



STATE OF NEW JERSEY

In the Matter of Michael Emmert,  
Garden State Correctional Facility,  
Department of Corrections

DECISION OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2026-591  
OAL Docket No. CSR 17453-25

CORRECTED DECISION

ISSUED: JUNE 10, 2026

The appeal of Michael Emmert, a Correctional Police Sergeant with the Garden State Youth Correctional Facility, Department of Corrections (DOC), of his removal, effective May 25, 2022,<sup>1</sup> was heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on April 9, 2026. Exceptions were filed on behalf of the appointing authority, and a reply to the exceptions was filed on behalf of the appellant.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply filed by the parties, the Civil Service Commission (Commission), at its meeting on May 20, 2026, adopted the ALJ's Findings of Fact and Conclusions of Law and his recommendation to modify the removal to a demotion to Senior Correctional Police Officer and a 30 working day suspension.

The Commission notes that the ALJ recommended upholding all the charges, which the appellant is not contesting. As such, the only remaining issue is the appropriate penalty. Further, as indicated above, the Commission thoroughly reviewed the appointing authority's exceptions in this matter. However, it finds them

<sup>1</sup> The May 25, 2022 Preliminary Notice of Disciplinary Action indicates that the appellant's removal was effective May 25, 2022. The ALJ's initial decision indicates that the appellant's removal was effective August 8, 2025, which is the date of the Final Notice of Disciplinary Action (FNDA). However, the FNDA does not indicate a removal date.

unpersuasive. In this regard, the appointing authority argues that the appellant's violations of its rules and regulations relating to a cell extraction of an inmate, which included deploying Oleoresin Capsicum (OC) spray twice, was a use of excessive force that warrants removal. However, the ALJ's determination is based significantly on his assessment of the witnesses' testimony. While the ALJ found the appointing authority's witnesses credible, none of them observed the cell extraction in real time. Additionally, the video provided "limited value" as the inside of the cell could not be seen and the inmate could not be heard.<sup>2</sup> 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 its exceptions, the Commission finds no persuasive evidence in the record or the exceptions to demonstrate that the ALJ's findings and conclusions based on his credibility determinations were arbitrary, capricious or unreasonable.

Specifically, the ALJ noted that Senior Training Officer Lieutenant Christopher Antoniello, who is responsible for providing annual training to DOC staff at the Sea Girt facility for "Use of Force; Deescalation; Cell Extraction; and First Aid" testified that:

[He] watched the video and observed the inmate put his hand out of the cell as if to comply but admitted that he was uncertain as to what the incarcerated person was trying to do. He also admitted that the video was limited in value because it does not show the individual or the inside of the cell; therefore, it is impossible to know what appellant observed.

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<sup>2</sup> The appointing authority argues that since the ALJ found its witnesses credible, it should be given deference regarding the appropriate penalty. However, this argument is not dispositive since the ALJ found the appellant's witnesses credible, and they were the only eyewitnesses to the entire incident. Further, the appointing authority's comment that it will be subject to a back pay award if the removal is not upheld is not persuasive since, to find otherwise, there would be no need for an administrative proceeding when an appointing authority removes its employee.

Additionally, the ALJ noted that “[o]nly two of the witnesses presented observed the cell extraction in real time, appellant and [Senior Correctional Police Officer Timothy] Ryan.” Consequently, the ALJ found Ryan to be a “pivotal witness.” Specifically, the ALJ stated that:

Ryan was not only able to observe the extraction as it occurred, but he was able to observe the interactions between appellant and the inmate that were not recorded. Additionally, as the control booth officer, Ryan was in charge of operating the cell doors and opened and closed them as the extraction occurred. Surprisingly, he was never interviewed in the investigation. Ryan described how he observed (but could not hear) inmate N.G. yelling from his second-floor cell down to the first floor as appellant approached the stairs. According to Ryan, the inmate was “jawing” with appellant and giving him the finger and did not appear to be complying with any of the appellant’s commands. When Ryan first opened the door, he observed the inmate’s hands, and it appeared to Ryan that the inmate was attempting to block the OC spray. Ryan indicated that the inmate was not cooperative and was not trying to cuff up. The second time appellant approached the cell, Ryan indicated that the inmate was in a position of mule kicking. Mule kicking is where inmates position themselves to kick or hurt the first officer who enters the cell. Again, according to Ryan, the inmate never appeared to be surrendering or complying with commands.

The ALJ also indicated that Ryan’s testimony was “consistent with the extraction teams members who detailed the inmate’s conduct in their special custody reports,” which each indicated that the inmate refused to follow commands.

Therefore, the ALJ determined that Ryan was “not only an important fact witness but a credible one.” Additionally, the ALJ found the appellant credible as he “could not detect any evidence of retaliatory motive, anger, or prior misconduct.” Consequently, the ALJ concluded that:

[I]nmate N.G. refused to cooperate with his transfer. Specifically, inmate N.G. was combative and refused to follow appellant’s commands to cuff up. Inmate N.G.’s conduct necessitated the forced cell extraction, and his injuries were the result of his actions in resisting custodial attempts to remove him from the cell and not the result of an assault.

