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STATE OF NEW JERSEY

In the Matter of Abena Simon
Hudson County,
Department of Corrections

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FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-2526
OAL DKT. NO. CSR 4484-15

ISSUED: NOVEMBER 5, 2015 BW

The appeal of Abena Simon, County Correction Officer, Hudson County, Department of Corrections, removal effective October 2, 2014, on charges, was heard by Acting Director and Chief Administrative Law Judge Laura Sanders, who rendered her initial decision on September 3, 2015. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on November 5, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Abena Simon.

Re: Abena Simon

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
NOVEMBER 5, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 4484-15

AGENCY DKT. NO. N/A

**IN THE MATTER OF ABENA SIMON,
HUDSON COUNTY.**

James D. Addis, Esq., for appellant Abena Simon

Chanima Odoms, Esq., for Hudson County (Donato Battista, County Counsel)

Record Closed: August 20, 2015

Decided: September 3, 2015

BEFORE **LAURA SANDERS**, Acting Director and Chief ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Correction Officer (CO) Abena Simon (the appellant) appeals the action by the Department of Corrections within Hudson County (the County, or respondent), terminating her employment on grounds of conduct unbecoming and other charges for fraternizing with someone in the corrections system without permission. CO Simon contends that the person in question was a long-time friend, and that she did attempt to comply with the County's policies.

On June 3, 2014, the County served the appellant Simon through personal service with a Preliminary Notice of Disciplinary Action (PNDA) dated June 2, 2014. A

departmental hearing was held on October 2, 2014, and by Final Notice of Disciplinary Action dated March 6, 2015, she was terminated, effective October 2, 2014. CO Simon appealed the termination to the Office of Administrative Law (OAL), where the appeal was filed on March 31, 2015. N.J.S.A. 40A:14-202(d). As a result of adjournment requests, she consented to waivers of pay, first between April 28 and May 27, and then between May 29, 2015, and August 21, 2015. N.J.S.A. 40A:14-201(b)(2). The hearing was held on August 20, 2015, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

While the parties disagree on the factual significance and legal importance of events, the evidence supports the following timeline, which is found as **FACT**. CO Simon had been a close friend of K.S. before she joined the County. On August 8, 2007, K.S. was sentenced to jail for a maximum term of five years on charges of resisting arrest; possession, manufacturing and distribution of controlled dangerous substances; unlawful possession of weapons; and eluding arrest with a motor vehicle. Appellant was hired by the County as a correction officer on April 21, 2008. On two or three occasions after her hiring, K.S.'s mother arranged a three-way phone call with her son, who was in the state correctional system. In the spring of 2012, K.S. was released on parole, and at some point afterward, CO Simon began allowing him to borrow her car.

On Saturday, October 13, 2012, Jersey City police officers went to the Holland Gardens Housing Complex in pursuit of three black males who fled to the development after committing an armed robbery. Although Police Officer Javier Lema noticed the car in the "no parking" zone, he initially focused on the two men that other police were questioning. From prior encounters, he recognized one of the men as K.S. When Lema started back toward the car, he noticed that the man and woman who had been sitting in it were now walking hurriedly away. The woman, who turned out to be K.S.'s sister, J.B., said she was going to call the owner of the car to move it. When Lema shone a light inside the car, he spotted a handgun protruding from under a floor mat.

J.B. and the man were both read their Miranda rights¹ and placed under arrest for possession of a handgun. At about this time, CO Simon appeared, saying that she had gotten a call from an unknown female, telling her police had her car at Holland Gardens. She told Lema and Detective Christopher Monahan that she had put her keys on the bar at the Ringside Tavern, where she was seeing some friends, and then could not locate them. She did not know who had taken them.

CO Simon, who told police she was a correction officer, agreed to come to the police station to provide a formal statement. At the station, she told the officers that she had loaned the car to K.S., and she was driving her father's car that night. It was J.B., as well as K.S.'s mother, who called her about her car. Asked why she had lied when she first met police, CO Simon responded that she had been worried about her friend, J.B., and did not want to see her get in trouble. Detective Monahan, who said at least at that point they had not told appellant about the gun, then reported the incident to the County's Department of Corrections.

