



B-21

STATE OF NEW JERSEY

In the Matter of Wade Gushard,  
Edna Mahan Correctional Facility

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2015-2516

Minor Discipline Appeal

ISSUED: **SEP 17 2015** (SLK)

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Wade Gushard, a Senior Correction Officer with the Edna Mahan Correctional Facility, Department of Corrections, appeals his five-day suspension.

By way of background, on November 10, 2014 the appellant entered in the log book of Alpha Cottage, "c/o Gushard informed SGT. Socolof that c/o M. Henderson left early." On November 25, 2014, the appellant entered in the log book of the Detention Unit, "LT Washington advised this officer that there was a missing 'SCO' on this officers name tag, which is in violation of the uniform standards LT. Washington out unit."

Subsequently, the appellant was charged with violation of a rule, regulation, policy, procedure, order, or administrative decision. Specifically, it was asserted that the appellant made unauthorized entries into log books as log books entries must only contain information relevant to the security and/or management of the post pursuant to internal management procedures.

The appellant did not call any witnesses to testify at the departmental hearing that was held on January 29, 2015. The appellant argued that he had not previously been sanctioned for a violation of a rule or procedure and therefore the sanctions were excessive. Additionally, during the investigation of the incident, the appellant asserted that he was forced to answer questions that touched on a confidential Equal Employment Division matter, which was protected and confidential. The appellant asserted that the log book entries were work related and relevant to the job. The appellant refused to answer the hearing officer's

questions and claimed that these questions were another form of retaliation and harassment. The appointing authority submitted Correction Lieutenant Joseph Riotto's report<sup>1</sup> which indicated that the appellant admitted to writing both entries and stated that he was justified because it was job related and authorized by its Internal Management Procedures (IMPs), which give examples as to what is appropriate to be put in the log book. The IMP specifies that any information that pertains "to the security and/or operation of the housing unit will be recorded." The hearing officer noted that the appellant did not deny making the log book entries and he refused to answer questions which could have clarified his knowledge or lack of understanding of the IMPs. Accordingly, the hearing officer found that the two log book entries clearly had nothing to do with the orderly operation of the housing unit and upheld the five-day suspension.

On appeal, the appellant maintains that the discipline in this matter was in retaliation for his participating in equal employment complaints regarding other Senior Correction Officers. The appellant claims that the appointing authority's Director of the Equal Employment Division retaliated against him and authorized an investigation against him which resulted in him receiving discipline in this case. The appellant asserts that the appointing authority utilized an excerpt from its IMPs as justification for its discipline against him, but refused to provide all the relevant IMPs so that he could defend himself. Regardless, the appellant argues that he did not do anything wrong since his entries were consistent with established IMPs by recording identified staffing levels and patterns, unusual events and uniform issues.

In response, the appointing authority states that this matter does not meet the standard for the Civil Service Commission (Commission) to review a minor disciplinary appeal. The appointing authority submits, among other documentation, Riotto's report, in which the appellant admits that he made the log book entries in question and the pages from its IMPs that relate to log book entries.

## CONCLUSION

*N.J.A.C.* 4A:2-3.7(a) provides that minor discipline may be appealed to the Commission. The rule further provides:

1. The [Commission] shall review the appeal upon a written record or such other proceeding as the [Commission] directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be

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<sup>1</sup> The appellant objected to Lt. Riotto's report on the grounds that Lt. Riotto was not present to be cross-examined. The hearing officer offered to postpone the hearing so that Lt. Riotto could be cross-examined; however, the appellant declined and instead stated that he wanted the charges dismissed.

dismissed and the [Commission's] decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the [Commission] will render a final administrative decision upon a written record or such other proceeding as the [Commission] directs.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the departmental level. In the present matter, while this appeal provides an issue of general applicability in the interpretation of law, rule, or policy, which is further discussed below, there is no basis on which to grant the appellant's appeal.

In considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the Department of Corrections. The Commission will also not disturb hearing officer credibility judgments in minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service rules. *See e.g., In the Matter of Oveston Cox* (CSC, decided February 24, 2010).

With respect to the appellant's assertion that the charges and the penalty were in retaliation for his assisting co-workers with their equal opportunity complaints, without substantial credible evidence in support of such allegations, his claims are not sufficient to meet the Commission's minor discipline standard in this circumstance. The mere fact that the appellant has participated in his co-workers' complaints, without more, is not sufficient to demonstrate retaliation. Additionally, the appellant did not provide any substantive evidence to show that the departmental hearing was improperly conducted. In this regard, the appellant objected to Riotto's report being admitted because he was not given an opportunity to cross-examine him. However, the hearing officer offered the appellant a chance to postpone the hearing if he needed to cross-examine Riotto, but he declined.

In considering minor discipline matters involving facility operating procedures, the Commission generally defers to the judgment of facility management as the responsibility for the development and implementation of such programs, policies and procedures are entrusted by statute to the responsible appointing authority. Although given the opportunity to clarify why he believed that his log book entries were consistent with the appointing authority's IMPs, the appellant refused to answer the hearing officer's questions and claimed that they were just another form of retaliation or harassment. Further, as the appellant has not provided substantial credible evidence that such judgments and conclusions

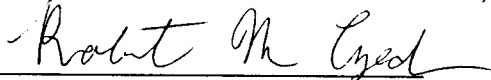
were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service rules, the hearing officer's determination must not be disturbed. Accordingly, no further review will be conducted in this matter.

**ORDER**

Therefore, it is ordered that this appeal be denied.

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 DAY 16<sup>th</sup> OF SEPTEMBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries and Correspondence	Henry Maurer Director Division of Appeals & Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312
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c: Wade Gushard  
Colleen Velekei  
Joseph Gambino