

in the record to demonstrate that the ALJ's findings regarding the charges were arbitrary, capricious or unreasonable.

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).

In this matter, in recommending that the removal be modified to a six-month suspension, the ALJ performed an analysis of the penalty to be imposed. In that regard, the ALJ found several mitigating factors to modify the penalty, such as, there was "limited to no specific evidence" that the appellant used or possessed his cell phone but for his admission; no harm resulted to others or the facility based on the appellant's use of the cell phone; and testimony that "it would not be problematic" if an officer accidentally brought a cell phone into the facility before the shift started and returned it before their shift started. Further, the appellant was a long-time employee, who was appointed in 2001, and his disciplinary history consisted of only minor discipline of a written reprimand, a three-day suspension, and a five-day suspension, where his last discipline was in 2003. Moreover, the appellant's prior discipline was not related to contraband.

In its exceptions, the appointing authority argues that the appellant's admission that he improperly possessed and used a cell phone while on duty necessitated his removal based upon long-established precedent which the ALJ ignored, and the ALJ's reliance on progressive discipline was misplaced. Additionally, the appointing authority contends that the ALJ erred in requiring that a showing that harm resulted from the appellant's conduct. Moreover, the appointing authority believes that it is not relevant that there was testimony that a Correctional Police Officer who accidentally brought a cell phone into the facility and returned it prior to the start of the shift would not be problematic because, in this case, the appellant admitted to using his cell phone while on duty. Further, the appointing authority presents that there was other testimony that the appointing authority's policies do not distinguish between accidentally and purposefully bringing in a cell

phone into the facility. Additionally, the appointing authority states that the ALJ failed to consider the danger posed by the appellant's admitted possession and use of a cell phone in the facility. Finally, the appointing authority asserts that the ALJ improperly banned it from presenting evidence it had collected regarding the appellant's cell phone usage while on duty.

However, while the appointing authority believes the removal should be upheld, the Commission finds support for the modification to a six-month suspension. In this regard, while the appellant's misconduct violated the appointing authority's policy, the record does not indicate that the appointing authority had a clear policy that mandated removal for using a cell phone while in the facility. Rather, the testimony indicates that the charges that were issued against the appellant *could* lead to removal, even for a first offense. In fact, there was testimony by a lieutenant that if an officer accidentally brought a cell phone into the facility and returned it before the shift started, it would not be problematic, which further confirms that a violation of the cell phone policy would not result in an automatic removal of an officer. Moreover, instead of pointing to a policy that would mandate removal, the appointing authority highlights prior Commission decisions as "precedent" for its assertion. However, each case is decided on its own unique facts. Consequently, it is appropriate for the Commission to consider progressive discipline. In this case, the mitigating factors, as articulated by the ALJ and stated above, justify modifying the appellant's removal to a six-month suspension.

Referencing the appointing authority's argument that it should not have been barred from presenting evidence regarding the appellant's cell phone usage while on duty, as noted by the appellant's reply, the ALJ, in her December 14, 2023 Order on Cross-Motions for Summary Decision, found that the cell phone records concerning the appellant's usage were insufficient to determine the penalty. In this regard, the ALJ explained that the cell phone records were not accompanied by an affidavit explaining how they were to be read and interpreted; the appointing authority did not produce an affidavit documenting when the appellant was on duty and not on break during the relevant time; and the appellant stated during his interview that, on at least some occasions, he immediately returned his cell phone to his car when he realized that he had inadvertently carried it into the facility. Moreover, even if the appellant had possessed and used his cell phone in the facility on more than one occasion, based on the mitigating factors, the Commission finds that a six-month suspension is the appropriate penalty. With that said, the Commission is not minimizing the misconduct as it was clearly inappropriate. As such, a six-month suspension, the most severe suspension permitted under Civil Service law and rules, should serve as a warning to the appellant that any future misconduct could result in his removal from employment.

