



**STATE OF NEW JERSEY**

In the Matter of Lynn Tyson, Adult  
Diagnostic and Treatment Center,  
Department of Corrections

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-512  
OAL Docket No. CSV 08014-22

**ISSUED: SEPTEMBER 10, 2025**

The appeal of Lynn Tyson, Senior Correctional Police Officer, Adult Diagnostic and Treatment Center, Department of Corrections, 10 working day suspension, on charges, was heard by Administrative Law Judge Sarah H. Sargent (ALJ), who rendered her initial decision on July 25, 2025. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on September 10, 2025, adopted the ALJ's Findings of Fact and Conclusions and her recommendation to reverse the 10 working day suspension.

As mentioned above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them unpersuasive in all respects. In this regard, the appointing authority argues, in essence, that the appellant stipulated that she engaged in the misconduct alleged. The Commission rejects this assertion. While the appellant did apparently admit to the misconduct in a joint stipulation of facts, the ALJ reconciled this inconsistency based on the credible testimony in the record. Specifically, the ALJ found that Tyson testified on that issue. In this regard, the ALJ notes that:

On redirect, Tyson clarified that while she signed the Joint Stipulation of Facts (J-2) indicating 'The Petitioner stated she knew about the locker with the unauthorized lock and did not report it to her supervisor,' prior to the investigation, she did not know that the lock was unauthorized. (T2-36.) Tyson also had not seen the lock itself at any time after the investigation began. (T2-37.) On recross, Tyson testified

that at the ADTC, ‘you see a lock, you just see a lock. You don’t turn it around to say it’s personal or it shouldn’t have been there. . . . I’m taking it as it’s authorized because it’s a lock.’ (T2-38.)

Later, the ALJ specifically found all of Tyson’s testimony credible.

In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 *N.J.* 108 (1997). “[T]rial courts’ credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record.” *See also, In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ’s decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). Upon its review and notwithstanding the appointing authority’s arguments in the exceptions, the Commission finds no persuasive evidence in the record or the exceptions to demonstrate that the ALJ’s findings and conclusions based predominantly on the above determinations were arbitrary, capricious or unreasonable.

Since the suspension has been reversed, the appellant is entitled to 10 working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*.<sup>1</sup> Moreover, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

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 counsel fees are finally resolved.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified and reverses that action. 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*. The Commission also orders reasonable

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<sup>1</sup> The ALJ indicates that the appellant served only six of the 10 days of suspension. If true, the appellant would only be entitled to six days of back pay or its equivalent.

counsel fees pursuant to *N.J.A.C.* 4A:2-2.12(a). Proof of income earned, and an affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C.* 4A:2-2.12(b), the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees 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 10<sup>TH</sup> DAY OF SEPTEMBER, 2025




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Allison Chris Myers  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 08014-22

AGENCY DKT. NO. 2023-512

**IN THE MATTER OF LYNN TYSON,  
ADULT DIAGNOSTIC AND  
TREATMENT CENTER, DEPARTMENT  
OF CORRECTIONS.**

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**Raymond C. Staub**, Esq., for appellant Lynn Tyson (Destribats Campbell Staub  
& Schroth, LLC)

**Rebecca Solano**, Legal Specialist, Office of Employee Relations, for respondent  
New Jersey Department of Corrections, pursuant to N.J.A.C. 1:1-5.4(a)(6)

BEFORE **SARAH H. SURGENT**, ALJ:

Record Closed: May 28, 2025

Decided: July 25, 2025

**STATEMENT OF THE CASE**

Appellant Lynn Tyson (Tyson) appeals from respondent Adult Diagnostic and Treatment Center, Department of Corrections' (Department) disciplinary action issuing her a ten-day suspension for failing to report the presence of an unauthorized personal combination lock on a locker inside the "map yard shack," the post overseeing the movement of facility residents where she served two days per week. Tyson seeks

compensatory time for the six days served of her ten-day suspension as well as attorneys' fees. The Department maintains that major discipline was warranted because Tyson, as the two-day "bidded officer" assigned to the map yard shack post, engaged in conduct unbecoming a public employee and violated facility policy regarding safety and security.

### **PROCEDURAL HISTORY**

On April 28, 2022, the Department served Tyson with a Preliminary Notice of Disciplinary Action (PNDA), notifying Tyson of the charges against her: (1) N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; (2) N.J.A.C. 4A:2-2.3(a)(12), other general causes; (3) HRB 84-17 C11, conduct unbecoming a public employee; (4) HRB 84-17 E1, violation of a rule, regulation, policy, procedure, order, or administrative decision; and (5) HRB 84-17 D7, violation of administrative procedures and/or regulations involving safety and security. (J-2.) The PNDA describes the incident giving rise to the charges as follows:

Numerous contraband items were seized from the Special Treatment Unit (STU) Movement/MAP Yard shack on March 17, 2022. Investigation into this contraband indicates that you were aware of the locker in your assigned area, which was secured with a personal lock. You failed to report this to a supervisor and overlooked possible security issues. This is a violation of policy, procedure, security regulations, and constitutes conduct unbecoming a public employee.

[J-2.]

After a Departmental hearing on August 9, 2022, the Department sustained all of the charges. (J-2.) By a Final Notice of Disciplinary Action (FNDA) dated August 26, 2022, the Department notified Tyson accordingly and imposed a penalty of suspension for ten working days. (J-2.)

On September 2, 2022, Tyson timely requested a hearing. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on September 14, 2022, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Settlement conferences were held on November 1, 2022, and

November 29, 2022, but the matter did not settle. After several pre-hearing conferences, the matter was scheduled to be heard on October 5 and 6, 2023, but was adjourned for a conflict. After additional status conferences, the hearing ultimately took place on September 19 and 20, 2024. The record was held open to allow the parties to order the transcript of the hearing and submit post-hearing briefs. The transcripts were not ordered until March 4, 2025. The parties were given a deadline of May 29, 2025, to submit briefs, and at that time briefs were submitted and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

These salient points are not in dispute. I therefore **FIND** the following as **FACT**.

