to have been signed by an Executive Undersheriff, and neither party called his individual to testify at the hearing.

The appellant argues that the matter should be dismissed because, without adequate explanation and without requesting additional time, Martorano failed to complete her investigation within the forty-five days required by the New Jersey Attorney General's Internal Affairs Policy and Procedure (IAPP). While I agree with Costello that it took the County an unusually long time to complete a rather straightforward investigation involving events that occurred during one officer's shift, I **CONCLUDE** that Martorano's delay does not warrant dismissal of the charges. Even if the investigation did not comply with the IAPP because it took Martorano more than five months to complete the investigation, neither the IAPP nor any law or regulation mandates the dismissal of charges when an investigation is not completed within forty-five days, and I am not persuaded that this delay warrants dismissal.

Costello also cites to N.J.S.A. 40A:14-147, the "45-day rule," which mandates the dismissal of certain charges against an officer when the complaint, i.e., the PNDA here, is filed forty-five days after the date the individual who filed the PNDA obtains "sufficient information" to file. Costello asserts that the matter should be dismissed because the County failed to establish that it complied with the 45-day rule. Martorano's investigative report was finalized on November 13, 2017, and it is evident from the report that she was



still investigating the matter on October 17, 2017 when she attempted to contact Inmate L. for questioning. I **CONCLUDE** that while the investigation was a prolonged one, the County did not violate N.J.S.A. 40A:14-147 since the PNDA was filed only seven days after the investigative report was finalized and there is no evidence to suggest that the Executive Undersheriff had sufficient information to file the PNDA anytime prior to November 20, 2017.

Does the preponderance of the credible and reliable evidence establish that the appellant's actions constitute a violation of the charges set forth in the FNDA?

Costello was charged with violating several Sheriff's Department's Employee Rules and Regulations, SOPs and Operational Directives. He was also charged with violating several provisions of the New Jersey Administrative Code, including: N.J.A.C. 4A:2-2.3(a)(1), Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3), Inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; 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.

Costello is charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform his duties. In this type of breach, an employee performs his or her duties but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). Based on my consideration of the testimony and findings of fact, I **CONCLUDE** that Costello violated N.J.A.C. 4A:2-2.3(a)(1) when he failed to perform certain duties on May 27, 2017. Specifically, he failed to disable the TCS when he walked away from the S-1 station; failed to conduct one and a half post inspections; inaccurately documented that he conducted these inspections that were never performed; and failed to perform at least one of the three required cell searches. I also **CONCLUDE** that because Costello neglected to perform these duties, his actions constitute a violation of N.J.A.C. 4A:2-2.3(a)(7).

"Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, 2009 N.J. AGEN LEXIS 112 (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. Here, Costello neglected to perform certain required duties during his shift on May 27, 2017—he neglected to log out of the TCS every time he walked away from his station; failed to conduct one and one-half post inspections and inaccurately reported that he did; and failed to conduct at least one cell search.

The appellant is also charged with violating N.J.A.C. 4A:2-2.3(a)(7) for unbecoming conduct. "Conduct unbecoming" is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for [government] employees and confidence in the operation of [governmental] services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). The County did not explain in its post-hearing brief how Costello's conduct was unbecoming, and while he may not have complied with certain SOPs or rules, I am not persuaded that his conduct "adversely affected morale or efficiency," or that it destroyed public respect or confidence in the operations of the jail. Consequently, I **CONCLUDE** that Costello's conduct was not unbecoming, and did not violate N.J.A.C. 4A:2-2.3(a)(6).

Costello is charged with "Inability to perform duty," N.J.A.C. 4A:2-2.3(a)(3), a charge which has been upheld where the employee is incompetent to execute his or her

job responsibility. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305 (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county). I **CONCLUDE** that Costello is not incompetent to execute his job duties and that the County has failed to demonstrate how Costello violated N.J.A.C. 4A:2-2.3(a)(3). In fact, the evidence suggests that Costello is fully competent to perform his job duties at the jail. Since this incident in 2017, he has not been disciplined for his performance and he has even been promoted to the rank of sergeant, where he is tasked with overseeing the operations of S-1.

Costello is charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause." "Other sufficient cause" is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, 2014 N.J. AGEN LEXIS 236 (May 19, 2014), adopted, Civil Serv. Comm'n (September 3, 2014), <http://njlaw.rutgers.edu/collections/oal/>. Moreover, "other sufficient cause" can include violations of agency rules, regulations and procedures. Here, I **CONCLUDE** that Costello violated N.J.A.C. 4A:2-2.3(a)(12) because he failed to comply with several SOPs and an Operational Directive on May 27, 2017. Specifically, as stated in the findings of fact above, Costello failed to comply with the following SOPs: CD-SOP-15-4.37, for allowing inmates out of their cells for extended periods of time; CD-SOP-09-4.26, for failing to disable the TCS two times when leaving the station unattended; CD-SOP-09-4.28, for failing to conduct one and a half post inspections; and CD-SOP-09-4.04, for inaccurately documenting that he conducted the one and one-half post inspections. Costello also failed to comply with Operational Directive CD-OD-16-16 for giving his leftovers to two worker inmates during his shift. Therefore, with regard to the SOPS, Operational Directives and Memorandum that Costello was charged with violating in the FNDA, I **CONCLUDE** that the charges relating to violations of CD-SOP-15-4.37, CD-SOP-09-4.26, CD-SOP-09-4.28, CD-SOP-09-4.0 and CD-OD-16-16 are **SUSTAINED**; and that the charges relating to CD-SOP-00-7.01, CD-SOP-05-5.04, CD-SOP-07-2.19, CD-OD-16-15 and MEMO-CD-17-19 are hereby **REVERSED**.