Accordingly, the Commission finds that removal is not appropriate based on the ALJ’s assessment of the credibility of testimony of the only two witnesses who had a real time view of the cell extraction where the video was only of “limited value.” Rather, the penalty of a demotion and a 30 working day suspension is proper under the circumstances.

Regarding the appellant's demotion from Correctional Police Sergeant to Senior Correctional Police Officer, the ALJ found:

[A]ppellant approached the cell without the full extraction team; appellant admittedly did not provide loud, clear commands to the inmate; when appellant first discharged OC spray, he did not follow up with a command to the inmate to cuff up and; the second time appellant discharged the OC spray, he did not allow for two minutes to elapse before ordering the extraction team into the cell.

Therefore, the Commission agrees that the appellant's demotion is appropriate because, as a supervisor, he failed to follow the appointing authority's cell extraction policy.

Referring to the appellant's suspension, 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 30 working day suspension along with the demotion, 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: 1. The appellant followed policy by securing approval for a forced cell extraction; 2. Although he did not do so in a loud and clear manner, the appellant requested the inmate cuff up on several occasions; 3. The use of OC spray is acceptable to gain compliance of an inmate as long as it used according to policy;<sup>3</sup> 4. The inmate's injuries were due to the inmate's resistance to being handcuffed and not due to an assault from custodial staff; and 5. The appellant began his employment on March 25, 2008, and had no prior major disciplinary infractions and only one minor

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<sup>3</sup> The appointing authority argues that since the ALJ found that the cell extraction did not comply with policy, this cannot be a mitigating factor. However, the non-compliance with the policy as outlined herein is why the appellant is being demoted and receiving a 30 working day suspension. However, this does not signify that removal is the appropriate penalty based on the totality of the circumstances.

infraction for reporting late for duty. Therefore, the Commission agrees with the ALJ that the mitigating factors outweigh the aggravating factors and a 30 working day suspension, along with the aforementioned demotion, is the appropriate penalty.

Since the removal has been modified, the appellant is entitled to be reinstated as a Senior Correctional Police Officer with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from 30 working days 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 a Senior Correctional Police Officer position.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing Michael Emmert was not justified. The Commission, therefore, modifies that action to a demotion to Senior Correctional Police Officer and a 30 working day suspension.

The Commission further orders that the appellant be immediately reinstated to Senior Correctional Police Officer and receive back pay, benefits, and seniority following 30 working days after the date of disciplinary separation without pay to the date of reinstatement. 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 20<sup>TH</sup> DAY OF MAY, 2026



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Mary Cruz  
Acting Chairperson  
Civil Service Commission

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and  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 17453-25

AGENCY DKT. NO. N/A

**IN THE MATTER OF MICHAEL EMMERT,  
GARDEN STATE CORRECTIONAL  
FACILITY, DEPARTMENT OF CORRECTIONS.**

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**Marcia J. Mitolo, Esq.**, for appellant, Michael Emmert (Limisky, Mitolo, Law Firm)

**Natalie Poirier**, Deputy Attorney General, for respondent Garden State Correctional Facility (Jennifer Davenport, Attorney General of New Jersey, attorney)

Record Closed: March 23, 2026

Decided: April 9, 2026

**BEFORE WILLIAM T. COOPER III, ALJ:**

**STATEMENT OF THE CASE**

Michael Emmert (appellant) challenges his removal from his position as a correctional police sergeant by respondent New Jersey Department of Corrections (DOC or respondent) for violations of the DOC Rules and Regulations relating to a cell extraction that occurred on April 8, 2020, at Garden State Youth Correctional Facility (GSYF).

Two issues must be addressed in this matter: first, whether respondent has proven the charges identified in the Final Notice of Disciplinary Action by a preponderance of the evidence, and second, if any of the charges have been proven, whether termination was the appropriate penalty to be imposed.

### **PROCEDURAL HISTORY**

On May 25, 2022, respondent served upon appellant a Preliminary Notice of Disciplinary Action (PNDA) charging appellant with multiple violations of DOC Rules and Regulations and conduct unbecoming a public employee. A departmental hearing was held, and on August 8, 2025, respondent served upon appellant a Final Notice of Disciplinary Action (FNDA) sustaining the charges and removing him from respondent's employment with an effective date of August 8, 2025. The sustained charges were as follows:

- N.J.A.C. 4A:2-2.3(a)(6)—Conduct Unbecoming a Public Employee,
- N.J.A.C. 4A:2.3(a)(12)—Other Sufficient Cause,
- DOC Rules and Regulations:  
HRB 84-17: C-11—Conduct unbecoming an employee  
HRB 84-17: E-1—Violation of a rule, regulation, policy, procedure, order or administrative decision.

