



A-16

STATE OF NEW JERSEY

In the Matter of Gary Victor
Mercer County,
Department of Public Safety

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2012-2640
OAL DKT. NO. CSV 03822-12

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ISSUED: DECEMBER 17, 2015 BW

The appeal of Gary Victor, County Correction Sergeant, Mercer County, Department of Public Safety, 10 working day suspension, on charges, was heard by Administrative Law Judge Joseph A. Ascione, who rendered his initial decision on November 5, 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 December 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

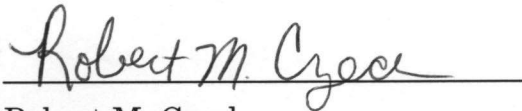
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Gary Victor.

Re: Gary Victor

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
DECEMBER 16, 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. CSV 03822-12

AGENCY DKT. NO. 2012-2640

**IN THE MATTER OF GARY VICTOR,
MERCER COUNTY DEPARTMENT OF
PUBLIC SAFETY.**

Stuart J. Alterman, Esq., for Gary Victor, appellant (Alterman & Associates, LLC, attorneys)

Kristina E. Chubenko, Assistant County Counsel, for Mercer County Department of Public Safety, respondent (Arthur R. Sypek, Jr., Esq., County Counsel, attorney)

Record Closed: May 4, 2015

Decided: November 5, 2015

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE

On March 1, 2012, appellant, Correction Sergeant Gary Victor (Victor), timely appealed his February 21, 2012, ten-day suspension by the Mercer County Department of Public Safety (MDPS), Corrections Center (CC) for discharging an inmate, P. to the street instead of to the Plainsboro Police as directed on P.'s paperwork, and other sufficient cause all occurring on January 24, 2011. The February 21, 2012, Final Notice of Disciplinary Action, (FNDA), attached the

departmental hearing officer's report, the May 4, 2011, Preliminary Notice of Disciplinary Action sustained charges of violation of N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(11), Other Sufficient Cause - violation of a rule, regulation, policy, procedure, order or administrative decision specifically, Standard Operating Procedure (SOP) 210 (D-6) on the Mercer County Table of Offenses; violation of N.J.A.C. 4A:2-2.3(a)(11), Other Sufficient Cause - Neglect of Duty attention to tasks which would result in danger to persons or property (B-2) on the Mercer County Table of Offenses; and violation of N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty. Appellant denies that the paperwork reflected the disposition of inmate P., the predicate for the issuance of these violations.

PROCEDURAL HISTORY

On January 30, 2012, Victor received his departmental disciplinary hearing on the PNDA. This matter was transmitted to and filed with the Office of Administrative Law on March 20, 2012, by the Civil Service Commission for determination 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. A hearing was held on March 17, 2014 and January 30, 2015. At that time, the parties requested the transcript prior to setting a date for the issuance of written closing statements and legal memorandum. The record closed on May 4, 2015, upon the receipt of the post-hearing submissions.

Post hearing, appellant requested that the record be reopened to include as an exhibit SOP 562. This application is denied, appellant had extensive time to introduce this exhibit during the prosecution of this appeal in 2012 through the final hearing date, appellant elicited no testimony as to the applicability of this SOP to the circumstances herein, and the proffered exhibit is dated March 7, 2012, after the incident in question here.

Extensions of time to issue the Initial Decision were granted.

FINDINGS OF FACT

The parties submitted a joint stipulation of facts J-1, from that stipulation, material facts are undisputed, I **FIND** the following **FACTS**:

1. Victor has been employed with the County of Mercer since April 12, 1993, in the position of correction sergeant since September 21, 2007.
2. On January 24, 2011, Victor was the Receiving and Discharge (R&D) Sergeant. Inmate P. was incorrectly discharged to the street, instead of being turned over to the Plainsboro Police Department.
3. On May 4, 2011, Victor received a PNDA, on January 30, 2012, Victor participated in a departmental hearing under the PNDA, and a February 21, 2012, FNDA directed a ten day-suspension of Victor for the January 24, 2011, incident.

TESTIMONY

Retired Lt. Steven Boseke (Boseke)

Boseke testified he served as the Lieutenant, Shift Commander, 3:00 p.m. to 11:00 p.m. shift at the CC on January 24, 2011,(1T:9).¹ He authored the incident report of similar date regarding the improper release of an inmate (R-1). He identified R-2 as release papers for inmate P. (1T:11). Boseke signed the discharge paperwork, which stated, "Turned over to Plainsboro Twp.," at the time he did not notice the upper right writing that said, "No ride Annex." If he noticed that latter entry, the entry would have resulted in an inquiry by him at the time the release paperwork was initially signed as the language could be interpreted as a street discharge. He identified R-3 as a body receipt to be signed by a Plainsboro Township official for inmate P. After signing the release paperwork, another Lieutenant, in this case P.A. Barbar signed it, then, the paperwork would be forwarded to the R&D Sergeant. The Sergeant would then check

¹ 1T references the transcript from March 17, 2014, 2T references the transcript from January 30, 2015.

whether the inmate had a balance in his account and issue a check. R-2 reflects no such balance.