Since the removal has been modified, the appellant is entitled to be reinstated to his position with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.*

4A:2-2.10 from six months after the first date of disciplinary separation without pay until the date he is reinstated.

However, the appellant 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 a 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). Thus, where, as here, a penalty is modified but charges are sustained and major discipline is imposed, counsel fees must be denied since the appellant has failed to meet the standard set forth at *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 decision of the Superior Court of New Jersey, Appellate Division, *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. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

One more issue needs to be addressed. In *In the Matter of John Arrington* (CSC, decided April 28, 2021), the appellant requested interim relief regarding his then pending discipline. Per the 180-day rule, the Commission ordered that the appellant receive his base pay from October 15, 2020 to his reinstatement. As the Commission ordered that the appellant receive base pay, such pay is not subject to mitigation. See *In the Matter of Ryan Marsh* (CSC, decided February 17, 2021). It would appear that the appointing authority has already restored the appellant to pay status and he is receiving his base pay until his reinstatement. However, if there is any back pay due to the appellant that is not covered during the base pay period already awarded by the Commission, that back pay would be subject to mitigation.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission, therefore, modifies that action to a six-month suspension.

The Commission orders that the appellant be immediately reinstated to his permanent position and receive back pay, benefits, and seniority following six months after the date of disciplinary separation without pay to the date of reinstatement for any period he was not in pay status pursuant to *N.J.S.A.* 40A:14-201. 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. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

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 25TH DAY OF FEBRUARY, 2026

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Dulce A. Sulit-Villamor
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H - Hearings Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05464-21

AGENCY DKT. NO. N/A

**IN THE MATTER OF JOHN T. ARRINGTON,
DEPARTMENT OF CORRECTIONS,
EDNA MAHAN CORRECTIONAL
FACILITY.**

Luretha M. Stribling, Esq., for appellant, John T. Arrington (Luretha M. Stribling, LLC, attorney)

Achchana Ranasinghe, Deputy Attorney General, for respondent, Edna Mahan Correctional Facility (Jennifer Davenport, Acting Attorney General of New Jersey, attorney)

Record Closed: December 16, 2025

Decided: January 30, 2026

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Appellant John T. Arrington appeals from disciplinary action taken by the Department of Corrections (respondent, appointing authority, or Department), removing him from his position of senior correctional police officer (SCPO). The removal was based upon a determination that he violated N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a

public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, as well as Department rules and policies when he used his cellular telephone while on his assigned post at Edna Mahan Correctional Facility (EMCF or Facility) between October 2019 and January 2020. After cross-motions for summary decision were filed, it was determined that appellant failed to comply with respondent's policy prohibiting possession and use of cell phones and thus that he is subject to discipline. However, summary decision was not granted with respect to whether removal is the appropriate penalty. Should appellant be removed from his position? No. Respondent has not demonstrated by a preponderance of the credible evidence that removal is the appropriate remedy. Given the limited evidence concerning specific times that appellant possessed or used his cell phone, his disciplinary history, and the range of permissible penalties, a six-month suspension is appropriate.

PROCEDURAL HISTORY

On April 2, 2020, the Department issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. A departmental hearing was conducted on March 30, 2021. On May 19, 2021, the Department issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the PNDA and removing the appellant from employment effective at a time to be determined. The appellant filed a timely appeal with the Office of Administrative Law and Civil Service Commission, for hearing 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 appeal was perfected on June 22, 2021. On November 15, 2021, appellant waived the 180-day deadline for the issuance of the Initial Decision, pursuant to N.J.S.A. 40A:14-201(b)(1).¹ OAL-1. Respondent filed a summary decision motion on June 30, 2023, but the motion was stayed due to pending discovery motions. Appellant filed a cross-motion for summary decision on September 8, 2023, and opposition to respondent's summary decision motion on September 11, 2023. Respondent filed its opposition to appellant's cross-motion and a reply brief in support of its summary decision motion on October 6, 2023. Appellant filed a reply brief in support