The specifications in support of the charges noted that:

On or about April 8, 2020, you were involved in an incident at Garden State Youth Correctional Facility. The complaint states that you attempted to cause or caused significant bodily injury to an Incarcerated Person [(IP)]. You were charged with criminal violations of 2C:12-1B(7) and 2C:28-7A(1). Further, these charges constitute a violation of departmental policies,

rules, and regulations and is conduct unbecoming a public employee.<sup>1</sup>

[R-2.]

On September 12, 2025, appellant timely appealed the FNDA, where it was filed by the Office of Administrative Law (OAL) as a contested case on October 6, 2025. N.J.S.A. 52:14 B-1 to -15; N.J.S.A. 52:14 F-1 to -13.

On November 24, 2025, appellant consented to a sixty-day extension of the 180-day time limit under N.J.A.C. 4A:2-2.13(g) and agreed to the issuance of a Final Agency Decision within 240 days of his appeal. (J-1.)

Hearings were conducted on February 2, 3, 9, and 10, 2026. Closing statements were received from the parties on March 23, 2026, and the record closed.

## **FACTUAL DISCUSSION AND FINDINGS**

### **Background**

On April 8, 2020, appellant was assigned to the restricted housing unit (RHU) at GSYF. During his shift, appellant, as the supervisor, led a cell extraction of inmate N.G.<sup>2</sup> (inmate) after the inmate assaulted a correctional officer. The DOC alleges that the cell extraction was not performed in conformance to DOC policy and procedures. Specifically, the DOC alleges that appellant first approached the cell without the full extraction team present; appellant deployed Oleoresin Capsicum (OC) spray and left the inmate unattended; and appellant did not provide the inmate an opportunity to comply after the first deployment of OC spray. Once the full extraction team was deployed, appellant allowed the team to physically assault the inmate. The DOC argues that appellant's failure to adhere to DOC protocol on April 8, 2020, showed a breakdown in appellant's

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<sup>1</sup> In November 2024, the criminal charges were dismissed in New Jersey Superior Court, and the matter was returned to NJ DOC for review and any disciplinary action deemed appropriate. (See R-4 at 13).

<sup>2</sup> The inmate's initials are used to protect his identity

leadership, that appellant lacked good judgment, and that the use of physical force placed the inmate and members of the extraction team in danger.

Appellant responds that the RHU is a volatile environment, that pursuant to DOC policy the inmate caused the need for the cell extraction and was uncooperative throughout the extraction process, and that the force used on April 8, 2020, was reasonable under the circumstances.

### **Initial Findings**

Based upon the joint stipulation of facts submitted by the parties, I **FIND as FACT:**

1. Appellant Emmert was hired by the Department of Corrections on March 25, 2008.
2. Appellant Emmert worked on April 8, 2020, at Garden State Youth Correctional Facility.
3. Appellant Emmert's title at that time was Sergeant.
4. Appellant Emmert was the sergeant in charge of supervising the cell extraction.
5. The incident was captured by Sergeant Jonathan Ash on video.
6. Initially, appellant Emmert proceeded up to the cell with Sergeant Ash and Officer Christopher Toth.
7. Appellant Emmert sprayed OC spray in the direction of the inmate's cell for approximately three seconds.
8. Appellant Emmert, along with Sergeant Ash and Officer Toth, then proceeded down the stairs.
9. At that time, the entire cell extraction team gathered.
10. The full cell extraction team then proceeded up the stairs toward the inmate's cell.
11. Appellant Emmert deployed OC spray again.
12. The officers took the IP to a shower to decontaminate.

13. The Department investigated after the April 8, 2020, incident.
14. The Preliminary Notice of Disciplinary Action is dated May 25, 2022.
15. The Final Notice of Disciplinary Action is dated August 8, 2025.

### **Testimony**

In presenting its case, respondent called five witnesses: Senior Investigator Daniel Cacia; Major James Forbes; Senior Training Officer Lieutenant Christopher Antonello; Director of Staff Training Trevor Beatty; and Director of Employee Relations Susan Sweeney. In response, appellant testified on his own behalf and also called Senior Correctional Officer Timothy Ryan as a witness.

**Daniel Cacia** (Cacia) is employed by the DOC and is assigned to the special investigation unit. Cacia performed an investigation of the April 8, 2020, cell extraction. In performing the investigation Cacia viewed the video (R-3) taken by Sgt. Ash, and the use of force reports completed by the other members of the extraction team. According to Cacia, appellant, pursuant to policy, obtained authorization for the cell extraction; however, after that the DOC policy and procedures for cell extraction were not followed.