Tyson was hired by the Department on March 12, 2005, and is a Senior Correctional Police Officer at the Adult Diagnostic and Treatment Center (ADTC). She is a STU Movement Two-Day “Bidded Officer”<sup>1</sup> assigned to the map yard shack. Specifically, on March 1 and March 15, 2022, Tyson was assigned to that post. During the period from March 1 to March 17, 2022, four other Custody Officers were assigned to the same post with one assigned as the Five-Day “Bidded Officer” and the other three working as a coverage assignment. On March 17, 2022, an inspection of the map yard shack revealed several contraband items in plain view and inside a locker with an unauthorized lock attached. Tyson was interviewed and administered her Weingarten rights in the presence of her union representative. She stated that she knew about the locker with the unauthorized lock and did not report it to her superior. An Incident Investigation and Report authored by Lieutenant Douglas Stark (J-3) was completed on April 21, 2022.

Following the report, Tyson was charged with the following in the Preliminary Notice of Disciplinary Action dated April 28, 2022 (J-2):

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<sup>1</sup> As explained by testimony at the hearing, a “bidded officer” is an officer who has specifically chosen their post within the facility by bidding on the given post. Officers can place bids to be either a five-day officer on a post (effectively making it their full-time post) or a two-day officer on a post (effectively “relieving” the five-day officer during the two days per week the five-day officer is not on the post).

N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee;  
N.J.A.C. 4A:2-2.3(a)(12) Other general causes;  
HRB 84-17 C11 Conduct unbecoming a public employee;  
HRB 84-17 E1 Violation of a rule, regulation, policy, procedure, order, or administrative decision;  
HRB 84-17 D7 Violation of administrative procedures and/or regulations involving safety and security.

The charges were substantiated in the Final Notice of Disciplinary Action dated August 26, 2022 (J-2).

### **SUMMARY OF RELEVANT TESTIMONY**

#### **KEITH LONEY**

Keith Loney (Loney), a Sergeant at the ADTC, testified on behalf of the Department. as follows. Loney is a sergeant in the STU, which has a population of approximately four hundred inmates receiving treatment for sexual crimes. (T22.) As a sergeant, he oversees the presence of other officers, including Tyson, as well as the movement of inmates. (T23.) Officers observe the movement of inmates from a control point known as the “map yard shack.” (T27.) The map yard shack is a structure “between the northwest and southeast units” of the ADTC where officers sit to observe the movement of inmates between housing units and other units, such as the kitchen, medicine line, and the ADTC yard. (T27.) Movement officers “working on first shift” have access to the shack. (T40.) Loney could not recall when questioned if the shack itself is locked from the outside. (T40.) Inside the shack is one “regular state locker” standing about six feet tall. (T42.) The locker is available for officers to store any authorized supplies such as a coat or hat. (T45.) The map yard shack locker should be secured with a “state lock” that “can take a state key” so that a supervisor can open the locker as necessary. (T45.)

On March 17, 2022, Associate Administrator Cruthers asked Loney to escort him to the area between the kitchen and the map yard shack. (T25.) Cruthers and Loney

then went to the kitchen area, followed by the map yard shack. Inside the map yard shack, Loney observed various contraband items in plain view. (T27.) A TV, space heater, DVD player, and personal microwave were in plain view inside the map yard shack. (T33.) The locker inside the map yard shack was locked with a lock not provided by the state. (T27.) State locks have a keyhole on the back; this lock did not. (T27.) Cruthers ordered Loney to remove the lock. (T28.) Loney sent other officers back to STU control for bolt cutters to remove the lock. (T27.) Inside the locker were numerous other items that were not authorized to be in the map yard shack. (T27.) Loney ordered another officer to confiscate the items, which the officer did after searching the area. (T28.) The items were then inventoried, reported, photographed, and removed. (T28.) Loney authored the Special Custody Report (J-3) that cataloged the confiscated contraband items found both in plain view and inside the locker. (T31.) The report did not specifically indicate whether the majority of the items were found in plain view or in the locker. (T34.) Loney also signed off as a Supervising Officer on the Seizure of Contraband Report (J-8). (T59.) The Seizure of Contraband Report listed all items that were seized from the map yard shack as contraband, which Loney confirmed. (T63-T66). The map yard log book was seized from the shack “to be checked,” and was listed in the report, but would not otherwise be considered contraband. (T63.)

On cross-examination, Loney confirmed that he was not the “lead investigator” into the contraband found in the map yard shack and that he followed “standard procedure” based on existing internal management procedures when photographing the contraband. (T68.) Loney also was unable to produce the lock itself or any photographs of the lock prior to its removal. (T68.) There were no pictures of the shack or locker prior to the search and the removal of the contraband items. (T69.) Loney testified that an officer “should be able to determine” the difference between a state lock and an unauthorized lock “even without seeing the back” of the lock. (T71.)

Regarding the investigation, Loney confirmed that he entered the map yard shack on March 17, 2022 at Cruthers’ request. (T77-T78.) As a supervising officer, Loney escorted Cruthers to the kitchen area and the map yard shack because Cruthers requested to see them. (T78.) Loney did not interview Tyson as part of the charges arising out of the March 17 incident. (T78.) Loney could not confirm which larger



contraband items were in plain view when he and Cruthers entered the shack. (T79-81.) He also could not confirm how long the larger items in plain view, such as the microwave, TV, and box fan had been in the shack prior to entering with Cruthers. (T81.) He stated that, because only first shift officers work the map yard shack during first shift, no officer worked in the shack during his shift and therefore he did not supervise any officers in the map yard shack. (T81.) Loney did not know if the visible contraband items outside the locker were present on March 1 or 15 during Tyson's shifts, nor did he know what officer was stationed in the map yard shack on March 17. (T82.)