On October 13, 2012, Simon filed an incident report, stating that her car was involved in a motor vehicle stop while being utilized "by a family friend whom uses the car from time to time." (R-6.) She had been notified that a weapon was found in the vehicle and that a female and male were taken into custody. She affirmed that she herself had been read her Miranda rights, was questioned, and responded truthfully.

On October 15, 2012, CO Simon participated in a taped interview with the Hudson County Department of Internal Affairs. (J-3.) She told investigators that K.S. had been a great friend since 2006, when they met at a restaurant. She knew he had been incarcerated in various state prisons but had been loaning him her car because she thought he was trying to get onto the correct path and needed it for things such as taking his son to the doctor and picking up his mother. She had loaned it to him on the morning of October 12. She admitted freely that she had not only spoken to him while he was in prison but also had written him letters. Her comments to the officers indicated that she believed the fact that he was a pre-existing friend, and not incarcerated in

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694(1966).

Hudson County's correctional facilities, put him generally outside the fraternization policy. She said she had notified the County, which was a reference to an incident form filed on June 18, 2012.

The incident form (R-4) states that CO Simon "is writing to inform whoever it may concern that (she) is close friends with [K.S.] an individual whom happen to have got into trouble in the past." She noted that she had known him prior to being employed and had been "very good friends with this individual for over eight years." She advised that K.S. "is currently in the halfway house," and that she kept in touch with him now and then. "This letter is to prevent any misunderstandings and to bring to your attention the friendship and minor contact." (ibid.)

During the October interview, CO Simon was reminded about the County's non-fraternization policy and warned that she should be avoiding K.S. The detectives pointed to the fact that he had been in prison and had an extensive record, saying it was an indication this was not a good guy, and that, as someone in her profession, she should be avoiding him.

At some point in November, a warrant for K.S.'s arrest was issued. Police Officer Michael Donohue, who is part of the Jersey City police warrant squad, testified that after they tried K.S.'s mother's house several times, someone suggested that CO Simon was his girlfriend. Around 5:00 a.m. on November 15, 2015, officers from the Jersey City Police Department, the New Jersey Parole Board, the U.S. Marshal's Fugitive Task Force, and the Hudson County Sheriff's Office, along with a representative from the County Prosecutor's Office, converged on CO Simon's apartment. She let them into her home, and they arrested K.S., who had been asleep in a back bedroom. No gun was found on the premises. On the same date, CO Simon filed a report of the incident with the County, including the information that K.S. had now entered a Hudson County correctional facility. (R-9.)

In a second interview with Internal Affairs, conducted and taped on November 20, 2012 (J-4), CO Simon said that K.S. had knocked on her windows at 2:00 a.m., asking to stay with her because of a situation with his uncle. She told him he could not

be there, and that she thought the Jersey City police were looking for him to go in for questioning. She told the investigators she did not know a warrant had been issued; she thought police simply sought K.S. to question. So when K.S. told her he had been to the police station and had been questioned, she thought the situation was resolved and let him in because this was a long-time friend who was homeless at 2:00 a.m. She denied ever having any romantic involvement, explaining that the back bedroom was a spare room; she sleeps in the front bedroom. Asked about K.S.'s parole violation, she asserted that he could not have been on parole because he served the maximum amount of time. As for concerns about guns, she does not bring her sidearm home, and K.S. did not have one when he asked to stay.

With regard to the seriousness of the events that occurred, the County offered testimony by Thaddeus Caldwell, Administrator, Internal Affairs Department, and the appellant testimony from a long-time family friend, Jill Dettere-Nelson.

Caldwell talked about key components of the County's Custody Staff Rules and Regulation Manual, which CO Simon received in January 2010. (R-8.) Section 31A(b) states that any employee that is unsure whether or not an inmate with whom he or she is acquainted should be considered a relative or associate for the purpose of this section, has the affirmative obligation to notify the Director of Corrections, in writing, so that the Director of Corrections may make a determination as to any appropriate action. Section 31B(c) states that

An employee who wishes to communicate by telephone, correspondence or any other means with an inmate (whether or not they are a relative or an associate) in a correctional facility under the jurisdiction of the (New Jersey Department of Corrections) NJDOC shall submit a written request for permission to communicate with the inmate to the Director of HCDOC.