¹ However, on May 3, 2021, the Civil Service Commission ordered that the appointing authority pay appellant his base salary beginning October 15, 2020. In re Arrington, 2021 N.J. CSC LEXIS 164 (May 3, 2021).

of his motion on October 27, 2023. On December 14, 2023, an Order was issued that denied appellant's motion and granted respondent's motion with respect to the charges in the FNDA but not the penalty to be imposed. The hearing concerning penalty was delayed because on February 8, 2024, the parties advised that they were engaged in settlement discussions. A May 2, 2024, hearing was adjourned because their settlement discussions were ongoing and appellant's witness was unavailable. On July 31, 2024, September 5, 2024, and October 4, 2024, the parties advised that they continued to discuss a global settlement that was contingent upon a related Superior Court matter. On November 8, 2024, the hearing was scheduled to be held on April 3, 2025. That hearing was adjourned because appellant's witness was unavailable. The hearing was rescheduled to July 22, 2025; however, it was adjourned because appellant's counsel was ill and his witness advised that he was unavailable until September 2025. The hearing concerning the penalty was held on September 15, 2025. The record remained open to permit the parties to receive the hearing transcript and submit briefs. Both briefs were received on December 15, 2025, and the record closed that day.

FACTUAL DISCUSSION

The following was derived from the summary decision motions and incorporated into the Order granting summary decision in part to respondent.

Appellant John Arrington, an SCPO assigned to EMCF, was charged with misconduct for allegedly bringing his personal cell phone into the secure perimeter of the Facility and using it while on duty. He was charged with the following violations:

- Conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)(6); and
- Other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12):
 - Neglect of Duty, loafing, idleness, or willful failure to devote attention to tasks which could result in danger to persons or property; Human Resource Bulletin 84-17 as amended (HRB 84-17), B-2;
 - Conduct unbecoming an employee, HRB 84-17, C-11;
 - Possession of contraband on state property or in state vehicles, HRB 84-17, C-17;

- Violation of administrative procedures and/or regulations involving safety and security, HRB 84-17, D-7; and
- Violation of a rule, regulation, policy, procedure, order or administrative decision, HRB 84-17, E-1.

Appellant began his employment as an EMCF SCPO on January 16, 2001. During the times at issue here, he was assigned to the Food Service A area. In January 2020, the Special Investigations Division (SID) received unsolicited information from a confidential informant (CI) that appellant was using his personal cell phone while on duty.

Officer Michael Dalrymple prepared an SID Administrative Investigation Report (SID Report). R-2. He wrote that two SID investigators interviewed the CI, who reported that he observed appellant using his telephone on multiple occasions, including to watch movies and listen to music. Appellant would “sometimes step into a utility closet where the kitchen tools are stored and would be engaged in conversations on . . . his telephone.” Ibid. He would also play music on his telephone while walking around the kitchen area. Id. at DOC 23.

A subpoena was issued for appellant’s cell phone records. The SID Report indicated that the records that were produced documented at least thirty days when appellant used his cell phone while on duty. The investigation identified at least 405 instances where appellant’s phone records showed incoming or outgoing activity and calls while he was supposed to be on duty at Food Service A. “Based upon a public social media platform search, many of the recipients of said calls were identified as known associates” of appellant. Id. at DOC 24.

Food Service A, the area where appellant was stationed, did not have security cameras. Thus, there was no surveillance video that could be reviewed.

Dalrymple interviewed appellant and recorded his notes of the interview in the SID Report. The interview was video recorded. Appellant confirmed that he knew that officers are prohibited from using personal phones on duty, as well as simply possessing them on duty, including in the Food Service A area.

Dalrymple wrote that appellant “admitted to being in possession of his cell phone while on post, on dates that he could not readily recall.” Id. at DOC 26. He wrote that appellant explained that he “often utilizes the ‘blue tooth’ feature when using his phone and as [sic] result, sometimes inadvertently leaves his phone on his person when entering the Food Service building to assume his post. . . . [A]s soon as he discovers the phone is on his person, he returns the device to his vehicle.” Upon inspection of subpoenaed cell phone records, appellant “acknowledged” that “he was on duty and on post during many of the times delineated in the subpoena results.” Ibid. He suggested that the outgoing calls could have been “butt dials.” Ibid. That is, the phone would dial independently if it were not in its case and its security code were not enabled.