Loney clarified that "every post has a log book to keep records," mostly to document when movements occur and who moves through an area at a given time. (T82.) During a shift when an officer is in the map yard shack, the officer's supervising sergeant should sign the log book twice, though doing so is "discretionary." (T90.) The map yard shack log book was only removed from the shack as contraband for investigation purposes and otherwise remains in the map yard shack. (T93.) Loney also clarified that certain items found in plain view in the map yard shack that were confiscated and determined to be contraband during the investigation could, in some instances, be found in plain view in other locations at the ADTC facility. (T85-86.) For example, there is a TV in the front entrance of the facility to "make it more ... comfortable and more modern," but Loney noted that such devices and items may not be permitted at an officer's post and that post orders may state what an officer can and cannot have at their post. (T86-87.)

Loney testified that any "officer, sergeant, or otherwise" should have known that the lock found in the map yard shack was not an authorized lock. (T93-94.) Loney could not confirm whether any other sergeant visited the map yard shack during first shift on March 17. (T91.) He also could not confirm how long the lock had been present in the map yard shack prior to March 17. (T94.)

On my examination, Loney clarified that a state lock would have a combination dial on the front and a master keyhole on the back that would only be visible if the lock were lifted and turned upside down. (T96.)

**DOUGLAS STARK**

Douglas Stark (Stark), current Assistant Superintendent at East Jersey State Prison, testified on behalf of the Department as follows. Previously, Stark served as an officer, a sergeant, and a Lieutenant with the Department of Corrections prior to being promoted to Assistant Superintendent. (T100.) In a previous role, Stark oversaw Tyson at the ADTC and was assigned to investigate the March 17 matter. (T100-101.) Stark authored the Incident Investigation and Report (J-9) regarding March 17. (T-101.) He was assigned to conduct the investigation and subsequently “collected the reports by staff involved in the incident, the seizure and contraband reports, photographic evidence, log book entries for the dates in question, facility schedules for staffing, and statements that were given by the parties involved.” (T103.) Schedules and log books were used to verify what staff worked the shifts in question. (T103.) In general, log books document “staff members on and off duty,” inmates in a given area, “supervisor tours, accountability of keys” and other incidents occurring that day. (T103.)

In his investigation report, Stark included “what staff were there on the day in question, security deficiencies, other things that staff may or may not have done ... in violation of the internal management procedures.” (T104.) He recalled interviewing three sergeants and at least three officers, including Tyson. (T104.) Stark interviewed Tyson in the Command Post at the ADTC and provided a list of “probably seven or eight questions” as well as “pictures of the evidence, maybe her report ... maybe the initial reports” to Tyson and her union representative. (T104-105.) Stark confirmed the pictures were taken by Loney on March 17 after the contraband had been removed. (T112-113.) Stark remembered that Tyson answered questions with one-word answers and denied having any knowledge of the contraband. (T-105.) His investigation concluded that Tyson did not bring in the contraband, but possibly knew of the contraband due to her “having never [notified] a supervisor” and failing to report the lock and the visible contraband items. (T106.)

On cross-examination, Stark noted that his investigation did not determine whether the contraband present in the map yard shack on March 17 was present on either March 1 or March 15. (T109.) He also could not confirm whether the lock was present in the

shack on March 15. (T112.) He clarified that the “first shift” during which the map yard shack is manned by an officer lasts from six o’clock in the morning through two o’clock in the afternoon. (T110.) In the map yard shack, the primary officer on duty is the “bided” officer, and a “relief” officer is also stationed. (T111.) The map yard shack also differs from other areas, as there may not be an officer posted in the shack at all times. (T115.) Stark believed Tyson to be the relief officer stationed in the map yard shack between March 1 and March 17. (T111, T114.) On both March 1 and March 15, there were four other officers stationed in the shack for at least one shift. (T111.) Stark interviewed the other officers, who indicated that “they did not recognize that there was contraband” in the shack. (T112.) Stark did not think any of the officers besides Tyson had been charged, but also confirmed that he had no part in determining who was charged. (T112.) He confirmed that Administrator Robert Chetirkin made all decisions as to discipline. (T124.) When Stark interviewed the officers, including Tyson, all officers were given their Weingarten rights, meaning that all officers potentially faced discipline. (T120.) He believed that the sergeants who were interviewed were interviewed as potential witnesses and were thus not given Weingarten rights, even though they potentially neglected their duties to find and eliminate contraband in the shack. (T120-121.) He also believed that he had “noted in [his] report that there was a failure on the part of the supervisors to tour the area” and sign the log book during the month of March. (T115.)

Stark only saw pictures of the lock, not the lock itself, during the investigation. (T121.) Based on the photographs (J-7) of the lock, Stark testified that he was unable to determine whether it was a state lock or an unauthorized lock. (T122.) While officers are not permitted to use personal locks anywhere, Stark did not know of “any rule that would prevent them from having a departmental lock on anything.” (T123.)

Stark also confirmed that in some areas of the ADTC, otherwise unauthorized items might be present. (T117.) On redirect, he noted that “certain items [are] just commonly sort of overlooked,” such as fans, televisions, or microwaves. (T126.) For example, if an inmate moved or left custody entirely and left a fan behind, “an officer might utilize that, but it’s not something that’s really ever looked [upon] as a security concern for the most part.” (T126.) He also identified certain items of the contraband, including screwdrivers, cords, and tape, as items that could be used as weapons. (T130.) These

items “generated the catalyst for the investigation,” not the “general items” of contraband such as the microwave or radio that might be found elsewhere in the facility. (T137.)