The full extraction team included appellant as supervisor, Sgt. Ash as cameraman, and five correctional officers (COs). First, the video shows that only appellant, CO Toth, and Sgt. Ash ascend a flight of stairs and approach the cell. DOC policy requires that the full team approach the cell. Next the video shows the inmate's hands coming out of the food port, and appellant deploys OC spray into the cell. Here it is alleged that there were several policy violations; first, according to Cacia, the inmate appears to be complying with the standard order to be handcuffed (also referred to as "cuff up" or "cuffing up") by putting his hands outside of the cell door. Second, when appellant deploys the OC spray it appears as if he does so at close range, which is against policy due to the risk of injury. Third, after the OC spray was deployed there was no opportunity provided for the inmate to comply. Finally, after the OC spray was deployed, appellant, Sgt. Ash, and the CO leave the area. DOC policy requires a person remain at the cell door to ensure there is

no medical emergency related to the use of OC spray and that the inmate is not prepared to defend the cell or inflict harm on the extraction team.

The video also shows the full extraction team assemble, then they are given instructions, and then they ascend the stairs to the inmate's cell. Again, appellant deploys OC spray, but according to Cacia it does not appear as if appellant gave the inmate a chance to comply beforehand. Additionally, after the OC spray was used, the extraction team entered the cell and the inmate was not provided an opportunity to comply. The video does not show the inside of the cell but COs inside the cell are repeatedly telling the inmate to "stop resisting" and "put your hands behind your back." Once secured the inmate is walked out of the cell, exhibiting the cuts and bruises he suffered. The cuts and bruises are also shown in seven photos taken post-extraction. (R-13.) The video also shows the inmate calmly walking to the shower area under his own power and without further incident.

Major **James Forbes** (Forbes) is the director of DOC operations. He is responsible for creating, reviewing, and modifying, as necessary, DOC policies and procedures. He also oversees body-worn camera footage. Forbes' prior work experience included an assignment to GSYF, and he admitted that the RHU is chaotic, loud, and very busy. Consequently, staff working in the RHU have to be "on their toes all day." Forbes indicated that a forced cell extraction can be used when an inmate is being moved due to a DOC violation. Once an inmate refuses to come out or otherwise cooperate, then permission from a superior officer for an extraction is required. A CO then should be posted to the cell to observe the inmate. Once the full extraction team is assembled, the supervisor instructs each member to their respective roles. Once outside the cell, the supervisor is required to again seek compliance; if the inmate refuses, then OC spray can be employed but only from a safe distance of at least three feet away. After OC spray is used, another request to comply should be provided. If that order of compliance is refused, then the extraction team would be sent inside the cell.

Forbes viewed the video of the extraction and opined that there were several deficiencies in the process. When appellant first approaches the cell in the video, he does not hear appellant instruct the inmate to submit to being handcuffed. He observes the inmate's hands come out, and then appellant deploys the OC spray. Forbes also noted that appellant; never posted a CO at the door once the extraction was authorized; approached the cell before the extraction team was in place; deployed OC spray, although it appeared as if the inmate was attempting to comply; did not provide instruction for compliance before deploying OC spray the second time; and that the OC spray appeared to be deployed when the inmate was within three feet of appellant. Overall Forbes stressed that multiple opportunities are to be provided to gain compliance in order to avoid extraction and the use of force.

Forbes' opinion is that the video shows the inmate attempting to comply with appellant's commands but that appellant did not provide him with the opportunity to do so. Forbes indicated that removal as a penalty is necessary here because the excessive force used showed a failure by appellant to control himself and the COs he supervised.

Senior Training Officer Lieutenant **Christopher Antonello** (Antonello) is responsible for providing annual training to DOC staff at the Sea Girt facility for: Use of Force; Deescalation; Safety Protocols; Cell Extraction; and First Aid. According to Antonello, an extraction team consists of seven members: a sergeant operating a handheld camera, a sergeant supervising, and five COs. The team as a whole approaches the cell, and the supervising sergeant provides a command to the inmate to comply and a warning as to what will happen if there is no compliance. If compliance is not forthcoming, then the use of OC spray is allowed; if there is no compliance after the OC spray is used, then the extraction team can go into the cell. A shield man enters first to take down or pin the inmate to a wall so that the other COs can secure arms and legs.

Antonello watched the video and observed the inmate put his hand out of the cell as if to comply but admitted that he was uncertain as to what the incarcerated person was trying to do. He also admitted that the video was limited in value because it does not

show the individual or the inside of the cell; therefore, it is impossible to know what appellant observed. Antonello indicated that training stresses deescalation so that the use of force is not necessary. Deescalation requires a lot of patience on the part of COs as well as loud, clear commands being provided.

Director of Staff Training **Trevor Beatty** (Beatty) is responsible for the training of DOC custodial staff. He is required to ensure that the training complies with the law and Attorney General guidelines. Beatty is also a member of the DOC Use of Force Committee (committee). According to Beatty, whenever there is a use of force incident, it undergoes a review process. The institution where the use of force was used reviews the incident first to determine if the force used was proportional. If the institution does not find the use of force was proportional, then the matter is reviewed by the committee. That committee reviews to verify the institution's conclusion and what, if anything, needs to be done as a result of a violation. It was Beatty's opinion that the cell extraction performed on April 8, 2020, was not proportionate, the use of mechanical force (OC spray) was excessive, and overall, the use of force employed was not in line with DOC policy and procedures. Beatty concluded that appellant did not use loud verbal commands and did not provide the IP with a fair opportunity to comply.