Appellant also stated that he “almost exclusively” keeps the phone in his outer jacket pocket and uses the “blue tooth” function of his phone for calls and listening to music. Ibid. On occasion, the phone “inadvertently continues to play music when he is out of range of his vehicle[.]” Id. at DOC 27. Also, “on occasion, he does not remember the device was on his person until later in the night when it rings or vibrates, alerting him to his [sic] presence. . . . [T]he wearing of his vest presents difficulty in feeling the device in his pocket. . . . [W]henver he mistakenly brings the phone to his post, he immediately requests a brief break so he can return the device to his car.” Id. at DOC 29.

Appellant contested the subpoena results, which showed he engaged in 405 calls between October 1, 2019, and January 17, 2020, by stating that it “would have been impossible to use the phone for that amount of time on duty.” Appellant was asked to identify the date when he answered the phone on post after admitting to answering it when it was “on him.” He could not remember the exact occasions that he would answer the phone, but when he would answer it, he would use the phone, and it “was likely his son’s mother calling.” Id. at DOC 29.

Video Recording

I viewed the entire video recording of appellant's interview. Appellant was cooperative and appeared to be forthcoming. At 6:20,² he acknowledged that cell phones and other electronic devices were not permitted in the full minimum areas of the prison, including Food Service A. He also agreed that officers were not permitted to possess cell phones while in any unit of the prison. At approximately 24:50, he stated that prison policy prohibited the use or possession of cell phones.

At 24:45, appellant was asked if he knowingly used his cell phone. He replied, "Yes." At 6:23, he stated that, sometimes, he might have had his phone in his uniform's vest pocket while he drove to work because the phone was too large to fit inside his vehicle's console. He used the "blue tooth" feature of the phone to operate it while in his car and sometimes forgot that the phone was in his pocket. At 21:37, he stated that he frequently realized the phone was in his pocket because he could feel it. However, he also stated that it is difficult to feel it through the vest. He would need to be by himself and in a quiet area to feel it.³ He would return it to his car when he was relieved. Other times, he would quickly return it to his car without needing an official break from his work because he parked his car close to where he worked. He said, "Once [he] feels it, it's gone."

At 23:17, appellant stated that he would answer the phone if it rang while he was on duty. He explained that this was the only way he discovered that he still had the phone with him. He would be surprised by the ringing. He did not recall specific times that he answered the phone but knew that he had not stayed on the phone for long periods of time. His son's mother could have been the person who called him.

At approximately 22:04, appellant stated that outgoing calls from his phone could have been "butt dials." He explained that this could have occurred if the phone were unlocked and not in its case. Sometimes his security code, which locked the phone, was disabled because his son, who was home alone, lost his phone. Appellant would give his phone to his son.

² The video record included a timer showing the minutes and seconds that elapsed during the interview (6:20 refers to six minutes, twenty seconds).

³ It appears that appellant was referring to feeling the vibration of the phone when it functioned.

Based upon the above facts, summary decision was granted in favor of respondent, with respect to the charges, because it was demonstrated that appellant was aware of the strict prohibition on the possession and use of cell phones while in the Facility and that he possessed and used his phone while on duty in the Facility. This was based upon appellant's acknowledgement of the policy and his admission that he answered his phone while on duty on at least one occasion. Therefore, his conduct constituted conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and, given the evidence of violation of the Department's policy, other sufficient cause for discipline, in violation of N.J.A.C. 4A:2-2.3(a)(12).