On my examination, Stark testified that “most supervisors” would carry a master key that opens “a lot of standard locks in many different areas.” (T139.) However, officers working in an area with a combination lock would “most likely not” have the combination. (T139.)

On recross, Stark noted that there is a locker room located outside the STU building for officers’ personal use. (T140.) The outside locker room is authorized for staff to store personal items outside the secured perimeter. (T140.) A supervisor could inquire about an officer’s personal locker, but it would be uncommon to do so. (T140.) Stark believed that the post orders for the map yard shack, however, require officers to inspect “all areas of their assigned unit,” potentially including the locker. (T140.) A supervisor would not “micro manage [an officer] to the point where [the supervisor] would go ‘hey, did you open up your supply locker and make sure there’s nothing in there?’” (T140.)

### **ROBERT CHETIRKIN**

Robert Chetirkin (Chetirkin), Prison Administrator at the East Jersey State Prison, testified on behalf of the Department as follows. Chetirkin has worked for the Department for approximately twenty-nine years and served as Prison Administrator at the ADTC in March 2022. (T146-147.) The Administrator oversees custody staff and majors, the Assistant Superintendent, the Associate Administrator, and manages day-to-day facility operations, security, decisions, and discipline. (T148.) Chetirkin described contraband as a threat to safety, security, and the orderly operation of a facility, as it could be used against custody staff or against other inmates or residents. (T148.)

Chetirkin was familiar with Tyson as the “bided two-day relief officer” overseeing “the movement and running inside the facility” from the map yard shack on March 17, 2022. (T149-150.) The map yard shack post would oversee the movement of civilians, residents, and custody staff of the ADTC to ensure that the movement of various groups did not overlap. (T150.) The Level III Internal Management Procedures (J-10) guiding

movement within the facility dictate that the officer stationed in the map yard shack “will authorize control, monitor resident and staff movement” and “perform security checks to ensure the security of the area and [that] no contraband is present in the courtyard” and “notify the area supervisor of any security issues.” (T153-154.) The officer shall “immediately notify the area supervisor of any unusual incidents” such as “a disturbance, a fight,” or a defect in the area, “whether it was pipes that were leaking” or “an area that [the officer] couldn’t access, a footlocker ... things that would stand out from your regular daily operations.” (T155.) Because Tyson was in the map yard shack two days a week, she was expected to follow internal management procedures and notify a supervisor of the footlocker or any contraband. (T156.)

Chetirkin clarified that the contraband DVDs found in the map yard shack were a major concern, since it would be possible to have a DVD labeled as a film while actually containing pornographic material, risking the ability to run the ADTC properly since residents there have been civilly committed for sexual offenses. (T157.) “Anything that comes through that door that is contraband . . . can absolutely impact in a very negative way” the ability to operate the facility. (T158.) A cord could be used as a weapon or an incendiary device, a screwdriver can be weaponized, and even duct tape can be used to do harm. (T159.) An officer’s failure to report contraband speaks to their truthfulness and ability to uphold public trust. (T160.)

Chetirkin referenced Human Resource Bulletin 8417 (J-12) as the “reference point” for disciplinary measures at the ADTC. (T166.) He identified a C-11 charge as being for “conduct unbecoming of an employee” which “would not fall in line with the values of what a law enforcement officer” would be expected to do. (T167.) For a first step C-11 conduct unbecoming charge, the minimum disciplinary action would be a three-day suspension, and the maximum would be removal. (T167.) A D-7 charge is for a violation of safety and security procedures or regulations. (T168.) For a first step D-7 charge, the minimum disciplinary action would be an official written reprimand and the maximum would be removal. (T168.) An E-1 charge is for a violation of “rule, regulation, policy, procedure order or administrative decision” and carries a minimum disciplinary action of an official written reprimand and a maximum of removal. (T168.) A ten-day suspension would be within the range of discipline for all three charges. (T167-168.) An officer’s personal work

history is used when issuing disciplinary charges to “ensure that [discipline] remains as a progressive matter.” (T168.)

Chetirkin also clarified the role of a “bidded” officer, which means that the officer has specifically placed a bid for the position or post. (T171.) Officers can also bid for a relief position. The bidded officer works for five days, the bidded relief officer works for two days, and then other officers are assigned to the position as needed. (T171.)

On cross-examination, Chetirkin confirmed that the decision to discipline Tyson was based on a conversation with Michael Carnivale, the Director of the Office of Employer Relations. (T173.) Chetirkin also sent an emailed “synopsis of what the investigation covered” to Carnivale. (T173.) The synopsis was partially based on Stark’s report, which indicated that Kennedy was the bidded officer and the only officer present on March 17 when the contraband was discovered. (T175.) While Kennedy initially denied that any of the contraband belonged to him, he subsequently admitted that all items were his. (T175.) Chetirkin testified that he was not aware if Kennedy implicated Tyson in either possessing or knowing of the presence of any of the contraband. (T176.) The investigation report indicated that contraband was only found in the map yard shack on March 17 and that Kennedy was the only officer with access to the shack on that day. (T177.)

Chetirkin remembered that the other officers posted at the map yard shack also stated that they did not observe the lock, which he believed to be truthful. (T178-179.) He also thought it would be truthful for an officer to have observed the lock but not looked at the lock to confirm if it was authorized or not. (T179.) Chetirkin believed Tyson’s testimony of the same to be truthful and affirmed that “if she had no reason to know it wasn’t a state lock, she would have no reason to report that lock.” (T181.) However, he did not believe it would be truthful for the officers to deny having seen the contraband in plain view. (T179.) Chetirkin noted that to determine if a lock is permitted, it must be inspected. (T180.) The failure to inspect the lock would be considered a violation. (T180.)