Consequently, I **CONCLUDE** that the charges of Neglect of duty [N.J.A.C. 4A:2-2.3(a)(7)]; Failure to perform duties [N.J.A.C. 4A:2-2.3(a)(1)]; and Other sufficient cause

[N.J.A.C. 4A:2-2.3(a)(12)] are hereby **SUSTAINED**. I also **CONCLUDE** that the charges of Inability to perform duties [N.J.A.C. 4A:2-2.3(a)(3)] and Conduct unbecoming a public employee [N.J.A.C. 4A:2-2.3(a)(6)] are **REVERSED**.

The FNDA also charges Costello with violating several Employee Rules and Regulations. The County did not provide a copy of these Rules and Regulations, Martorano did not testify to these, and the County's post-hearing brief does not address any of them. Consequently, I **CONCLUDE** that the charges addressing violations of Employee Rules and Regulations, GO-00-1.2, are **REVERSED**.

### **PENALTY**

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, or demotion. Bock, 38 N.J. at 522-24.

The County argues that a sixty-day suspension is warranted given that Costello admits to two of the most serious violations—failing to conduct at least one and one-half post checks and incorrectly stating in the logbook that he had; and failing to disable the TCS when he left the officer's station unattended. The County argues that this, together with the other violations Costello is charged with, justify this discipline. Costello maintains that the proposed penalty is excessive, violates the notion of progressive discipline, and that, at most, minor discipline should be imposed.

I am persuaded that while there are some sustained violations that warrant discipline, the proposed penalty of a sixty-day suspension is excessive. Several charges here have not been sustained and those that have been sustained are not sufficiently egregious to warrant this level of discipline.

In determining the appropriate level of discipline, I take into account the fact that these events occurred during one shift only nearly eight years ago when Costello was still relatively new to the jail. Since that time, he has had no discipline and he has been promoted to the rank of sergeant. The County trusts Costello's abilities enough not only to promote him, but to assign him to supervise and oversee the same unit, S-1, which is one of the toughest at the jail since it houses high-security inmates. Also, when the County issued the charges and imposed a sixty-day suspension, it never removed him from that assignment nor did he have to serve that suspension, which is unusual.

Although Costello did not comply with an SOP when he allowed two worker inmates out of their cells for more than four hours, and acted contrary to an Operational Directive when he gave them his leftovers, he testified credibly that this was customary in the jail at the time and there is no evidence that Costello did so for any inappropriate or questionable purpose.

Regarding Costello's failure to disable the TCS when he left the station unattended on two occasions (once for only two minutes), he also testified credibly that Lower Control also monitors and controls the TCS at S-1, and that an inmate gaining access to the TCS in S-1 is not as easily achieved as Martorano made it appear in her testimony. While he did neglect his duty to disable the TCS every time he walked away from the station that evening, and that he should receive discipline for this, I am not convinced that his failure created a material safety risk.

Finally, it is undisputed that Costello failed to complete one and one-half post inspections, which are conducted every half hour, and one cell search. Costello did, however, perform most of the required post inspections that day. While Costello noted in the logbook that these post inspections were conducted, when they were not, I could not determine, based on the evidence presented, that Costello intentionally falsified the

logbook as the County suggests. While I recognize the importance of maintaining accurate records, particularly in law enforcement, there is simply insufficient evidence here to determine that Costello's inaccurate documentation was intentional and not simply an oversight or error on his part.

Given these considerations, and the fact that Costello had one minor prior discipline, resulting in a five-day suspension, I **CONCLUDE** that progressive discipline is appropriate, and that a sixty-day suspension is excessive. I **CONCLUDE** that a more appropriate penalty here is a ten-day suspension.

### **ORDER**

Accordingly, it is **ORDERED** that the charges of Neglect of duty (N.J.A.C. 4A:2-2.3(a)(7), Failure to perform duties (N.J.A.C. 4A:2-2.3(a)(1), and Other sufficient cause (N.J.A.C. 4A:2-2.3(a)(12) for failing to comply with CD-SOP-15-4.37, CD-SOP-09-4.26, CD-SOP-09-4.28, CD-SOP-09-4.0 and CD-OD-16-16 are **SUSTAINED** and that all other charges be **REVERSED**; and that the proposed sixty-day suspension be reduced to a ten-day suspension.

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.

\_\_\_\_\_  
June 27, 2025  
DATE

  
\_\_\_\_\_  
SUSANA E. GUERRERO, ALJ

Date Received at Agency:

\_\_\_\_\_  
June 30, 2025

Date Mailed to Parties:

\_\_\_\_\_

jb

**APPENDIX**

**WITNESSES**

**For Appellant:**

Daniel Costello, Jr.

**For Respondent:**

Detective Jaime Martorano

**EXHIBITS**

**For Appellant:**

None

**For Respondent:**

- R-1 Final Notice of Disciplinary Action dated November 21, 2023
- R-2 Memo from Lt. Giustra to Captain Grella dated June 1, 2017
- R-4 Letter from Inmate N. Turner to Captain Grella
- R-4 Internal Affairs Investigation Report dated November 13, 2017
- R-5 Not in evidence
- R-6 Cell Search Report dated May 27, 2017
- R-7 Logbook dated May 27, 2017
- R-8 Not in evidence
- R-9 Not in evidence
- R-10 Standard Operating Procedures (SOPs) and Operational Directives
- R-11 Costello DMS
- R-12 Notice of Minor Disciplinary Action dated September 20, 2016