Hearing Concerning Penalty

The following, which is derived from the testimony and evidence offered during the hearing on the issue of the appropriate penalty, is undisputed. I therefore **FIND** it as **FACT**.⁴

Major James Forbes, who works for the appointing authority in its Division of Operations, explained that all custody staff are given Department policies when they attend the Academy as well as facility-specific policies. All officers receive the same training concerning the policies. Cell phones, drugs, and weapons are the most dangerous forms of contraband in a prison facility given the harm that they can cause. Cell phones are prohibited in Department facilities, and personnel may not carry a cell phone into a Department facility, even in a purse or pocket. R-6. Given the risks of escape or other dangerous or illegal activity that could occur were an inmate to access an officer's cell phone, the prohibition is absolute and applies to all staff.

At the facility where appellant worked, officers accessed the facility's grounds by driving through a gate. In 2019 and 2020, the years that are relevant here, inmates were able to walk freely within the gated area, including past the employees' parking lot. For

⁴ This is not a verbatim summary of the testimony. It is the testimony that I found to be relevant to determining the appropriate penalty.

this reason, officers were required to secure their cell phones in their vehicles and could not use them while outside of their vehicles. **Lieutenant Ricki Nester**, who supervised the entire prison facility until he retired in 2022, confirmed that all personnel were advised that cell phones were not permitted in the facility, including in Food Service A, and that they were required to leave their cell phones in their cars. Although he did not encounter officers who had cell phones with them while in the facility, had an officer had a cell phone with them during their shift, they would have been removed; a report would have been prepared; and “the on-call would be notified.” T 117:14. However, had the officer reported to his post, but his shift had not yet started, he “believe[d]” that they “would just walk back to their vehicle and put it in their car.” T⁵ 117:22–23. He did not believe that this would be problematic if supervisors were unaware that it occurred.

Officers were permitted to use their cell phones during their breaks while they were inside their personal vehicles. A typical shift was eight hours, with a fifteen-minute break if relieving staff were available and a thirty-minute lunch break.

As a Grounds Food Service “A” Officer, appellant oversaw the work of inmate and civilian kitchen staff and was responsible for maintaining security and orderly operations within the kitchen, to enable food to be prepared and distributed to inmates and facility staff and to prevent wrongdoing. The kitchen was stocked with items that could be used as weapons, such as cans, can lids, bleach, knives, and metal utensils. Appellant was responsible for ensuring that all utensils remained in the kitchen and that food was not adulterated by inmates. Under the Internal Management Procedure for Food Service Officers, cell phones were contraband because they distracted from performing these functions properly. R-7.

The Department’s Human Resources Bulletin 84-17 details penalties for infractions. R-9. For each of the infractions charged in the FNDA, removal is permitted for a first offense. R-1; R-9. A written reprimand could be warranted if an officer brought contraband such as a sandwich, pack of gum, or newspaper into the facility. Removal is

⁵ “T” refers to the transcript of the September 15, 2025, hearing. It is followed by the referenced page and line numbers.

appropriate for a first offense of bringing a cell phone, weapon, or drugs into the facility. This was “widely known . . . throughout the state.” T 126:7. It would not matter if a cell phone were accidentally brought into the facility, as the Department’s policy is absolute and does not consider intent. A veteran officer should know and understand this policy. Moreover, by failing to comply with the policy, an officer exposes himself to inmates who may observe their improper cell phone usage, which would compromise the officer’s ability to properly and safely perform their job. This could jeopardize the safety of the officer, other officers, and inmates.

During the time that Lieutenant Nester supervised appellant, he performed his job in accord with “post orders,” and there were “no issues.” T 120:9–11.

Appellant **John T. Arrington** acknowledged that he was trained concerning Department policies. During the times at issue, he arrived approximately a half hour prior to the start of his shift and parked across from the building where he worked. It took approximately one and one-half minutes to walk from his car to the building. When he asked his supervisor if he could get something from his car or use his phone, he was told that he could do so as long as someone could cover for him. He did not recall having been told to sign in and out when he took a break.