In talking to Carnivale, Chetirkin confirmed that he selected the bidded officer, Kennedy, and the two-day bidded relief officer, Tyson, to recommend for discipline. (T183.) He stated that as the two-day relief officer, Tyson should have been more familiar with the post than the one-day relief officers. (T185.) He was aware that Tyson's previous record contained only minor discipline, with no incidents since 2015. (T184.) After three years, typically only major discipline is considered when taking new disciplinary action. (T184.)

Chetirkin testified that he could not confirm that the contraband was in the shack on either March 1 or March 15 when Tyson worked the post. (T186-187.) He also could not confirm what lock was on the locker on either of those dates. (T188.) No sergeants signed the map yard shack log book, nor did the investigation reveal any observations of the shack by any sergeant, during March 2022. (T189.) Chetirkin did not bring disciplinary charges against any sergeant. (T192.) Chetirkin and the Director decided upon the ten-day suspension for Tyson, with a possible range of discipline from an official written reprimand to a removal. (T192.)

Tyson was only charged for violating policy, not for violating any law or statute. (T193.) The policy Tyson was charged with violating is directed to all staff and must be followed by all officers on the map yard shack post. (T193.) The policy exists for the safety of the facility, and the contraband found in the shack compromised that security. (T194.) There are no policies, either written or unwritten, about what is or is not considered contraband. (T195.) There are other areas of the facility where items that may be considered contraband, like radios, are out in the open. (T195.) Contraband is not held to a "strict liability policy" where once it is found, it is automatically removed and grounds for officer discipline. (T195.)

When asked if someone could be in the shack and not notice that the locker has a lock secured to it, Chetirkin stated "it's possible it could've been missed." (T197.) Chetirkin believed Tyson to have been truthful with the investigator. (T198.) Chetirkin also testified that, because the other three officers also said that they did not see the lock during the investigation, either the officers lied during the investigation or the lock was not present. (T198.) He did not interview the other officers and did not specifically ask the

investigator about the credibility of the other officers. (T201.) Chetirkin confirmed that if an officer knew there was an unauthorized lock, they would be required to report the same, but that an officer who observed the lock but did not know if it was unauthorized would not be required to report it. (T201-202.) Chetirkin had not observed the lock itself, only the pictures of the lock submitted as part of the investigation. (T202.)

On redirect, Chetirkin testified that he did not think it would be possible to bring in all of the contraband items pictured as part of the investigation report in one day. (T204.) He also noted that one officer's failure to report does not absolve another officer of their respective duty to report. (T204.)

On recross, Chetirkin identified that the investigation report does not list whether the contraband items were found in the locker or outside of the locker. (T206.) He did not know if the DVDs were contained in anything or if they could have been brought in at one time in a bag. (T206.) He also noted that the charge of "conduct unbecoming of a public employee" was based on Tyson's failure to report the lock. (T208.)

On further redirect, Chetirkin clarified that "all schedules" from March 1 to March 17 were reviewed as part of the investigation conducted by Stark. (T212.)

On further recross, Chetirkin identified that under the Level 3 Internal Manager Procedure for STU Traffic Control (J-10), Tyson violated the policy stating "The officers assigned to traffic control post will check their area of responsibility prior to any resident movement" and the policy stating "Officer assigned to monitor the courtyard will also perform security checks to ensure security of the area and no contraband is present. The courtyard officer will notify the area supervisor of any security issues and when they are ready for resident and civilian staff movement." (T216.) The paragraph does not specify which officer it guides, and all officers assigned to the map yard shack were bound by the same internal management procedure. (T216.)

Chetirkin also testified that the reason why the one-day relief officers were not considered for discipline was because the investigation "would've gone on, and on, and on." (T217.) Going "on and on" would have required the other officers to be disciplined



as well as the “four to six sergeants that during that period” should have, and did not, observe the map yard shack. (T217.) If the one-day officer failed in their duties, it could be just as dangerous as the five-day or the two-day officer failing in their duties. (T217.) Chetirkin did not remember whether he or the Director made the final call regarding discipline, but recalled that they “would’ve come to an agreement of some sort” had there been a disagreement regarding discipline. (T219.)

Chetirkin testified that the Law Enforcement Personnel Rules and Regulations (J-11) do not specify different levels of discipline for officers holding different positions such as five-day, two-day, and one-day. (T221.) The rules and regulations are binding on all officers staffing the map yard shack, as well as all sergeants and the lieutenant. (T221.) Chetirkin confirmed that the discipline was based on the period from March 1 to March 17, but that the investigation would have “encompassed some time” from March 17 to April 21 when Stark’s report was issued. (T222.) Chetirkin did not know if the one-day officers were able to bid for the map yard shack post again, if they were retrained, or if they were instructed that in the future they must report any lock found in the shack. (T222-223.)

On examination by the Court, Chetirkin confirmed that Tyson was disciplined for failing to report the lock itself, but that he did not examine the lock or see photographs of the back of the lock. (T226.) The face of the lock looks like “a standard Master lock.” (T230.) There is not a written policy that informs officers that they may not use personal locks inside the facility, but that knowledge is “standard practice.” (T229.) To require officers to “flip over every combination lock in the facility to check and see whether it’s a personal lock or a state lock” would “take people all day long.” (T236.) Chetirkin defined contraband in his own words as “anything that’s not authorized for retention or possession inside the facility.” (T231.)

On final recross, Chetirkin noted that Stark wrote in his report that while “it is improbable that the contraband was secured in the locker after Kennedy’s tour it is not impossible. The shack has no lock and cannot be secured” and that “it is also unlikely that another staff member would utilize a locker in the map yard shack if they are not regularly

assigned to that post. The regularly assigned officer to that post was Officer Kennedy.” (T241.)