Beatty believed the incident was egregious because had the policy been followed, force would not have been necessary. According to Beatty, the committee concluded that the actions of appellant showed ignorance of the policy and lack of understanding of DOC standards and policy, and as such, termination was deemed appropriate.

Director of Employee Relations **Susan Sweeney** (Sweeney) handles major discipline of DOC staff and is a non-voting member of the committee. Once the committee review was completed, it was her responsibility to make the decision as to disciplinary action. Sweeney testified that appellant and other extraction team members were indicted by a Burlington County Grand Jury, but the charges were eventually dismissed and the matter referred back to the DOC for further action as deemed necessary. The committee reviewed the incident of April 8, 2020, and appellant's role and unanimously

recommended that termination was necessary. Sweeney noted that certain infractions cannot be tolerated, and if they were, then the DOC would lose the trust and confidence of the public at large. According to Sweeney, as a result of this incident, the DOC revamped its use of force policy.

Sweeney noted that appellant's failure to follow procedure led the entire team to violate policy. Further, appellant's actions placed not only the inmate in physical harm, but also jeopardized the safety of the entire extraction team. Sweeney found that this was not a minor incident but a severe violation that required a serious penalty. In her opinion anything less than termination would leave other DOC staff to believe that this type of conduct was acceptable.

Appellant **Michael Emmert** testified that he has been employed by the DOC for approximately eighteen years without prior discipline. Appellant has been a sergeant for five years. On April 8, 2020, he was assigned to the RHU, which he described as a jail within a jail, where incarcerated persons who cannot, do not, or will not follow DOC rules are placed. According to appellant, his role as a sergeant in the RHU is to ensure the safety and security of those incarcerated as well as the safety of the COs under his command. Appellant recalled receiving use-of-force training when he was promoted, and at the time, the training consisted of a PowerPoint presentation. If an inmate in the RHU commits a rule infraction, then they are placed in pre-hearing detention to await a hearing on the rule infraction and what penalty will be ordered. Removal from the RHU is mandatory after a rule infraction has been committed.

On April 8, 2020, inmate N.G. assaulted a CO by throwing liquid at him through the food port of his cell. The liquid was suspected to be a mixture of bodily fluids and water. When questioned, the incarcerated person accused the CO of trying to poison him. Appellant notified his lieutenant, who authorized the move to pre-hearing detention. Appellant went back to the cell and ordered the incarcerated person to "cuff up," and he refused. According to appellant, the incarcerated person threatened to assault any CO who would come up to the cell.

He conceded that the video reflects approximately sixty seconds between OC deployments. He admitted, in hindsight, that he wished he had repeated commands louder and maintained camera positioning. The video began approximately twenty minutes after the initial assault, and it did not capture the inmate's prior threats, obstruction of the food port, or prolonged refusal to comply.

Officer **Timothy Ryan** (Ryan) testified that he was positioned in East Control, operating the doors, and had direct line-of-sight observation of the cell extraction. Ryan maintained continuous visual observation of the inmate during both approaches. Ryan confirmed that the inmate was at the front of the cell yelling and making obscene gestures. The inmate was not at the rear of the cell; the inmate's hands were not behind his back in a cuffing posture; the inmate was not compliant or surrendering. When the door was cracked three to four inches, Ryan observed the inmate's hands immediately come through the opening. From his vantage point, it appeared the inmate was blocking spray rather than cuffing up.

Further, Ryan's testimony regarding the inmate's crouched positioning prior to entry supports the assessment that the inmate posed a safety risk and was not in compliance with orders from appellant. Finally, it was Ryan's opinion that the cell extraction was done pursuant to NJ DOC procedure.

### **Credibility of Witnesses**

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also,

"the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Here, respondent presented testimony from five witnesses: Cacia, Forbes, Antonello, Beatty, and Sweeney. Appellant testified on his own behalf and also presented CO Ryan. There was a stark difference between the witnesses as to how a cell extraction is supposed to be conducted. Further, the video taken by Ash as the extraction was occurring was only of limited value because it did not record what inmate N.G. was doing inside the cell or what he was saying. Moreover, the video depicted only a portion of the events that occurred on April 8, 2020. Only two of the witnesses presented observed the cell extraction in real time, appellant and Ryan.

Cacia, Forbes, and Antonello testified as to how a cell extraction is supposed to occur when performed in accordance with NJ DOC policy. Their testimony was clear, concise, and presented in a professional manner. I agree with Cacia's conclusion that the cell extraction was not performed according to NJ DOC policy but disagree with his conclusion that the members of the cell extraction team committed criminal infractions. Forbes and Antonello were knowledgeable as to the NJ DOC policy concerning extractions and enunciated how the policy is designed to provide an inmate with multiple opportunities to comply but requires patience. I found them to be credible. Beatty and Sweeney were similarly professional in their testimony, and although I agree with their general position that COs assaulting an inmate can never be tolerated, I do not agree that is what occurred here, and I do not agree with their position that the termination of appellant was necessary.

