

*In the Matter of Christopher Hendershot*  
CSC Docket No. 2011-262  
OAL Docket No. CSR 8155-10  
**(Civil Service Commission, decided February 2, 2011)**

The appeal of Christopher Hendershot, a Senior Correction Officer with Edna Mahan Correctional Facility, Department of Corrections, of his removal effective July 12, 2010, on charges, was heard by Acting Director and Chief Administrative Law Judge Laura Sanders (ALJ), who rendered her initial decision on November 29, 2010. Exceptions were filed on behalf of the appellant and cross-exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on February 2, 2011, accepted and adopted the Findings of Fact and Conclusions as contained in the attached initial decision and the ALJ's recommendation to uphold the appellant's removal.

## **DISCUSSION**

The appellant was charged with conduct unbecoming a public employee and other sufficient cause. Specifically, the appointing authority asserted that the appellant had been engaged in a personal and inappropriate relationship with an inmate. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

Initially, the ALJ set forth that although the appellant acknowledged limited contact with the friend of an inmate, there was a dispute over the extent of this contact. The appointing authority asserted that the appellant visited a tattoo shop knowing that an artist at the shop was friendly with an inmate and that the artist's name appeared on the inmate's visitor list. The appointing authority's evidence consisted mostly of recordings of telephone conversations between the inmate and her artist friend. The tapes did not mention the appellant by name, but referred to a very tall officer, which the appellant was. The tapes indicated that the inmate inquired from her friend about certain art and pricing, about a tall officer coming in to get work done, about an officer cancelling the finishing of a tattoo due to the weather and about this officer going to a particular concert. Additionally, the tapes indicated that the inmate questioned her artist friend about the officer talking about her and about a tattoo that another officer had on his chest. In the recordings, the inmate asserted that she had seen the tattoo on the officer's arm and that the tall officer was a certified trainer and that he had been working out with the officer who got a tattoo on his chest. All in all, there were approximately eight

phone calls from February 8, 2010 to March 30, 2010, between the inmate and her artist friend which reference an officer.

Senior Investigator Sean Tonner testified that when he interviewed the inmate, she described the appellant as a nice guy and that they conversed about music, movies and working out. No evidence of a romantic attachment was found. The inmate also indicated that she saw the appellant's entire tattoo, which was on his arm.

The appellant testified that he went to the tattoo shop in question before the inmate overheard him talking to a fellow officer about getting a tattoo. Additionally, the appellant stated that he stopped going to the shop when he was questioned by the artist about knowing the inmate. The appellant also explained that the inmate overheard a number of officers talking about going to a concert.

The ALJ found that the appellant went to the tattoo shop on his own and independent of the inmate to start the work on his tattoo. The ALJ also found the appellant's testimony credible regarding the inmate overhearing the appellant talking about getting a tattoo and that it was through eavesdropping that the inmate learned about the tattoo and the shop where the appellant was getting the work done. Additionally, the ALJ stated that the inmate found out about the concert by eavesdropping once again. Further, the ALJ found that the appellant terminated the situation at the tattoo shop on the date he claimed. However, the ALJ found that the appellant had conversations with the inmate about his tattoo and another officer's tattoo. The ALJ determined that too much conversation about personal matters had occurred between the appellant and the inmate before the appellant took action, and thus, for a short period, undue familiarity did occur. The ALJ noted that the second correction officer who got a tattoo at the same shop had no knowledge that an inmate's friend did the work and did not discuss his tattoo with the inmate. Moreover, the ALJ found that the appellant's disclosure of a fellow officer's tattoo to an inmate without his knowledge, as well as sharing information about his own tattoo, created a risk to himself, the other officer and the facility in general. With regard to the penalty, the ALJ indicated that, given the security risks created by the appellant's actions, termination was the proper penalty.

