



STATE OF NEW JERSEY

In the Matter of Idesha Howard,
Essex County, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-2840
OAL Docket No. CSR 05655-23

ISSUED: FEBRUARY 28, 2024

The appeals of Idesha Howard, County Correctional Police Officer, Essex County, Department of Corrections, removal, effective September 1, 2022, on charges, was heard by Administrative Law Judge Daniel J. Brown (ALJ), who rendered his initial decision on February 1, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on February 28, 2024, adopted the Findings of Fact and Conclusion as found in the initial decision and the recommendation to uphold the removal.

The Commission makes only the following comments. In his initial decision, the ALJ provided scant analysis regarding the penalty to be imposed.¹ Specifically, the ALJ found:

Falsification of a report by a corrections officer has been deemed to be very serious in the context of the prison setting, where order and discipline are necessary for safety and security. Even one instance of falsification of a report by a corrections officer has been determined to be so serious that it can disrupt and destroy order and discipline in a prison. *Henry v. Rahway State Prison*, 81 N.J. 571 (1980); *In re Warren*, 117 N.J. 295, 299 (1989).

Based upon the reasons set forth above, I **CONCLUDE** that respondent has met its burden on these major disciplinary charges and

¹ In this regard, the Commission prefers an ALJ to indicate, for example: an appellant's previous disciplinary history, if any; whether the recommended penalty is based on an application of progressive discipline; and a description of any aggravating or mitigating factors that were considered, if any.

that the disciplinary charges against appellant must be upheld. Based upon the serious nature of appellant's falsification of the close custody observation report, I **CONCLUDE** that based on the serious nature of appellant's falsification of the close custody observation report, removal is the appropriate penalty.

Similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer, such as a County Correctional Police Officer, is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990).

While the ALJ's penalty discussion was brief, the Commission agrees that removal is the proper penalty in this matter. The infractions that the appellant committed are egregious and pose a serious safety and security risk in a secured facility. Moreover, the appellant's submission of false reports indicating work that was not actually performed is of great concern. The appellant is a law enforcement officer, who is held to a higher standard, where such serious misconduct cannot be tolerated. Accordingly, the Commission agrees with the ALJ that the appellant's conduct was egregious and wholly inappropriate for a law enforcement officer and worthy of removal without regard to progressive discipline.² The appellant's actions would clearly tend to undermine the public trust and as such, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

² For the sake of completeness, in its review of official personnel records, the Commission could find no prior disciplinary actions not related to the current matter in the appellant's work history with the appointing authority, which spanned approximately 12 years.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeals of Idesha Howard.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF FEBRUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05655-2023

**IN THE MATTER OF IDESHA HOWARD,
ESSEX COUNTY DEPARTMENT OF
CORRECTIONS.**

Luretha M. Stribling, Esq., for appellant Idesha Howard

Jeanne-Marie Scollo, Assistant County Counsel, for respondent Essex County
Department of Corrections (Jerome S. St. John, Essex County Counsel,
attorney)

Record Closed: October 18, 2023

Decided: February 1, 2024

BEFORE DANIEL J. BROWN, ALJ:

STATEMENT OF THE CASE

Appellant appeals from the decision of the respondent to remove her from her position as a Corrections Officer with the Essex County Jail on charges of failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1), conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7) and other sufficient cause relating to an allegation of falsifying her close custody observation report in violation of N.J.A.C. 4A:2-2.3(a)(11). Appellant denies the charges and asserts that respondent has failed to meet its burden of proving those

charges. Should respondent's removal of appellant be sustained? Yes. Respondent has established by a preponderance of the competent, relevant, and credible evidence that the appellant committed the charged offenses. Additionally, removal is warranted because the falsification of the close custody observation report by the appellant is such a serious offense that it "strikes at the heart of discipline within the corrections system." In re Warren, 117 N.J. 295, 299 (1989)

PROCEDURAL HISTORY

On August 31, 2022, a Preliminary Notice of Disciplinary Action ("PNDA") was filed seeking appellant's removal. Appellant requested a departmental hearing which was held on December 21, 2022, February 6, 2023, and February 27, 2023. Thereafter, a Final Notice of Disciplinary Action was issued on June 6, 2023, sustaining the charges in the PNDA and removing appellant from her position as a corrections officer effective September 1, 2022. Appellant appealed that removal action on June 21, 2023. The matter was filed simultaneously with the Civil Service Commission and the Office of Administrative Law (OAL), under the expedited procedures of P.L. 2009, c. 16, N.J.S.A. 40A:14-202(d), where it was stamped received on June 22, 2023, 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, 2023.