The following section, 32A(c), states that, "Any employee who believes that (he or she) may have inadvertently established a pattern of fraternizing or socializing with a current inmate, ex-offender, or parolee, must immediately notify the Director of Corrections in writing so the Director can determine the appropriate adjustment of work

assignment if any” Other parts of Section 32 prohibit personal involvement in an inmate’s private or family matters outside of assigned professional duties, performance of personal favors, or housing an inmate “under the custody of the (County) or any other Correctional institution (e.g.: while on probation, parole” Several sections state that failure to comply with the policy can result in disciplinary action, up to and including termination. (R-8.)

Caldwell said the fact that CO Simon’s June 18, 2012, incident report was not directed specifically to the Director of Corrections was not a problem. However, the fact that it did not specifically request permission, and did not indicate an intention to hold off any further contact until permission was granted, in his eyes was a violation of the policy. He also was troubled by the presentation of the contact as minor, when, in his opinion, activities such as loaning a car and allowing someone to spend the night were not minor. He said the scale of the contact should have been disclosed.

Dettere-Nelson’s testimony was aimed at providing a clearer picture of CO Simon as a person. Dettere-Nelson said her family is so close to the appellant’s, including her parents, that CO Simon calls her auntie. She has known the appellant for more than twenty years. Because CO Simon often puts the needs of others ahead of her, Dettere-Nelson said, people can make the mistake of seeing that strength as a weakness and seek to take advantage of her. She knows CO Simon to be truthful, kind, and considerate.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives 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; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Here, as a result of the incidents, CO Simon is charged with (1)

insubordination, (2) conduct unbecoming, (3) neglect of duty, and (4) other sufficient cause.

The insubordination charge relates primarily to the second incident. Even if CO Simon mistakenly thought that her contact with K.S. was acceptable once she notified her superiors through the incident report, the Internal Affairs investigators made clear during the October 15, 2015, interview that in their view, K.S. was “not a good guy,” and that in light of his extensive record, she should avoid him. Thus, the County argues, CO Simon was essentially under an order to avoid him, and letting him stay at her house amounted to disregard of an order. However, there was no showing that the Internal Affairs interviewers were directly in her chain of command, nor was there any time in that interview when they straightforwardly ordered her to have no further contact with him. Therefore, I **CONCLUDE** that this charge has not been proven.

Conduct unbecoming is a term that encompasses actions adversely affecting the morale or efficiency of a governmental unit or having a tendency to destroy public respect 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, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). The Civil Service Commission’s precedents make clear that undue familiarity is a form of unbecoming conduct, as it undermines the perception of fairness and strict enforcement necessary in a penal institution. See, for example, In re Ridgeway, CSV 00552-05, Initial Decision (December 30, 2005), modified, Merit System Board (March 9, 2006), <http://nj.law.rutgers.edu/collections/oal/>.

CO Simon essentially argues that the core of the County’s policy is its prohibition on contact with Hudson County inmates, which she did not violate. She contends that the fact that K.S. was in a State prison and then a State halfway house put him in a different category. Moreover, she notes that she did notify the County that contact was going to occur. Given the sharpness of her reply to investigators regarding K.S. being on parole, she apparently thought (erroneously) that he was not on parole. Such an error might explain her failure to realize that K.S. fell under the

portion of the County policy that prohibits housing an inmate under the custody of any correctional institution, which specifically includes probation, parole, furlough, community/work release, or home confinement. (R-8, Section 32(e)xii.) But in the October interview, the investigators made clear that for the sake of her occupation, she needed to stay away from K.S. Further, she did have some idea that police were looking for him, when he showed up at 2:00 a.m., and nonetheless, took the risk of sheltering him for the night. Having police arrest someone at a correction officer's house has a tendency to erode public respect for law enforcement, because it creates the impression that correction officers are unable to maintain the impartial distance needed to do the job properly and fairly. Therefore, I **CONCLUDE** that the Department has proven this charge.

Neglecting one's duty incorporates the idea of failing to follow rules and regulations. Here, the other sufficient cause is the failure to follow the anti-fraternization sections of the County's Rules and Regulations Manual. CO Simon did house an inmate under the custody of another correctional institution (the State Parole Board) in violation of the policy, and over time, established a pattern of involvement in an ex-offender or parolee's private and family matters outside her assigned duties through such activities as loaning him her car, calling him, and writing him. Thus, I **CONCLUDE** the County has met its burden with respect to those two charges.