Appellant discussed what he said to the investigator during his interview, including that he accidentally brought his phone into the Facility before his shift started. He was surprised when it rang. He “answered it by squeezing it and making it stop vibrating and ringing.” T 103:10–11. He did not want it to ring because he knew he was not supposed to have his phone with him while in the Facility. He then returned his phone to his car in “two seconds.” T 89:5. While he did not remember what he told the SID interviewer, he was “definitely” truthful because he was “always truthful.” T 99:25 to 100:5. He did not recall that he told the investigator that he “frequently” realized that his phone was in his pocket when he entered the Facility because that happened only once. T 101:22.

LEGAL ANALYSIS AND CONCLUSION

Because respondent previously established that summary judgement should be granted with respect to the charges in the May 19, 2021, FNDA, the remaining issue is the appropriate penalty.

Appellant argues that he should not be removed from his position because the charges against him are based only upon his admission that he accidentally brought his cell phone into the Facility and that he returned it to his car when he realized it was in his breast pocket. He also argues that mitigating factors—his length of service, disciplinary history, and work ethic—outweigh the seriousness of his offense. The Department contends that removal is appropriate because appellant admitted to having knowingly used his cell phone while working and that he frequently had his cell phone in his pocket while he was on duty. It argues that removal is the only appropriate penalty, even if appellant accidentally carried the phone into the Facility, because it could have been used in ways that could expose staff and the public to harm and subvert order and discipline in the Facility. Also, because there were multiple items in the Food Service area that could have been used as weapons, it was imperative that appellant not be distracted by his phone.

In evaluating the appropriate penalty, the nature of the offense, the concept of progressive discipline, and the employee's prior record must be considered. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.⁶ Under West New York v. Bock, 38 N.J. 500, 523–24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlow, 192 N.J. Super. 247 (App. Div. 1983).

[P]rogressive discipline is a flexible concept, and its application depends on the totality and remoteness of the individual instances of misconduct that comprise the disciplinary record. The number and remoteness or timing of the offenses and their comparative seriousness, together with an analysis of the present conduct, must inform the evaluation of the appropriate penalty. Even where the present conduct alone would not warrant termination, a history of discipline in

⁶ Unreported and administrative decisions are not precedential. They are referenced here because they provide relevant guidance.

the reasonably recent past may justify a greater penalty; the number, timing, or seriousness of the previous offenses may make termination the appropriate penalty.

[In re Stallworth, 208 N.J. 182, 199 (2011) (emphasis added).]

However, “progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee’s position involves public safety and the misconduct causes risk of harm to persons or property.” In re Herrmann, 192 N.J. 19, 33 (2007) (citing Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994)). When the offense is sufficiently serious, removal from employment can be appropriate even when the employee had not previously been disciplined. See In re Carter, 191 N.J. 474 (2007). Further, “[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).

The safety risks associated with cell phones inside prison facilities are well established. See In re Griffin, 2011 N.J. Super. Unpub. LEXIS 2756, *14 (App. Div. Nov. 4, 2011) (a cell phone in a prison “could wreak havoc with the safe operation and maintenance of such a facility and those entrusted with the responsibility of operating a correctional institution”); In re Gilsenan, 2011 N.J. CSC LEXIS 71, *10–11 (Jan. 19, 2011) (Cell phones are prohibited because they can be “used by inmates to further their criminal activities while incarcerated and are used to intimidate guards, other inmates and the general public. They therefore are an instrument which destroys the entire foundation of the penal system and are strictly prohibited”). Thus, the nature of appellant’s offense is a significant aggravating factor. Also, the need to deter others from engaging in such behavior and the adverse impact of the conduct upon his employer, including the morale of appellant’s coworkers, weigh in favor of discipline. Similarly, the impact of appellant’s actions upon the public’s perception about the Department’s capacity to perform its duties also weighs in favor of discipline.

