



STATE OF NEW JERSEY

In the Matter of Shawn Kelly,
Hudson County, Department of
Corrections

CSC Docket No. 2024-2526
OAL Docket No. CSV 09047-24

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: AUGUST 13, 2025

The appeal of Shawn Kelly, County Correctional Police Officer, Hudson County, Department of Corrections, 30 working day suspension, on charges, was heard by Administrative Law Judge Daniel J. Brown (ALJ), who rendered his initial decision on July 7, 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 and his recommendation to modify the 30 working day suspension to a 20 working day suspension.

Since the suspension has been modified, the appellant is entitled to 10 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 major 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

20 working day suspension. The Commission further orders that the appellant be granted 10 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. Proof of income earned 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 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 13TH DAY OF AUGUST, 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 09047-24

AGENCY DKT. NO. 2024-2526

**IN THE MATTER OF SHAWN KELLY,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS.**

Michael P. DeRose, Esq., for appellant (Crivelli, Barbati and DeRose, L.L.C.,
attorneys)

Daniel W. Sexton, Assistant County Counsel, for respondent (Alberico De Pierro,
County Counsel)

Record Closed: June 10, 2025

Decided: July 7, 2025

BEFORE **DANIEL J. BROWN**, ALJ:

STATEMENT OF THE CASE

On October 10, 2021, the appellant, a corrections officer, was arrested and charged with criminal mischief and harassment arising out of an incident with his mother at their residence in Bayonne, New Jersey. The criminal charges were dismissed in Bayonne Municipal Court on August 8, 2023. Should the appellant be disciplined? Yes. Under N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to discipline for unbecoming conduct when the conduct at issue was a 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

PROCEDURAL HISTORY

On February 5, 2024, Hudson County Department of Corrections (Hudson) served appellant with a Preliminary Notice of Disciplinary Action (PNDA). In its notice, Hudson charged the appellant with incompetency, inefficiency or failure to perform duty in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); 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).

In that notice, Hudson specified, in pertinent part, that on October 16, 2021, the appellant was arrested by the Bayonne Police Department and charged with criminal mischief and harassment. Additionally, the notice claimed that the appellant's mother stated that she was afraid for her life because the appellant had a gun and broke the front door to his apartment. The PNDA reflected that the criminal charges were disposed of on August 8, 2023, in Bayonne Municipal Court. A certificate of disposition reflects that the charges were dismissed.

The PNDA sought discipline in the form of an indefinite suspension or removal, and the appellant requested a departmental hearing.

On April 17, 2024, Hudson conducted a departmental hearing. The hearing officer rendered a decision sustaining all the charges. The hearing officer called for the appellant to serve a thirty-day suspension and complete an anger management program.

On May 20, 2024, the appellant appealed the FNDA.

On June 28, 2024, the Civil Service Commission transmitted the case to the Office of Administrative Law (OAL) 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. The OAL received the case the same day.

I was assigned to the case on July 8, 2024. I held prehearing conferences with the parties under N.J.A.C. 1:1-13.1 on July 16, 2024, and September 19, 2024, to discuss availability of dates for the hearing, the nature of the proceeding, the issues to be resolved, and any unique evidentiary problems. I permitted additional time for discovery, and I scheduled the hearing for December 16, 2024. Counsel for the appellant requested an adjournment of the hearing date. I granted the adjournment request and rescheduled the hearing for March 20, 2025.

The hearing was held on March 20, 2025. At the request of the parties, I kept the record open for the receipt of transcripts and written summations.

On June 10, 2025, I received the written summations from the parties and closed the record.

DISCUSSION AND FINDINGS OF FACT

Based upon the testimony provided, and my assessment of its credibility, together with the documents submitted, and my assessment of their sufficiency, I make the following **FINDINGS of FACT**:

Officer Edward Cook of the Bayonne Police Department testified that, on October 16, 2021, at around 11:20 A.M., he arrived at 576 Avenue A in Bayonne on a report of an incident between the appellant and his mother, Carol Kelly. The residence is a one family house that is co-owned by the appellant and his mother. Ms. Kelly told the officer that the appellant was downstairs in his apartment and that she was afraid because the appellant had a gun and had broken the door to his apartment. Ms. Kelly sought a temporary restraining order (TRO), which was issued. Officer Cook and another officer walked to the entrance of the apartment located downstairs. The officers were met by the appellant, who stated that he was a corrections officer, and he had a handgun which was locked in his bedroom. Officer Cook observed the damaged door. Officer Cook testified that the

appellant's handgun was properly stored and that there was no allegation that the appellant used the handgun during the incident. Officer Cook testified that there was no allegation of physical violence toward the appellant's mother and that she did not have any signs of injury.