On January 24, 2011, Victor advised Boseke that he mistakenly discharged an inmate to the street. Boseke immediately directed Victor to contact the transport to see if the inmate could be retrieved. C.O. Elgee Styles contacted Boseke and advised that inmate P. had been discharged and she asked permission to draw weapons. Boeske advised not to shoot anyone but contact the Trenton Police where inmate P.'s discharge occurred.

Boeske direct and identified the incident reports of C.O. Vannozzi (R-4), C.O. Elgee Styles (R-5), C.O. Curtis Diaz (R-6), C.O. Jeffrey Lane (R-7), and Victor (R-8).

Boeske testified that the language, "No ride, Annex" would have been written by the R&D Sergeant, resulting from the Sergeant's inquiry of whether the inmate needed a ride or whether someone would come to pick up the inmate. The reference to Annex referred to the housing unit the inmate occupied prior to release.

Boeske became aware of the return of inmate P. to the jail, and inmate P.'s discharge to the Plainsboro Township Police.

Boeske recalled admonishing Victor only to have Victor dismiss the admonishment, as inmate P.'s violation resulted from failure to wear a seatbelt. Boeske testified that Victor refused to recognize the seriousness of the offense.

Boeske acknowledged that several individuals reviewed inmate release paperwork prior to sending it to the R&D Sergeant, but Boeske would not sign a blank one. He also acknowledged that the property officer Jeffrey Lane and the Control Room (CR) 3 officer Curtis Diaz, also had the opportunity to review the discharge paperwork, however they were subordinate to the R&D Sergeant.

Elgee Styles (Styles)

Styles testified she served as the transportation officer at the CC on January 24, 2011, and authored R-5 as her incident report. She testified to the release of inmate P. to the street, receipt of notice to return him to the CC, contacting the Shift Commander Boeske for direction, and then, the Trenton Police Department to obtain inmate P.'s return. Inmate P. was reacquired and returned to the CC.

Gary Vannozzi (Vannozzi)

Vannozzi testified he served as the driver of the transport at the CC on January 24, 2011, and authored R-4 as his report. After releasing inmate P. and discovering he had to be reacquired, he attempted to cajole him back into the van while Styles contacted the Trenton police. The inmate started to run so the Trenton police had to acquire inmate P. and return him to the transport vehicle.

Lt. Farah Fioravanti (Fioravanti),

Fioravanti testified she currently is a lieutenant at the CC. On January 24, 2011, she held the rank of sergeant and assigned to Internal Affairs (IA) (2T:6-7).B She prepared R-9, the IA report of the incident, after conducting an investigation (2T:6-18 to 2T:7-5). Victor denied seeing the body receipt in the discharge paperwork. Fioravanti testified that the R&D Sergeant is governed by Standard Operating Procedure (SOP) 210 marked as R-10. Fioravanti testified that the R&D Sergeant is required to coordinate efforts closely with the Classifications/Records Lieutenant. Fioravanti testified that Victor acknowledged receipt of SOP 10 on June 30, 2009, in R-11.

Fioravanti testified that Victor advised her that when the Plainsboro Township police appeared he reviewed the discharge paperwork and noticed the error. Victor also acknowledged to her that he may have overlooked the discharge paperwork that said "Turned Over To: Plainsboro Twp." Victor alternatively gave Fioravanti an alternative that someone may have changed the paperwork between the time inmate

P. left and the time he reviewed the paperwork. This alternative Fioravanti disputed as she saw the original signature of Mary Gayles, who was not on duty at the time of the incident.

Fioravanti testified the transport officers did not have any obligation to review the discharge paperwork or sign off on it (2T:137-22, 24).

Jeffrey Lane, (Lane)

Lane testified to his employment with CC as a CO Property Officer at the time of the incident. He testified that he reviewed the discharge paperwork of inmate P. and did not notice his discharge to be to the Plainsboro Township police. He could not say with certainty that it was not there.

Curtis Diaz, (Diaz)

Diaz testified to his employment with CC as the CR3 Officer at the time of the incident. Diaz also testified that he did not notice that inmate P. needed to be turned over to the Plainsboro Township police. He testified he checked inmate P.'s picture to ensure that the correct inmate be discharged, and the inmate has to give him his prison identification number. He also testified that he reviewed the remaining discharge paperwork for inmate P.