### **LYNN TYSON**

Tyson testified on her own behalf, as follows. She has been employed by the Department since November 2004. (T2-12.) During March 2022, she worked as a five day officer, with two days in the map yard shack each week. (T2-12.) She worked in the map yard shack for slightly under a year. (T2-15.) Kennedy was always the other five day officer who worked in the map yard shack during Tyson’s time at that post. (T2-15.)

The shack measures about four feet by four feet. (T2-14.) Tyson testified that she never brought personal items into the shack, but she saw items like a radio and a heater there. (T2-15.) Tyson never accessed the locker, stored anything in the locker, or inspected the locker, and to her knowledge, there was always a lock on the locker. (T2-16.) She never looked at the back of the lock. (T2-16.) During her time on the map yard shack post, Tyson was not instructed to inspect or check the locker. (T2-18.) Tyson also did not feel it was her duty to search another officer’s locker, and she considered the map yard shack locker to belong to Kennedy. (T2-20.) Tyson also never saw a sergeant sign the log book or come to the shack during her time on the post. (T2-19.) She also did not see any sergeant ever check the lock and did not believe any sergeant was disciplined. (T2-23.) Tyson was unaware of the DVDs, pictures, and microwave in the shack. (T2-20.) She was aware of the radio but did not use it. (T2-24.)

The map yard shack is only manned during the first shift, from six in the morning until two in the afternoon. (T2-17-18.) The shack latches but does not lock. (T2-18.) Tyson was aware that there were three other officers who had shifts in the shack during the month of March, but believed she was the only officer besides Kennedy who was called for an investigation or brought up on disciplinary charges. (T2-21.) During the investigation, Tyson told Stark that she saw a lock, but that she did not know it was an unauthorized lock. (T2-22.)

Regarding her disciplinary history (J-13), Tyson testified that she received a written reprimand for misuse of a sick day in 2007 after the comm-operator mistakenly entered that she called in sick at 11 o'clock in the morning rather than at 11 o'clock the night before. (T2-24-25.) She stated that she did not challenge the written reprimand because she was "too new to really know ... how to fight different charges." (T2-25.) Originally, she was offered three days as discipline but ultimately received a written reprimand. (T2-25.) In 2015, Tyson was disciplined for failing to bring her shank-proof vest into the secured area. (T-26.) She received one day for failing to report the missing vest to her supervisor although she reported it to her union representative. (T2-27.) Tyson testified that in the present matter, Chetirkin offered an official written reprimand as discipline to Tyson's union representative. (T2-29.) Tyson declined the official written reprimand. (T2-29.) Tyson testified that she told the truth both throughout the investigation and at the hearing, that she cares about her reputation at work, and that if she had known the lock was unauthorized, she would have taken action. (T2-30.)

On cross-examination, Tyson noted that while the lockers outside the secure perimeter are for personal items like cell phones, there may be lockers at each post to store "supplies or whatever [an officer] may need for the course of [their] day on [their] post." (T2-32.) There would be "no need to" use the locker, however, since all officers in the map yard shack must do is observe the yard. (T2-33.) While the shack only latches and does not lock, residents of the ADTC should not have access as they only move past the shack once per day. (T2-34-35.) Civilians that conduct programming for residents may move past the shack more than once per day. (T2-35.)

On redirect, Tyson clarified that while she signed the Joint Stipulation of Facts (J-2) indicating "The Petitioner stated she knew about the locker with the unauthorized lock and did not report it to her supervisor," prior to the investigation, she did not know that the lock was unauthorized. (T2-36.) Tyson also had not seen the lock itself at any time after the investigation began. (T2-37.) On recross, Tyson testified that at the ADTC, "you see a lock, you just see a lock. You don't turn it around to say it's personal or it shouldn't have been there. . . . I'm taking it as it's authorized because it's a lock." (T2-38.)

On my examination, Tyson confirmed that she has served six of the ten days of her disciplinary suspension. (T2-39.) Due to the discipline, she has been “denied interviews” and “different positions with specialized units” and was unable to study for the sergeant exam properly. Tyson seeks to have her attorneys’ fees reimbursed and to have her charges dismissed and is willing to accept compensatory time for the six days served. (T2-39-40.)

### **CREDIBILITY DETERMINATIONS AND FURTHER FINDINGS OF FACT**

#### **I.**

I must weigh the credibility of the witnesses to determine the ultimate issues. Credibility is the value that a fact finder gives to a witness’s testimony. An ALJ’s findings of fact as to issues of credibility of a witness’s testimony may not be rejected or modified unless the record demonstrates that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, credible evidence in the record. N.J.S.A. 52:14B-10(c).

“Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence.” Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.” State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone’s Estate, 5 N.J. 514, 522 (1950)).

A fact finder is expected to base credibility decisions on their common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and a fact finder “is not bound to believe the testimony of any witness, in whole or in part,” State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted). Rather, they “may reject what in their conscientious judgment ought to be rejected and accept

that which they believe to be credible.” Ibid. Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511, 523 (App. Div. 1962). “The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their] testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (internal quotation marks omitted).

In this case, I **FIND** the testimony of Loney, Stark, Chetirkin, and Tyson to be credible. All four witnesses testified honestly and with conviction. In particular, Loney, Stark, and Chetirkin readily admitted when they did not know relevant information about the investigation and acknowledged potential gaps in policy and procedure. Stark and Chetirkin both acknowledged Tyson’s candor during the investigation process. Tyson testified clearly and her testimony was consistent with the other witnesses and with the investigation.