CO Ryan was a pivotal witness because he was in the control booth during the entirety of the incident on April 8, 2020, and from that position he had an unobstructed view of inmate N.G.'s cell. Ryan was not only able to observe the extraction as it occurred, but he was also able to observe the interactions between appellant and the inmate that were not recorded. Additionally, as the control booth officer, Ryan was in charge of operating the cell doors and opened and closed them as the extraction occurred. Surprisingly, he was never interviewed in the investigation. Ryan described how he observed (but could not hear) inmate N.G. yelling from his second-floor cell down to the first floor as appellant approached the stairs. According to Ryan, the inmate was "jawing" with appellant and giving him the finger and did not appear to be complying with any of appellant's commands. When Ryan first opened the door, he observed the inmate's hands, and it appeared to Ryan that the inmate was attempting to block the OC spray. Ryan indicated that the inmate was not cooperative and was not trying to cuff up. The second time appellant approached the cell, Ryan indicated that the inmate was in a position of mule kicking. Mule kicking is where inmates position themselves to kick or hurt the first officer who enters the cell. Again, according to Ryan, the inmate never appeared to be surrendering or complying with commands.

Ryan's testimony was also consistent with the extraction team members who detailed the inmate's conduct in their special custody reports. CO Toth noted the inmate's failure to comply with commands to cuff up and reported that as he entered the cell the inmate began to kick him. (R-7 at DOC020.) CO Sadowski noted that the inmate refused to handcuff when commanded to do so. (R-7 at DOC022.) CO Quinones noted that upon the arrival of the full extraction team, the inmate refused to cuff up and affirmed that when the cell door opened the inmate became combative. (R-7 at DOC024.) CO Gaines noted that the inmate refused to comply with commands to cuff up, which led to a discharge of OC spray by appellant and further that the inmate was resisting efforts to be secured. (R-7 at DOC026.) CO Ambrozaitas noted that as the extraction team entered the cell, the inmate continued to refuse commands. (R-7 at DOC028.)

Accordingly, I found Ryan to be not only an important fact witness but a credible one.

Appellant's testimony provided insight into his attempts to gain the inmate's compliance and the observations made requiring the actions he took. Appellant had participated in over 100 extractions without correction, and continued employment without further force issues for years after the incident. I could not detect any evidence of retaliatory motive, anger, or prior misconduct. I found appellant to be entirely credible.

### **Additional Findings**

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

On April 8, 2020, inmate N.G. refused to cooperate with his transfer. Specifically, inmate N.G. was combative and refused to follow appellant's commands to cuff up. Inmate N.G.'s conduct necessitated the forced cell extraction, and his injuries were the result of his actions in resisting custodial attempts to remove him from the cell and not the result of an assault. However, the cell extraction did not occur pursuant to NJ DOC policy because: appellant approached the cell without the full extraction team; appellant admittedly did not provide loud, clear commands to the inmate; when appellant first discharged OC spray, he did not follow up with a command to the inmate to cuff up and; the second time appellant discharged the OC spray, he did not allow for two minutes to elapse before ordering the extraction team into the cell.

### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be

disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

Police officers are held to a high standard of conduct both on and off the job. In re Phillips, 117 N.J. 567, 577 (1990). Correction officers serve in a capacity analogous to police officers. As such, they have a duty to serve the public with the highest fidelity, honesty, integrity, and good faith. As they are vested with powers and responsibilities not held by other public employees, law enforcement officers are held to the highest standards of conduct. See In re Carberry, 114 N.J. 574 (1989).

The issues to be resolved here are whether respondent has proven the charges by a preponderance of the credible evidence, and if so, whether the penalty of removal was justified and reasonable.

The FNDA charges appellant with violating the following regulations: 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; HRB84-17: C-11, Conduct unbecoming an employee; and HRB 84-17: E-1, Violation of a rule, regulation, policy, procedure, order, or administrative decision.

The purpose of NJ DOC Policy CUS.001.UOF.002 Use of Force and Security Equipment: Forced Cell Extraction is to establish and maintain NJ DOC internal management procedures regarding the use of force and security equipment by custody staff members during Forced Cell Extractions. (R-20 at DOC196.)

Section IV. Procedures, Part A. Forced Cell Moves, Section 4. "When a special needs inmate must be force medicated" states in part:

[W]hen a decision has been made to force an inmate to move, the area **custody supervisor will give the inmate a clear verbal order to comply**. If there is no immediate danger to the inmate's safety, or serious damage to state property by the inmate, a reasonable amount of time will be allowed for the inmate to comply.