Lt. Alberta Stokes (Stokes)

Stokes testified to her twenty-three years employment with CC and her work in the records department. She testified that three times during those years where she has seen mistakes made by the records department that led to improper releases of inmates (2T:84-85).

Lt. Patricia Barber (Barber)

Barber testified to her twenty-nine years employment with CC but acknowledged not working in the R&D unit. She also testified that the paperwork from records had on occasion had to be sent back (2T:87-18).

Sgt. Victor

Victor testified to his twenty-two years employment with CC. The last eight as a sergeant. He testified that the paperwork for inmate P. had been changed from the initial release to include a body receipt. He testified it had to be re-signed. He testified that the paperwork did not have to be re-signed by Mary Gayles, but it differed from the original paperwork. He testified the original paperwork had, "Turned over to the street." (2T:99-1to13). He also testified that when he first saw the document it only said, "Bag and baggage" and that also meant turning the inmate over to the street (2T:97-22 to 98-1to13). He testified, the new form had a body receipt. Victor testified that he placed the words, "No right(sic), Annex" on the form (2T:114-5,6). Victor testified that the discharge document should have been three pages, the release form, a body receipt, and in many cases a detainer (2T:99-23 to 100-2). Victor testified that when he looked at the paperwork, when Plainsboro arrived, he saw the inmate P. paperwork reflect the discharge to Plainsboro and took action accordingly to attempt to get the inmate back. Victor testified that between a half an hour to forty minutes past between the release of inmate P. and the arrival of the Plainsboro Police transport. (2T:108-19 to 109-10), not the fifteen to twenty minutes he told the IA Sgt. Fioravanti. Victor testified, "it was a very busy night." "I had no idea that I would've ended been (sic) brought up on charges and be disciplined for doing my job." (2T:113-3,7).

Appellant testified that he did not make any effort that evening or any other time to locate the original paperwork (2T:113-12 to 114-1).

DISCUSSION

Victor disputes that he should be held accountable for the actions of January 24, 2011. Inmate P. was released to the street instead of to Plainsboro. Inmate P. was promptly re-apprehended and his warrant related to a Plainsboro seat belt violation. Victor viewed the event as not warranting discipline. He points to other's actions as causing the issue, but he did not bring any disciplinary action against anyone under his command. The fortuitous recapture of inmate P. and the insignificant offense for which inmate P. needed to be held, does not mitigate the offense.

Victor told the shift commander that a mistake had been made in the release of inmate P. Even if he filed disciplinary actions against others, he claimed should have caught the mistake, as R&D Sergeant the actions were his responsibility. If the paperwork contained any confusion, Victor should have refused the release of inmate P. to clarify his status. Victor attempts to cloud the issue by denying the existence of the "body receipt" to the initial paperwork. Victor claims the night was busy with intakes and releases. A small period of time elapsed between the original release and his review of the discharge papers sitting in CR3. Victor claims a "body receipt" appeared in that short period of time. This testimony is not credible. It is not credible both as to the short time the paperwork sat in CR3, and the attitude exhibited by Victor. Victor resents that he is charged in a disciplinary matter he views as insignificance. It is much more likely that an error occurred when initially reviewing the paperwork. Victor acknowledges that he wrote, "No ride, annex." The confusion cannot come from Victor's own input onto the discharge document. Diaz and Lane did not dispute that the transfer to Plainsboro existed, just that they did not notice it. They both had other duties to perform in connection with the discharge. Lt. Stokes and Lt. Barber testified to errors made in the past by the records department, however, they did not testify that the records here were in error.

ADDITIONAL FINDINGS OF FACT

As a result of the testimony and documentary evidence, I **FIND** the following additional **FACTS**:

4. On January 24, 2011, inmate P.'s paperwork reflected a transfer to the Plainsboro Police to address a warrant.
5. On January 24, 2011, inmate P.'s paperwork contained a body receipt.
6. On January 24, 2011, at approximately 7:50 p.m. inmate P. was released to the street at the direction of Victor.
7. Shortly thereafter, Victor became aware that inmate P. should have been turned over to the Plainsboro Police pursuant to a warrant.
8. Victor advised the shift commander, Lt. Boeske of the error.
9. The re-apprehension of inmate P. occurred and the inmate turned over to the Plainsboro Police by 9:00 p.m.
10. SOP 210 sets forth the duties and obligations of a sergeant, specifically under responsibilities E-9 and E-14, to supervise his subordinates in his assigned area and enforce the rules and regulations. SOP identifies additional obligations of the R & D Sergeant at D-2.
11. The charges identified conduct unbecoming a public employee, neglect of duty, and other sufficient cause. All related to the erroneous release of inmate P. These offenses provided sufficient notice to Victor of the offenses charged.

LEGAL ANALYSIS AND CONCLUSION

Civil service employees's rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public

service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the employee's guilt or innocence, as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

The burden of persuasion falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described 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).