The officers asked the appellant to step outside to discuss the incident and the appellant complied. The appellant told the officers that he was arguing with his mother about a loan that was used to refinance their house. The appellant told the officers that the issue of the home loan was a constant source of tension between him and his mother, and they had argued about it before. The appellant also told the officers that he was performing renovations to his apartment and that he was frustrated by the renovations which led to the damage to the door. Officer Cook described the appellant as cooperative during Officer Cook's questioning of him.

The appellant testified that, on the day of the incident, he was removing a couch from his basement apartment and the couch wouldn't fit through the door. The appellant testified that he was able to get the couch through the door, but the process broke the door a little bit. The appellant testified that he attempted to take the screws out of the door to remove it but was unsuccessful. The appellant stated he broke the door to remove it and then placed it outside the residence, in the driveway with the couch. This was also captured by the body-cam footage. The appellant testified that his mother was upstairs and did not see him break the door. The appellant admitted that his behavior on the date of the incident did not comport with his responsibility to act as an Officer should, whether on or off duty. The appellant acknowledged that he should face a suspension for his conduct and the suspension should be for six days. I give great weight to the appellant's admission and his acknowledgement that he should be suspended for his conduct. I **FIND** that he testified credibly that his conduct was beneath that expected of an off-duty corrections officer.

The appellant was arrested and charged with criminal mischief and harassment. The appellant notified his immediate supervisor with the Department of Corrections about the incident and filed a report about the incident on October 17, 202. The criminal charges issued against the appellant were dismissed in Bayonne Municipal Court on August 24,

2023, based upon the wishes of the appellant's mother and the fact that she would not cooperate with the prosecution of the case. The appellant continued to work as a correction officer during the pendency of the criminal charges, but he was placed on a do not arm list. Additionally, no final restraining order was issued against the appellant because his mother asked to have the TRO dismissed.

Captain Paul Morales conducted an internal affairs (IA) investigation into this incident. As part of his investigation, Captain Morales reviewed the criminal summons and complaint lodged against the appellant. Captain Morales also reviewed Officer Cook's incident report and body cam footage. Additionally, Captain Morales reviewed the report that the appellant authored about the matter. Captain Morales attempted to speak to Officer Cook and the appellant's mother, but he was unsuccessful in doing so. Following his investigation, Captain Morales recommended that disciplinary charges be brought against the appellant, and that the appellant be terminated because of those charges.

The appellant's disciplinary history was also made part of the record through exhibit R-11. The appellant has been employed by Hudson since December 2018. The appellant faced fines for absenteeism on four separate occasions in 2023 and once in 2020. On January 3, 2024, the appellant was suspended for seven days for insubordination and neglect of duty. The seven-day suspension was the appellant's only occurrence of major discipline. In mitigation, the appellant introduced P-2 into evidence, which is a certificate that documents that he successfully completed an anger management course. Additionally, the appellant introduced P-3 into evidence, which shows that he started a not-for-profit organization in 2023 to benefit the youth of his community.

DISCUSSION AND CONCLUSIONS OF LAW

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:2-21;

N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Appellant's status as a police officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). Police 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." Township of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

Hudson charged the appellant with incompetency, inefficiency or failure to perform duty; insubordination; conduct unbecoming a public; neglect of duty; and other sufficient cause.

"Conduct unbecoming a public employee" is an elastic phrase encompassing conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). Further, misconduct does not require that the employee violates the criminal code, a written rule, or a policy. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). The complained-of conduct and its attending circumstances need only "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959) have already found that the actions of the appellant were beneath those expected of a corrections officer. The appellant's conduct adversely affects the public interest and the public's standard of decency. Therefore, I **CONCLUDE** that a preponderance of credible evidence exists to demonstrate that Hudson sustained its burden on its charge that the appellant conducted himself in a manner unbecoming that of a public employee.