Indeed, civil service laws “are designed to promote efficient public service, not to benefit errant employees. The welfare of the people, and not exclusively the welfare of

the civil servant, is the basic policy underlining [the] statutory scheme.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). “The overriding concern in assessing the propriety of the penalty is the public good.” George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) at 465. Moreover, appellant’s status as a law enforcement officer places his conduct under heightened scrutiny. His primary duty is to enforce and uphold the law and he “is constantly called upon to exercise tact, restraint and good judgment.” In re Disciplinary Procedures of Phillips, 117 N.J. 567, 576–77 (1990) (quoting Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965)). Being held to this heightened standard of conduct is one of the obligations the appellant undertook “upon voluntary entry into the public service.” In re Emmons, 63 N.J. Super. 136, 142 (App. Div. 1960).

The temporal proximity of past offenses must also be considered when evaluating the appropriate penalty. In Feldman v. Town of Irvington Fire Department, 162 N.J. Super. 177 (App. Div. 1978), the Appellate Division addressed a firefighter’s disciplinary history, which included three violations involving abuse of the sick leave policy; one of which also involved a finding of insubordination. These violations occurred four years prior to his failure to respond to a call. The court noted that, in West New York v. Bock, 38 N.J. 500 (1962), the Supreme Court found that a period of seven years between the “past record” and the charges being adjudicated “mandated that the ‘past record’ should not be considered on the penalty issue.” Feldman, 162 N.J. Super. at 182. The Feldman court added, “Although we cannot say that a span of four years automatically renders a past record too remote for consideration by the Commission, nevertheless such a period of service unblemished by infractions weighs heavily in mitigation of the penalty to be imposed.” Id. at 182–183. While the court declined to establish a bright-line rule for when a past record was too remote for consideration, it concluded that the conduct supporting the charges was not so egregious as to warrant removal and the prior four years of service “unblemished by infractions weigh[ed] heavily in mitigation of the penalty to be imposed.” Id. at 182–83. See also Scott v. Burlington Cnty. Jail, 96 N.J.A.R.2d (CSV) 171, 174 (concluding that a six-month suspension eight years prior was remote enough to justify not removing the corrections officer but held that his behavior was unacceptable conduct and demonstrated a disregard for the law, thus upholding the seventy-eight suspension). However, a period of years between offenses does not necessarily require that the earlier

offenses be disregarded. See, e.g., In re McIver, 2012 N.J. Super. Unpub. LEXIS 1049 (App. Div. May 14, 2012).⁷

In 2001 and 2003, appellant was disciplined for violating Departmental attendance policies and was issued a written reprimand (2001) and suspended three work days (2003, second offense). A-1. In 2002, he was found to have neglected his duties when he improperly used a facility telephone. He was suspended for five work days and ordered to reimburse the phone charges. A-1; R-12. The FNDA at issue here thus includes a second offense for neglect of duty. The penalty for a second neglect of duty offense (B-2) ranges from a thirty-work-day suspension to removal. R-9. Appellant has not been previously disciplined for the other charges that were sustained. The penalty for a first offense of conduct unbecoming (C-11) ranges from a three-work-day suspension to removal. Ibid. The penalties for a first offense of possession of contraband (C-17), violation of administrative procedures and/or regulations involving safety and security (D-7), and violation of a rule, regulation, policy, procedure, order, or administrative decision (E-1) range from an official written reprimand to removal. Ibid.

Mitigating factors include the length of appellant's service,⁸ he has no prior "C-11," "C-17," "D-7," or "E-1" offenses; and his next most recent offense for which he was disciplined occurred in 2003. It is also noteworthy that while the Department sought to demonstrate that he used his cell phone multiple times while on duty, the sustained charges are based solely on appellant's admission that he used his phone.⁹ There is limited to no specific evidence concerning whether appellant used or possessed his phone, and the FNDA does not specify precisely when he did so. Finally, there is no evidence in the record that appellant's use of his cell phone resulted in harm to others or the Facility, and Lieutenant Nester stated that it would not be problematic if an officer accidentally brought a phone into the Facility and returned it before their shift started.