I **CONCLUDE** that respondent has met its proof by a preponderance of the evidence that Victor released inmate P. to the street instead of turning him over to the Plainsboro Police transport to answer to a warrant, a violation of N.J.A.C. 4A:2-2.3(a)(11), section reference has changed since the date of the offense now N.J.A.C. 4A:2-2.3(a)(12), specifically, Other Sufficient Cause - violation of a rule, regulation, policy, procedure, order or administrative decision, Standard Operating Procedure (SOP) 210 (D-2, E-9, and E-14).

I further **CONCLUDE** that respondent has not met its proof by a preponderance of the evidence that Victor's actions, placed the property and persons of the other inmates and staff in danger, a violation of N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause - neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would result in danger to persons or property (B-2) on the Mercer County Table of Offenses. This tribunal's determination results from the respondent's failure to document the Mercer County Table of Offenses range and language of the violation. It does not appear that any property or person was placed in danger as a result of the incidents surrounding this release and re-apprehension.

I further **CONCLUDE** that respondent has met its proof by a preponderance of the evidence that Victor released inmate P. to the street instead of turning him over to the Plainsboro Police transport to answer to a warrant, a violation N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty.

I further **CONCLUDE** that respondent has met its proof by a preponderance of the evidence that Victor released inmate P. to the street instead of turning him over to the Plainsboro Police transport to answer to a warrant, a violation of N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a public employee. This is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Because I have concluded that respondent proved that Victor released inmate P. to the street instead of to the Plainsboro Police transport, I must also conclude that his actions violated this standard of good behavior.

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the proofs and penalty on appeal based on the charges presented must be evaluated. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. West New York v. Bock, supra, 38 N.J. at 522-24. Major discipline

may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

The parties acknowledge the absence of Victor's prior disciplinary record.

Victor's proposed suspension in this matter is ten days from the FNDA. The respondent sought the same penalty in the PNDA. The Mercer County Table of Offenses were not provided to this tribunal. However, the improper release of an inmate to the street is a serious violation warranting a major discipline. The fortuitous nature of the re-apprehension does not mitigate the offense, nor does the nature of the detainer.

Respondent seeks a discipline penalty of the ten days. Appellant argues that a thirty-day penalty for a first offense of a momentary lapse seems excessive. I agree. The present case does not warrant increasing the penalty, however, a reasonable calculation of discipline in the presence of the seriousness of this offense is ten days.

Accordingly, I **CONCLUDE** that the respondent's imposition of a ten-day penalty is appropriate.

ORDER

For the reasons stated above, I hereby **ORDER** that Victor violated N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, specifically, violation of a rule, regulation, policy, procedure, order or administrative decision.

I further **ORDER** that Victor violated N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty.

I further **ORDER** that Victor violated N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a public employee.

I further **ORDER** that Victor's appeal is **DENIED** in all respects.

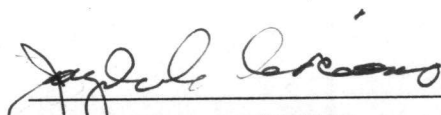
I further **ORDER** that the ten-day suspension against Victor is **AFFIRMED** in all respects.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 5, 2015
DATE



JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

11/5/15

Date Mailed to Parties:

11/5/15

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APPENDIX
LIST OF WITNESSES

For Appellant:

Lt. Alberta Stokes, Mercer County Corrections Center
Lt. Patricia Barber, Mercer County Corrections Center
Sgt. Gary Victor, Appellant

For Respondent:

Steven Boseke, Retired Lt., Mercer County Corrections Center
Elgee Styles, CO Mercer County Corrections Center
Gary Vannozzi, CO Mercer County Corrections Center
Lt. Farah Fioravanti, Internal Affairs, Mercer County Corrections Center
Jeffrey Lane, Property Officer, Mercer County Corrections Center
Curtis Diaz, CO Mercer County Corrections Center

LIST OF EXHIBITS

Joint

JT-1 Joint Stipulation of Fact
JT-2 FNDA and PNDA

For Appellant:

P-1 See P-3
P-2 Log Book Entry from R&D Sgt.
P-3 Log Book January 24, 2011
P-4 Body Receipt from Plainsboro January 24, 2011

For Respondent:

- R-1 Incident report of S. Boseke
- R-2 Discharge for Inmate P.
- R-3 Body Receipt
- R-4 Incident report of G. Vannozzi
- R-5 Incident report of E. Styles
- R-6 Incident report of C. Diaz
- R-7 Incident report of J. Lane
- R-8 Incident report of G. Victor
- R-9 IA Report of F. Fioravanti
- R-10 SOP 210
- R-11 Sign Off for receiving post orders