I **CONCLUDE** that the remaining charges are duplicative. Therefore, I **CONCLUDE** that a preponderance of evidence does not exist to sustain these charges. As a result, all remaining charges are **DISMISSED**.

The next question is the appropriate level of discipline that the appellant should face. A progressive discipline system has evolved in New Jersey to provide job security and protect employees from arbitrary employment decisions. Progressive discipline is an appropriate analysis for determining the reasonableness of the penalty. See West New York v. Bock, 38 N.J. 500, 523–24 (1962). The question upon appellate review is whether such punishment is “so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness. In re Carter, 191 N.J. 474, 484 (2007) (quoting In re Polk, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Indeed, bypassing progressive discipline occurs only when the misconduct is severe, rendering the employee unsuitable for continuation in the position or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007).

In this case, the appellant acknowledged that a suspension should be imposed, although the appellant thought the suspension should only be for six days. I disagree. I believe that a progressive discipline analysis calls for a penalty higher than the seven-day suspension that the appellant received in 2024. In Hudson’s written summation, Hudson asks for a one-hundred-and-twenty-day suspension, arguing that the appellant’s conduct showed an absence of any insight by the appellant into his behavior. I disagree. I believe that the fact that the appellant voluntarily completed counselling shows a great deal of insight by the appellant into his behavior. Additionally, I believe that a one-hundred-and-twenty-day suspension is grossly excessive.

The appellant’s disciplinary history shows minor discipline for absenteeism on four separate occasions in 2023 and once in 2020. On January 3, 2024, the appellant received major discipline, in the form of a seven-day suspension for insubordination and neglect of duty. The seven-day suspension was the appellant’s only occurrence of major discipline. I note that the appellant voluntarily completed counselling after this incident, and I give that great consideration to that in mitigation of penalty.

Hudson imposed a thirty-day suspension as part of the FNDA, but I **CONCLUDE** that the appellant should receive a lesser penalty under a progressive discipline analysis. I **CONCLUDE** that a suspension is necessary based upon the appellant's misconduct and the length of his disciplinary history, including both major and minor discipline. However, I **CONCLUDE** that a thirty-day suspension is excessive.

For those reasons, I **CONCLUDE** that a twenty-day suspension strikes a balance between the appellant's misconduct, the respondent's need to ensure compliance with its policies, and the public interest.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the appellant's appeal is denied and that a twenty-day suspension is imposed.

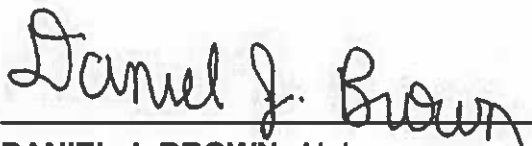
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

July 7, 2025

DATE



DANIEL J. BROWN, ALJ

Date Received at Agency:

July 7, 2025

Date Mailed to Parties:

July 7, 2025

dr

APPENDIX

Witnesses

For Appellant:

Shawn Kelly

For Respondent:

Paul Morales

Edward Cook

Exhibits

Joint:

J-1a PNDA dated 2/5/2024

J-1b FNDA dated 5/10/2024

For Appellant:

A-1 Certificate of Disposition in Municipal Court Case

A-2 Certificate of Completion for Anger Management

A-3 Documents related to the formation of the non-profit that appellant founded

For Respondent:

R-1a Internal Affairs Report dated November 8, 2024

R-1b Summary and Conclusion Report

R-2 Arrest Report dated October 16, 2021

R-3 Incident Report dated October 16, 2021

R-4 Supplementary Domestic Violence Offense Report

R-5 Not in Evidence

R-6 Complaint

R-7 Not in Evidence

R-8 Request for Disciplinary Action

R-9 Custody Staff Rules and Regulations Manual

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R-10 Incident Report by Petitioner dated October 16, 2021

R-11 Employee Profile

R-12 Body Cam footage