Compliance at this step means the inmate removes all clothing (strips) and places his or her hands through the food port (if applicable) so that he or she can be handcuffed. In a case where there is no food port, to facilitate safe entry into the cell for handcuffing, the inmate will be ordered to remove all clothing (strip) step to the rear of the cell, kneel facing the wall with feet crossed and place hands behind the head with fingers interlaced.

**If the inmate refuses the order to move and/or refuses to comply with the above handcuffing procedures, and a supervisor reasonably believes that the use of force is imminently necessary and time and circumstances permit, the Shift Commander shall be advised of the situation, and no further action shall be taken prior to an approved Forced Cell Extraction.**

[R-20 at DOC201 (emphasis added).]

Section IV. Procedures, Part C. Use of Chemical and/or Natural Agents states in part:

Natural Agents - Natural Agents such as, but not limited to, oleoresin capsicum (pepper spray) shall be used to enforce NJDOC regulations as authorized . . . or in situations where a

custody staff member believes that the inmate's failure to comply constitutes a threat to the safety and/or security of the correctional facility.

.....

Natural agents should be used at the closest range possible without excessive risk of injury to the user and should not be directly sprayed into eyes at a distance of [] less than three feet due to potential injury from the force of the spray.

.....

**After administering one short spray application, staff should wait approximately two minutes for the spray to completely take effect before administering a second application, if necessary.**

[R-20 at DOC203 (emphasis added).]

Section IV.. Procedures, Part F. Forced Cell Extraction Process (Single-Lock Cell)  
states in part:

**The Extraction Team will proceed to the cell / area, and the Team Supervisor shall again give the inmate a loud and clear verbal order to comply. If the inmate complies at this point, he or she will be processed and restrained as detailed in Section A. and escorted by the supervisor and the entire team to the designate[d] cell or other secure area.**

**If the inmate again refuses to comply, the supervisor shall immediately use the natural agent spray as long as there is no overriding factor to prevent it from being used.**

**After approximately two (2) minutes from first natural agent application, the Team Supervisor will again give the inmate a loud and clear verbal order to comply. If the inmate complies at this point, he or she will be processed and restrained as detailed in Section A. and escorted by the supervisor and the entire team to the designated cell or other secure area.**

If the inmate refuses to comply at this point, the extraction process shall continue. . . .

[R-20 at DOC206 (emphasis added).]

Applying the credible facts to the law, I **CONCLUDE** that appellant violated NJ DOC policy on forced cell extraction because appellant initially approached the cell without the full extraction team; although appellant gave commands to comply to the inmate, he admittedly did not do so in a loud and clear manner; when appellant first discharged OC spray, he did not follow up with a command to the inmate to cuff up; and the second time appellant discharged the OC spray, he did not allow for two minutes to elapse before ordering the extraction team into the cell. I could not tell from the video how far the inmate was from appellant both times the OC spray was discharged by appellant and cannot conclude the allegation that the OC spray was discharged at close range.

Appellant is also charged with violating N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee. "Conduct unbecoming" is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for [government] employees and confidence in the operation of [governmental] services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). I **CONCLUDE** that appellant's conduct on April 8, 2020, was unbecoming when he failed to follow NJ DOC policy for forced cell extractions in violation of both N.J.A.C. 4A:2-2.3(a)(6) and NJ DOC Policy HRB 84-17: C-11, Conduct unbecoming an employee.

“Other sufficient cause,” N.J.A.C. 4A:2-2.3(a)(12), is an offense for conduct that violates the implicit standards of good behavior that devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, 2014 N.J. AGEN LEXIS 236 (May 19, 2014), adopted, Civil Serv. Comm’n (September 3, 2014). I **CONCLUDE** that on April 8, 2020, appellant failed to follow NJ DOC policy as to forced cell extractions in violation of respondent’s Rules and Regulations and therefore violated HRB 84-17: E-1, Violation of a rule, regulation, policy, procedure, order or administrative action and that respondent has sufficiently demonstrated that Emmert violated N.J.A.C. 4A:2-2.3(a)(12).

### **PENALTY**

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182,195–96 (2011); West New York v. Bock, 38 N.J. 500, 523 (1962). When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant’s past record. Bock, 38 N.J. at 523–24. The employee’s past record is said to encompass their reasonably recent history of promotions or commendations on the one hand, and on the other hand, any “formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee.” Id. at 524. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Ibid.

However, the theory of progressive discipline is not a fixed rule to be followed without question.

An analysis of the mitigating and aggravating factors must be undertaken before the appropriate discipline can be determined. The mitigating factors are as follows: First, appellant followed DOC policy by securing approval for a forced cell extraction on April 8, 2020. Second, although he did not do so in a loud and clear manner, appellant requested

the inmate cuff up on multiple occasions. Third, the use of OC spray is acceptable to gain compliance of an inmate so long as it is used according to NJ DOC policy. Fourth, the injuries suffered by the inmate were not the result of an assault by custodial staff but due to his combativeness and active resistance to attempts to being handcuffed. Fifth, appellant has no prior major disciplinary infractions and only one minor infraction for reporting late for duty.