## II.

Based upon the foregoing credibility determinations and the competent, credible evidence of record, I further **FIND** the following **FACTS**. I **FIND** that Tyson was the officer regularly scheduled to work two days per seven-day week at the map yard shack post, while Kennedy was the primary officer at the post who worked five days a week and three other officers worked at the post one day per week. I **FIND** that Tyson was disciplined based on her failure to report the lock secured to the locker in the map yard shack. I **FIND** that the lock in question looked like a standard Master lock and that the only way to determine whether it was an unauthorized lock or a departmental lock was to turn the lock upside down and examine the back. I **FIND** that no sergeant signed the log book in the map yard shack during the period from March 1 to March 17 despite their obligation to do so. I **FIND** that, based on the lack of written policy regarding locks and the absence of any instruction to do so, Tyson had no reason to check the lock and believed that it was an authorized departmental lock.

## **LEGAL ANALYSIS AND CONCLUSIONS**

### **I.**

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583, 586 (App. Div. 1972). However, "[t]here is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

Indeed, a civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2c; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2(a). Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. N.J.S.A. 11A:1-2c. Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2c; N.J.A.C. 4A:2-2.2(a).

In appeals concerning major disciplinary action, the appointing authority bears the burden to prove the FNDA charges by a preponderance of the competent credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (internal quotation marks omitted). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). OAL hearings on civil service removal appeals are *de novo*, both as to guilt and the penalty to be imposed. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); W. New York v. Bock, 38 N.J. 500, 522, n.1, n.3 (1962). *De novo* review requires

the development of a new evidentiary record and allows the Board to substitute their opinion for that of the appointing authority as if there has been no prior decision. Henry, 81 N.J. at 576; Holman v. Newark Bd. of Educ., 92 N.J.A.R.2d (CSV) 454, 457.

### **The Charges**

1. N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee
2. HRB 84-17 C11 Conduct unbecoming a public employee

Conduct unbecoming a public employee is an elastic phrase which encompasses “any conduct which adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). “[I]t is sufficient that the conduct complained of and its attending circumstances “be such as to offend publicly accepted standards of decency.” Id. at 555 (quoting In re Zeber, 150 A.2d 821, 825 (1959)). Such misconduct need not “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)). “Any conduct that serves to diminish the public’s trust in the integrity of its employees is intolerable.” In re Green, Dep’t of Human Servs., 2006 N.J. AGEN LEXIS 632, \*5 (June 7, 2006).

Based on the present record, it cannot be confirmed when the contraband was brought into the map yard shack by Officer Kennedy. It is unclear what contraband was present in the shack during Tyson’s shifts on March 1 and March 15. No photographs or other definitive evidence of the shack with the contraband as it appeared on March 17 have been made available. The only photographs of the contraband and the lock were taken after the items were removed from the shack and after the lock was cut from the locker. Tyson’s discipline must only be based on her failure to report that there was an

unauthorized lock securing the locker in the map yard shack, as Chetirkin stated it was and as the FNDA notes.

It is clear that when an authorized lock is attached to a locker, it can only be determined that it is an authorized lock by flipping it upside down to view the master keyhole on the back of the lock. Chetirkin admitted in his testimony that it would take an unreasonable amount of time to require every officer to inspect every lock in the facility this way. Chetirkin also admitted that there is no policy requiring officers to inspect locks. Tyson testified that she was never instructed to do so and that she considered the locker to belong to Kennedy as the five-day officer on the post. The investigation report also noted that "it is unlikely that another staff member would utilize a locker in the map yard shack if they are not regularly assigned to that post. The regularly assigned officer to that post was Officer Kennedy." Kennedy was investigated, confessed that the contraband was entirely his, and was disciplined accordingly and separately from Tyson. Tyson was disciplined for failing to identify that the lock, which appeared identical to an authorized lock, was unauthorized despite having been given no reason to do so and seeing the lock during only two shifts during the time period considered by the investigation. Chetirkin testified that an officer would be required to report the lock if they knew it was unauthorized, but not if they did not know it was unauthorized, as Tyson did not.

Additionally, the Department has not proved that Tyson did anything differently from any of the one-day officers posted at the map yard shack that would require her to be disciplined when the other officers were not. In Chetirkin's words, discipline was limited to the five-day officer, Kennedy, and two-day officer, Tyson, because otherwise the investigation would have gone "on and on." The decision appears to have been made accordingly not to discipline the three one-day officers, nor the four to six sergeants who failed to investigate the shack and sign the log book during the period from March 1 to March 17. While Stark testified that signing the log book is discretionary, without signatures, it cannot be confirmed whether sergeants actually visited the map yard shack as required. No evidence about the conversations regarding these decisions was available. Thus, it appears that the other officers and sergeants were not investigated solely in order to maximize the ease of the investigation for the Department. Either the one-day officers and sergeants engaged in conduct unbecoming when they failed to



identify and report the unauthorized lock and failed to observe the map yard shack and sign the log book, respectively, or else Tyson did not engage in conduct unbecoming when she did not identify and report the unauthorized lock.

Tyson's failure to report the lock is no different from the other officers' failure to do the same. Tyson did not disobey an order to investigate the lock, did not fail to follow a written policy regarding the lock, and was not dishonest when asked about the lock. In fact, all witnesses asked said they believed Tyson to have been truthful during the investigation. I therefore **CONCLUDE** that the Department did not meet its burden to prove that Tyson engaged in conduct unbecoming a public employee by a preponderance of the competent credible evidence, and that the above charges should be **REVERSED**.