The remaining issue is penalty. In general, principles of progressive discipline apply in Civil Service proceedings. W. New York v. Bock, 38 N.J. 500, 523 (1962). However, some infractions are so serious that termination is warranted, In re Carter, 191 N.J. 474, 484 (2007) (citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense)); see also In re Herrmann, 192 N.J. 19, 33 (2007).

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). Both police officers and correction officers 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).

In her four-and-a-half years as a correction officer, the appellant, received two one-day fines, both attendance-related. Other than that, her record is free of problems. She seeks a second chance, an opportunity to prove that this experience has left her with a clear understanding of how much correction officers need to be on guard against those who would take advantage of them.

In general, cases involving undue familiarity have resulted in termination. The appellant in Ridgeway, supra, was living with the father of her children, a parolee, at the time she was hired at South Woods State Prison. The Administrative Law Judge found credible her explanation that once she realized his presence could threaten her job, she failed to disclose it, because no one told her the Corrections authorities may have deemed the relationship acceptable. However, the Merit System Board terminated her on grounds that the failure to disclose was sufficient to threaten the security of the prison. In re Coon, CSV 10243-09 and CSV 04370-10, Initial Decision (September 28, 2012), adopted, CSC (November 8, 2012), <http://njlaw.rutgers.edu/collections/oal/>, involved release at the end of a working test period and violation of a Last Chance Agreement by a county correction officer who agreed to stop contact with an inmate, then continued it after the inmate was transferred to a jail in another county. In re Livingston, CSV 11903-08, Initial Decision (June 25, 2009), adopted, CSC (August 5, 2009), <http://njlaw.rutgers.edu/collections/oal/>, concerned a correction officer who was terminated when authorities learned she had an undisclosed relationship with an inmate that existed before, during, and after his incarceration.

Here, the County argues that CO Simon placed friendship ahead of duty, and that for correction officers, duty comes before friendship where there is any question of the friend's involvement with the correctional system. This strong policy is in place to prevent correction personnel from being manipulated by those in the system, which can ultimately compromise the security and safety of all those in the correctional system.

I **CONCLUDE** that the County has demonstrated, based on the precedents and upon the policy behind those precedents that the appellant's termination is within the law and associated regulations.

ORDER

For the reasons cited above, the termination is **AFFIRMED**.

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, P.O. 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.

September 3, 2015
DATE

Laura Sanders
LAURA SANDERS
ACTING DIRECTOR AND CHIEF
ADMINISTRATIVE LAW JUDGE

Date Received at Agency:

September 3, 2015

Date Mailed to Parties:

September 3, 2015

/caa/mph

WITNESSES

For Appellant, Abena Simon

Jill Dettere-Nelson

For Respondent, Hudson County

Javier Lema

Christopher Monahan

Michael Donahue

Thaddeus Caldwell

EXHIBITS

Joint Exhibits

- J-1 Final Notice of Disciplinary Action dated March 6, 2015
- J-2 Preliminary Notice of Disciplinary Action dated June 2, 2014, and delivered June 3, 2014
- J-3 DVD of interview dated October 15, 2012
- J-4 DFD of interview dated November 20, 2015

For Appellant, Abena Simon

No separate exhibits

For Respondent, Hudson County

- R-1 Jersey City Police Department Investigation Report dated October 13, 2012
- R-2 Jersey City Police Department Supplementary Investigation Report dated October 13, 2012

- R-3 Jersey City Police Department Supplementary Investigation Report dated November 15, 2012
- R-4 Hudson County Department of Corrections Office of Internal Affairs Investigation Report by Sergeant Arestides Lambos dated October 14, 2012
- R-5 Hudson County Correctional Center Incident Report Form dated June 18, 2012
- R-6 Hudson County Correctional Center Incident Report Form dated October 13, 2012
- R-7 Download from New Jersey Department of Corrections, Offender Details for K.S., dated November 20, 2012
- R-8 Receipt and Acknowledgement Form, Custody Staff Rules and Regulations Manual, dated January 7, 2010; also Section 31, "Fraternization Regarding Incarcerated Relatives or Associates" and Section 32, "Fraternization and Socializing with Current Inmates"
- R-9 Hudson County Correctional Center Incident Report Form dated November 15, 2012
- R-10 Indictment, Superior Court, Hudson County, April 7, 2013, and order of dismissal in relation to Abena Simon on May 9, 2014
- R-11 Employee work history