The aggravating factors include that appellant is a supervisor who failed to follow NJ DOC policy for conducting a forced cell extraction. Appellant testified he has conducted over 100 cell extractions, so the inability of a supervisor to follow the policy is concerning. Further, among the missteps made by appellant include improperly using OC spray by not waiting two minutes after deployment.

In a disciplinary proceeding, an employee's past record may be resorted to "for guidance in determining the appropriate penalty for the current specific offense." Bock, 38 N.J. at 523. This past record includes "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously called to the attention of and admitted by the employee." Id. at 524. However, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. Henry v. Rahway State Prison, 81 N.J. 571 (1980).

Here, appellant has no prior major disciplinary infractions during his career and only one minor infraction for failing to report for his shift on time. Corrections officers are held to a higher standard compared to other public employees, and here, appellant failed to follow NJ DOC policy on how to conduct forced cell extractions. Respondent argues that the penalty of removal is warranted because appellant knew better yet chose to inflict harm on an inmate, and his actions were egregious and caused actual harm to the inmate, and risked potential harm to the officers, and increased serious scrutiny on NJ DOC.

This argument is unconvincing as it relies primarily upon the video taken by Sgt. Ash and is not consistent with the credible evidence.

The inmate assaulted a correctional staff member, and appellant notified the inmate that he would be placed in pre-hearing detention and asked if he would comply with the transfer, to which the inmate refused. Appellant secured the appropriate authority to conduct a forced cell extraction, and although the video does not record well, CO Ryan's testimony as well as the reports from the extraction team members make it clear that the inmate was instructed verbally to comply multiple times yet consistently refused. Further, the credible evidence also established that inmate N.G. was combative and his conduct necessitated the forced cell extraction.

Weighing the mitigating and the aggravating factors, I conclude that the mitigating factors outweigh the aggravating factors. Here, respondent sought a penalty of removal. Under the circumstances presented here, such a penalty is disproportionate to the facts surrounding the sustained charges and ignores the mitigating factors that support a less stringent penalty.

I agree with respondent that a person who is in a supervisory role must adhere to NJ DOC policy for the benefit of both custodial staff and inmates. That was not done here. Accordingly, I **CONCLUDE** that a demotion from the rank of Sergeant together with a thirty-working-day suspension is appropriate under the circumstances presented here.

### **ORDER**

I **ORDER** that the charges of violating 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, to wit, NJ DOC Rules, Regulations and Policy HRB 84-17: C-11, Conduct unbecoming a public employee and HRB 84-17: E-1, Violation of a rule, regulation, policy, procedure, order or administrative decision for violation of NJ DOC Policy CUS.001.UOF.002 Use of Force and Security Equipment: Forced Cell Extraction, be **SUSTAINED**.

It is further **ORDERED** that the removal be amended to a demotion from the rank of Sergeant with a thirty-working-day suspension.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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.

April 9, 2026  
DATE

  
\_\_\_\_\_  
WILLIAM T. COOPER, III, ALJ

Date Received at Agency: April 9, 2026

Date Mailed to Parties: April 9, 2026

WTC/am

**APPENDIX**

**Witnesses**

**For Appellant:**

Michael Emmert

Timothy Ryan

**For Respondent:**

Daniel Cაცია

James Forbes

Susan Sweeney

Trevor Beatty

Christopher Antonello

**Exhibits**

**Joint:**

J-1 Extension Consent

J-2 Joint Stipulation of Facts

**For Appellant:**

None

**For Respondent:**

R-1 PNDA, dated May 25, 2022

R-2 FNDA, dated August 8, 2025

R-3 Video 1: Cell Extraction

R-4 Special Investigation Report dated December 17, 2024

R-5 April 8, 2020, Preliminary Incident Report

- R-6 April 8, 2020, Daily Schedule
- R-7 CUS-100 Special Custody Reports
- R-8 CUS-102 Use of Force Reports
- R-9 Authorization for Prehearing Disciplinary Housing Placement
- R-10 Logbook Pictures
- R-11 Daily Shift Log
- R-12 Video 13: Inmate Statement
- R-13 Pictures of Inmate's Injuries
- R-14 Video 2: Michael Emmert Interview
- R-15 Video 3: Michael Emmert Interview (part 2)
- R-16 January 27, 2025, Supplemental Special Investigation Division Report
- R-17 January 9, 2025, Use of Force Review Committee Determination Form
- R-18 Division of Operations Level I Internal Management Procedure
- R-19 GSYF Level III Internal Management Procedure
- R-20 Division of Operations Level I Internal Management Procedure
- R-21 GSYF Level III Internal Management Procedure
- R-22 Law Enforcement Personnel Rules and Regulations
- R-23 Mr. Emmert Individual Training Summary Report
- R-24 HRB 84-17 (As Amended) Table of Offenses and Penalties
- R-25 Administrative Code