3. HRB 84-17 E1 Violation of a rule, regulation, policy, procedure, order, or administrative decision
4. HRB 84-17 D7 Violation of administrative procedures and/or regulations involving safety and security

As stated above, Tyson's discipline was based on her failure to report the unauthorized lock, not the presence of contraband in the map yard shack. Chetirkin testified that there is no policy regarding locks in the facility. No policies were identified specifically delineating what is or is not considered contraband. The policies referenced that Tyson is charged with violating include the Level 3 Internal Manager Procedure for STU Traffic Control (J-10) and the Law Enforcement Personnel Rules and Regulations (J-11).

The Level 3 Internal Manager Procedure states:

The Officer assigned to monitor the Courtyard will also perform Security Checks to ensure the security of the area and no contraband is present. The Courtyard Officer will notify the Area Supervisor of any security issues and when they are ready for resident and civilian staff movement. The Courtyard Officer will observe all movements through the

Courtyard for security concerns and will immediately notify the Area Supervisor of any Unusual Incidents.

[J-10, at 3.]

The Level 3 Internal Manager Procedure does not define what constitutes an “Unusual Incident.” Chetirkin testified that an area that an officer could not access or anything that “would stand out from your regular daily operations” would qualify as an unusual incident. Notwithstanding the fact that this policy appears to be directed towards the courtyard itself and not the interior of the map yard shack, the unauthorized lock does not rise to the level of an unusual incident. Tyson did not need access to the locker, nor was access to the locker part of the map yard shack officer’s responsibilities. The locker was exclusively for officer use, and Tyson reasonably believed that it was for Kennedy’s use as the primary officer on the post. Stark’s investigation report even noted that officers other than Kennedy would be unlikely to use the locker. Chetirkin testified that a supervisor would not request an officer to open a locker on their post. Tyson never had a reason to access the locker, nor did she have any indication that the locker should not have been locked or that the lock was an unauthorized personal lock.

Tyson is charged with violating policies that apply to all officers and staff within the facility. It does not follow that policies and procedures regarding safety would be selectively applied in the face of a potential security risk. The safety and security of a correctional facility is paramount and must be upheld by all officers. The hierarchy of the facility ensures that sergeants are monitoring officers’ posts, including the map yard shack, to prevent lapses in security. Here, no sergeants appear to have monitored the map yard shack during the period from March 1 to March 15. If they did, they failed to document it in the log book. It was noted at the hearing that the map yard shack latches but does not lock. The presence of contraband in an unlocked shack certainly may pose a security risk, and the potential security risks of various items found in the shack on March 17 are valid.

It seems that for the Department to adequately address the potential safety risks identified in this matter, the investigation would need to go “on and on.” If Tyson violated a policy, then the one-day officers stationed at the map yard shack during the period from

March 1 to March 17 did so as well, not to mention the sergeants who should have monitored the shack, since it cannot be confirmed that they did so. If the one-day officers did not violate a policy by failing to report the unauthorized lock, then neither did Tyson, as the Department did not identify any difference in her behavior from those other officers. I therefore **CONCLUDE** that the Department did not meet its burden to prove that Tyson violated a rule, regulation, policy, or procedure by a preponderance of the competent credible evidence, and that the above charges should be **REVERSED**.

5. N.J.A.C. 4A:2-2.3(a)(12) Other general causes

Other sufficient cause has been described as other conduct not specifically delineated in N.J.A.C. 4A:2-2.3(a) which would violate “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.” In re Boyd, Cumberland County Dep’t of Corrs., 2019 N.J. CSC LEXIS 621, \*115 (July 3, 2019), adopted Comm’r, id. at 1-2 (Aug. 14, 2019). N.J.A.C. 4A:2-2.3(a)12 is essentially a catchall provision for why an employee may be subject to major discipline. “An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority.” In re Mumford, 2014 N.J. CSC LEXIS 478, \*33, Final Decision, (June 5, 2014).

Based on the foregoing analysis and the fact that the Department has not proved any of the other charges against Tyson before me, I **CONCLUDE** that the Department did not meet its burden to prove this charge by a preponderance of the competent credible evidence, and that the charge should be **REVERSED**.

II.

The Civil Service Commission may award reasonable counsel fees “where an employee has prevailed on all or substantially all of the primary issues” before it. N.J.A.C. 4A:2-2.12. In a disciplinary appeal, the primary issue is the merits of the charges. See In the Matter of Keith Wickham, Jr., CSV 09423-13, Final Decision (September 18, 2013), <<https://njlaw.rutgers.edu/collections/oal/>>. To prevail, no serious charges that provide grounds for major discipline should be sustained against the appellant. Ibid.

All charges against Tyson have been reversed. Therefore, I **CONCLUDE** that Tyson is entitled to reasonable attorneys' fees.

**ORDER**

It is therefore **ORDERED** that the charges in the August 26, 2022 FNDA are hereby **REVERSED**; and it is further **ORDERED** that Tyson is entitled to reasonable attorneys' fees as well as any requisite back pay and benefits associated with this case.

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 25, 2025  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
SARAH H. SURGENT, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_  
SHS/kr

## **APPENDIX**

### **WITNESSES**

#### **For appellant**

Lynn Tyson

#### **For respondent**

Keith Loney

Douglas Stark

Robert Chetirkin

### **EXHIBITS**

#### **Joint**

- J-1 Joint Stipulation of Facts
- J-2 PNDA and FNDA
- J-3 Report of Keith Loney
- J-4 Photos of ADTC Map Yard Shack
- J-5 Photos of contraband (11 photos, 2 pgs.)
- J-6 Picture of locker in map shack
- J-7 Photo of lock and cords
- J-8 Confiscation report 171-1A
- J-9 Incident Investigation and Report authored by Douglas Stark
- J-10 Level 3 IMP for ADTC
- J-11 Guidelines for Law Enforcement Personnel
- J-12 HR Bulletin 84-17
- J-13 NJDOC Work History Form for Lynn Tyson