The matter was assigned to me on July 20, 2023. Telephonic case management conferences were held on July 20, 2023, August 22, 2023, September 11, 2023, and September 14, 2023 to discuss discovery issues. The hearing was held on September 19, 2023. The matter did not conclude on that date. The hearing was continued on October 3, 2023, and October 13, 2023. On October 16, 2023, via a letter from appellant's counsel appellant waived the requirement that a final decision be issued within 180 calendar days of appellant's suspension without pay pursuant to N.J.S.A. 40A:14-201b(1). The hearing concluded on October 18, 2023, and the record was closed on that date.

FACTUAL DISCUSSION

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Appellant was hired by respondent as a corrections officer in May 2014. On August 28, 2018, appellant was working as an auxiliary officer in the Essex County jail providing coverage to another officer during that officer's meal break. Between 1:00 a.m. and 2:00 a.m., appellant was tasked with performing in-person tours of the 2D3 tier of the housing unit of the Essex County jail. Investigator Zapata testified that, as part of appellant's job responsibility, appellant was required to conduct in-person observations of L.V., an inmate who was housed on the tier. L.V. had previously attempted to harm himself while housed in the jail and was determined to be at risk to commit suicide. As a result, on August 28, 2018, L.V. was placed in a cell with a camera on August 28, 2018, and was required to have in-person observations by a corrections officer in fifteen-minute intervals per respondent's written policy. (R-10). Additionally, per the respondent's written policy, it was part of appellant's job duties on the morning of August 28, 2018, to perform in-person checks of L.V. every fifteen minutes and document those checks in the close custody observation report for L.V. (R-10). Appellant documented in the close custody observation report that she performed in-person checks of L.V. at 1:00 a.m., 1:16 a.m., 1:30 a.m., 1:47 a.m., and 2:01 a.m. Video surveillance showed that appellant only performed in-person checks at 1:16 a.m. and 1:45 a.m. and that she did not perform in-person checks at 1:00 a.m., 1:30 a.m. and 2:01 a.m., despite entries in the close custody observation report indicating otherwise. Additionally, appellant noted in the close custody observation report that L.V. was quiet at 1:30 a.m. Video footage revealed that at that time, L.V. was repeatedly kicking his cell door with his legs and was not quiet.

L.V. was able to obstruct the view of the camera in his cell in the early morning hours of August 28, 2018. The camera in L.V.'s cell was obstructed from approximately 1:46 a.m. to 6:00 a.m. At approximately 6:00 a.m., L.V. was found hanging in his cell. L.V. was pronounced deceased at 6:27 a.m.

Appellant called several witnesses during the hearing. Appellant also testified. Her testimony and the testimony of the witnesses called by her attorney raised several arguments, which will be discussed below. Appellant argued that she was only obligated to perform in-person checks of L.V. every 30 minutes and that she satisfied that obligation. Appellant also argued that she performed checks of L.V. at 1:00 a.m., 1:30 a.m., and 2:00 a.m. by observing him remotely via the camera in his cell. Lastly, appellant argued that she did not make the 2:01 a.m. entry in the close custody observation report and that an unknown third party made that entry.

Appellant's arguments lack merit and credibility. Appellant could have performed in-person observations of L.V. every 30 minutes if L.V. was housed in general population. However, L.V. was housed in a special tier as he was deemed a suicide risk. Therefore, per respondent's written policy, appellant was required to make observations of L.V. every 15 minutes. (R-10). Per respondent's written policy, appellant was required to make those observations in-person. (R-10). Additionally, testimony from one of respondent's witnesses, Captain Cornelius established that it was the responsibility of the desk officer to monitor cell cameras and the tier officer to make in-person observations of inmates. As appellant was a tier officer, she was not responsible for monitoring cell cameras. Additionally, the camera in L.V.'s cell was blocked from 1:46 a.m. to 6 a.m. As a result, appellant could not have observed L.V. via the cell camera as she said she did. Appellant's argument that she did not make the 2:01 a.m. entry in the close custody observation report is belied by the fact that the entry is in her handwriting and has her name affixed to it. For the reasons stated above, I give appellant's arguments no weight whatsoever.

I **FIND** that appellant was required as part of her job duties on August 28, 2018, between 1:00 a.m. and 2:00 a.m. to perform 15 minute in-person checks of L.V. and that appellant did not do so. I **FIND** that the entries that appellant made in the close custody observation report reflecting that she performed in-person checks of L.V. at 1:00 a.m., 1:30 a.m. and 2:01 a.m. were false. I **FIND** that appellant did not perform those in-person checks and that she falsified those entries on the close custody observation report.