In his exceptions, the appellant does not challenge the ALJ's findings of fact or her conclusions that he engaged in conduct unbecoming and undue familiarity. Rather, he challenges the severity of the penalty. The appellant contends that not all cases of undue familiarity should result in termination. In addition, the appellant asserts that he did not have a romantic relationship with the inmate. Further, his contact with the inmate, although improper, was brief and was as minor as such an offense could be. The appellant adds that he did not employ the appellant's artist friend to do the tattoo, rather, he employed another artist in the

same shop. Also, he contends that once he knew that the artist and inmate knew each other, he terminated the business relationship. Moreover, the appellant argues that the Commission has imposed penalties less than removal for undue familiarity cases in the past.

In its cross-exceptions, the appointing authority argues that the ALJ correctly found that termination was the proper penalty. It asserts that the appellant's offense was serious and endangered the safety of another correction officer, and left him open to the possibility of blackmail. Further, the appointing authority contends that the present matter is different from the line of cases the appellant relies on in arguing that not all undue familiarity cases result in termination. It states that many of the cases involved institutions outside the Department of Corrections, which houses the more violent offenders, or did not involve the sharing of personal information, which could lead to serious security breaches. Finally, the appointing authority reiterates that this was a serious offense as the appellant compromised his safety and the other officer's safety by sharing personal information with an inmate.

Upon its *de novo* review of the record, the Commission agrees with the ALJ's determination and the decision to uphold the penalty of removal. In determining the proper penalty, the Commission's review is *de novo*. In this regard, the Commission is mindful that the ALJ concluded that the appellant was guilty of engaging in a personal and inappropriate relationship with an inmate. Such conduct warrants significant discipline. Moreover, the Commission is also mindful of the following admonition from the court:

The appraisal of the seriousness of [the appellant's] offense and degree to which such offenses subvert discipline at Bayside State Prison are matters peculiarly within the expertise of the corrections officials. The appraisal is subject to *de novo* review by the [Commission], *ibid.*, but that appraisal should be given significant weight. *Bowden v. Bayside State Prison*, 268 N.J. Super. 301, 306 (App. Div. 1993), *cert. denied*, 135 N.J. 469 (1994).

However, the standard set forth in *Bowden* does not provide that removal is automatically warranted whenever charges implicating rules associated with undue familiarity with an inmate are sustained. Rather, in determining the penalty, consideration is properly accorded to the level and scope of the relationship between the inmate and the employee and other mitigating factors, as well as the concept of progressive discipline. Regardless, prior decisions where removal for undue familiarity was upheld focus upon the underlying nature of the relationship. Where the relationship has been found to be surreptitious, compromising or illicit, the penalty of removal has been sustained. *See e.g., In the Matter of Robert Rain*, Docket No. A-3933-03T3 (App. Div. February 4, 2005). *See also, In the Matter of*

*Artella Richardson* (MSB, decided March 23, 2005) and *In the Matter of Monet S. Mason* (MSB, decided April 20, 2005). It is clear that the facts of the current matter squarely fall into the above category.

With regard to determining the appropriate penalty, the Commission, in addition to considering the seriousness of the underlying incident, utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). However, it is well established that when 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 Correction Officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense occurring in the environment of a correctional facility may, nevertheless, warrant the penalty of removal where it compromises the safety and security of the institution, or has the potential to subvert prison order and discipline. *See Henry v. Rahway State Prison, supra* at 579-80. In this regard, the Commission emphasizes that a Correction Officer is a law enforcement officer who, by the very nature of his job duties, is held to a higher standard of conduct than other public employees. *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).

In the instant matter, any possible mitigation due to the appellant's lack of prior major disciplinary history would be inconsequential as the appellant was a short-term employee with only two years of service. Regardless, the Commission finds that the appellant's action in the present matter was egregious enough to warrant removal. While the appellant is correct in contending that the Commission does not always uphold termination for cases of undue familiarity, he is not persuasive in arguing that he should not be terminated. The appellant discussed personal information about himself and another correction officer with an inmate. He opened himself and the other officer up to possible blackmail or other actions from this inmate and/or other inmates. The improper sharing of this information placed the security of the entire facility at risk. Accordingly, the Commission finds that the penalty of removal was proper.

## **ORDER**

The Civil Service Commission finds that the action of the appointing authority in imposing a removal was appropriate. Therefore, the Commission affirms that action and dismisses the appeal of Christopher Hendershot.

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