⁷ Overruled on other grounds by Steinel v. Jersey City, 99 N.J. 1, 3-4 (1985).

⁸ Appellant's work history reports that he was hired January 16, 2001. A-1.

⁹ The Order on the parties' Cross-Motions for Summary Decision addresses respondent's failure to produce reliable evidence supporting its contention that appellant used his cell phone on multiple, specific occasions.

I do not take lightly the imperative that law enforcement personnel comply with Department procedures and the security interests that are at issue here. However, because removal is not mandated for each of the sustained charges, appellant's disciplinary history is remote in time and does not involve charges concerning contraband, and respondent has the burden of proof, I am compelled to find, based on these specific facts and circumstances, that respondent has not demonstrated by a preponderance of the credible evidence that removal is appropriate. Nonetheless, the maximum period of suspension should apply. I am constrained by the regulation that limits the maximum suspension to six months without pay. N.J.A.C. 4A:2-2.4. Accordingly, I **CONCLUDE** that a six-month penalty is appropriate here.

Since the penalty has been modified, I **CONCLUDE** that appellant is entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. The amount of back pay awarded is to be reduced and mitigated for any period of time when back pay was waived.¹⁰

I also **CONCLUDE** that appellant is not entitled to counsel fees. Pursuant to N.J.A.C. 4A:2-2.12(a), the award of counsel fees is appropriate 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 any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See Walcott v. City of Plainfield, 282 N.J. Super. 121, 128 (App. Div. 1995); Smith v. Dep't of Pers., Docket No. A-1489-02T2 (App. Div. Mar. 18, 2004); In re Dean (MSB, Sept. 21, 1989). Here, while the penalty was modified, the appointing authority sustained the charges, and major discipline was imposed. Therefore, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. See In re Bergus, 2000 N.J. AGEN LEXIS 1347 (Dec. 19, 2000), aff'd, Bergus v. City of Newark, Docket No. A-3382-00T5 (App. Div. June 3, 2002); In re Simmons, 1999 N.J. AGEN LEXIS 1221 (Oct. 26, 1999). See also In re

¹⁰ On May 3, 2021, the Civil Service Commission ordered that the appointing authority pay appellant his base salary beginning October 15, 2020. In re Arrington, 2021 N.J. CSC LEXIS 164 (May 3, 2021). Thus, appellant may be required to reimburse the appointing authority for some portion of the salary he received during the six-month period of suspension.

Simmons, 1999 N.J. AGEN LEXIS 1221 (Oct. 26, 1999). See also In re Rhoads, 2002 N.J. AGEN LEXIS 1642 (Sept. 10, 2002).

ORDER

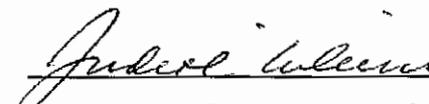
I **ORDER** that a six-month suspension be imposed. I **ORDER** that appellant is entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. Any award of back pay is to be reduced and mitigated for that period of time when back pay was waived. I further **ORDER** that appellant is not entitled to counsel fees.

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.

January 30, 2026
DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency: January 30, 2026

Date Mailed to Parties: January 30, 2026

JL/mg

APPENDIX

Witnesses

For appellant:

John Arrington
Lieutenant Ricki Nester

For respondent:

Major James Forbes

Exhibits

OAL:

OAL-1 Waiver letter

For Appellant:

A-1 Appellant's Work History

For Respondent:

R-1 FNDA
R-2 Not admitted
R-3 Not admitted
R-4 Not admitted
R-5 Not admitted
R-6 Policy statement concerning prohibition on electronic communication devices
R-7 EMCF internal management procedure for Food Service A Officer
R-8 Law Enforcement Personnel Rules and Regulations
R-9 Departmental Disciplinary Action Policy
R-10 Not admitted
R-11 Not admitted
R-12 Notification of minor disciplinary action

R-13 Not admitted

R-14 Not admitted

R-15 Not admitted