ANALYSIS AND CONCLUSIONS OF LAW

A civil service employee who commits a wrongful act related to their duties, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2.

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, In re Phillips, 117 N.J. 567, 575 (1990), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). One can describe preponderance as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Significantly, police officers and corrections officers are held to a higher standard of conduct than other citizens due to their roles in the community. In re Phillips, 117 N.J. at 576-77. They represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

Conduct unbecoming a public employee has been interpreted broadly as conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 398 Pa. 35, 43 (1959)). Such misconduct need not “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior.” 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)).

"Neglect of duty" contemplates nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). Neglect of duty can arise from an omission to perform a duty or failure to perform or discharge a duty and includes official misconduct as well as negligence. Steinel v. City of Jersey City, 7 N.J.A.R. 91, 95 (March 21, 1983), modified on other grounds, Civ. Serv. Comm'n, 7 N.J.A.R. 100 (May 12, 1983), modified on other grounds, 193 N.J. Super. 629 (App. Div. 1984), aff'd, 99 N.J. 1 (1985).

Falsification of a report by a corrections officer has been deemed to be very serious in the context of the prison setting, where order and discipline are necessary for safety and security. Even one instance of falsification of a report by a corrections officer has been determined to be so serious that it can disrupt and destroy order and discipline in a prison. Henry v. Rahway State Prison, 81 N.J. 571 (1980); In re Warren, 117 N.J. 295, 299 (1989).

Based upon the reasons set forth above, I **CONCLUDE** that respondent has met its burden on these major disciplinary charges and that the disciplinary charges against appellant must be upheld. Based upon the serious nature of appellant's falsification of the close custody observation report, I **CONCLUDE** that based on the serious nature of appellant's falsification of the close custody observation report, removal is the appropriate penalty.

ORDER

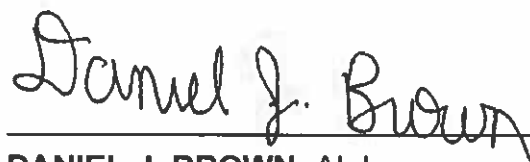
Given my findings of fact and conclusions of law, I **ORDER** that each charge against appellant be **SUSTAINED**, and that appellant be **REMOVED** from her position as a corrections officer effective September 1, 2022.

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.

February 1, 2024
DATE


DANIEL J. BROWN, ALJ

Date Received at Agency: February 1, 2024

Date Mailed to Parties:
dr February 1, 2024

APPENDIX

Witnesses

For Appellant:

Carlos Zapata
Thomas McEnroe

For Respondent:

James Miler
Wali Gibson
Captain Cornelius
Idesha Howard

Exhibits

Joint Exhibits:

J-1 Essex County Corrections policy regarding Post Orders effective February 1, 2007

For Appellant:

P-1 Preliminary Notice of Disciplinary Action dated August 31, 2022
P-2 Notice of dismissal of criminal charges
P-3 Envelope of certified mailing to appellant
P-4 Not in evidence
P-5 Not in evidence
P-6 Not in evidence
P-7 Not in evidence
P-8 Not in evidence
P-9 Supplemental Notice of Disciplinary Action
P-10 Post Order for the General Housing Unit
P-11 Not in evidence
P-12 Not in evidence

- P-13 Not in evidence
- P-14 Not in evidence
- P-15 Not in evidence
- P-16 Not in evidence
- P-17 Not in evidence
- P-18 Investigative report of Sgt. Zapata
- P-19 Not in evidence
- P-20 Not in evidence
- P-21 Essex County Corrections policy regarding Special Housing Unit effective April 24, 2012

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action dated August 31, 2022
- R-2 ECCF Investigation Report dated August 31, 2022
- R-3 Video Cam 32 2D3044 Corridor
- R-4 Video Cam 059 2D3024
- R-5 Close Custody Supervision Report for L.V.10 to 6 shift on 8/28/18
- R-6 Essex County Department of Corrections Incident Report #5426-18
- R-7 Essex County Department of Corrections Incident Report #5457-18
- R-8 Essex County Department of Corrections Incident Report #5483-18
- R-9 Essex County Department of Corrections Incident Report #5580-18
- R-10 Essex County Corrections Policy on Suicide Prevention dated April 2018
- R-11 Hearing Officer Decision in departmental disciplinary hearing
- R-12 Final Notice of Disciplinary Action dated June 6, 2023
- R-13 Not in evidence
- R-14 Not in evidence
- R-15 National Commission on Correctional Health Standards- section on suicide prevention and intervention