



STATE OF NEW JERSEY

In the Matter of Kevin Broadbent  
Mercer County,  
Department of Public Safety

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-1140  
OAL DKT. NO. CSV 14107-14

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

ISSUED: OCTOBER 20, 2016 BW

---

The appeal of Kevin Broadbent, County Correction Officer, Mercer County, Department of Public Safety, 30 working day suspension, on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on November 30, 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 October 19, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

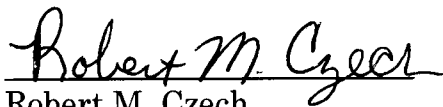
ORDER

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 Kevin Broadbent.

Re: Kevin Broadbent

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  
OCTOBER 19, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Assistant 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 14107-14

AGENCY DKT. NO. 2015-1140

**IN THE MATTER OF KEVIN  
BROADBENT, MERCER COUNTY  
DEPARTMENT OF PUBLIC SAFETY.**

---

**David B. Beckett, Esq.**, for appellant (Law Offices of David Beckett, attorneys)

**Kristina Chubenko**, Assistant County Counsel, for respondent (Arthur R. Sypek,  
Jr., County Counsel)

Record Closed: October 14, 2015

Decided: November 30, 2015

BEFORE **JOHN S. KENNEDY**, ALJ:

**STATEMENT OF THE CASE**

Respondent, Mercer County Department of Public Safety (hereinafter Appointing Authority), suspended appellant Kevin Broadbent for thirty working days. The Appointing Authority alleges that appellant, a corrections officer, was verbally and mentally abusive to an inmate on March 11, 2014, and that a suspension for a period of thirty working days was the appropriate penalty.

Appellant was charged for this offense with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause (J-1).

### **PROCEDURAL HISTORY**

On March 20, 2014, the Appointing Authority issued a Preliminary Notice of Disciplinary Action setting forth the charges and specifications made against appellant. After a departmental hearing on September 8, 2014, the Appointing Authority issued a Final Notices of Disciplinary Action (J-1) on October 2, 2014, sustaining the charges in the Preliminary Notice and suspending appellant from employment for thirty working days. Appellant appealed, and the matter was filed at the Office of Administrative Law on October 30, 2014 for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on June 16, 2015. The parties filed post-hearing briefs and the record closed on October 14, 2015.

### **FACTUAL DISCUSSION**

**Phyllis Oliver** testified on behalf of the Appointing Authority. She is a Lieutenant assigned to the Mercer County Correctional Center (MCCC) and is in charge of the Internal Affairs Department. She has been employed by the Appointing Authority for over thirty years (eight years as a Lieutenant) and has been in the Internal Affairs Department since 1993. On March 11, 2014, Lt. Oliver was working in her office and called appellant on the telephone at his desk in the Star PC living unit. Star PC is a special housing unit that houses inmates who are mentally ill, in protective custody or in detention. There are six cells in Star PC and the unit officer is responsible for ensuring that all inmates are secure. The Star PC officer is also responsible for passing out lunch trays, letting inmates in and out of their cells for medical and recreation and other related duties. Appellant was assigned to Star PC on March 11, 2014 for the 7:00 a.m. to 3:00 p.m. shift.

Each morning Lt. Oliver calls the Star PC unit to review the names of the inmates housed in the unit. On March 11, 2014, she called the Star PC unit but no one

answered. Lt. Oliver can access the Star PC unit surveillance camera from her office, turned it on and observed appellant standing in front of one of the cells. She called the unit again and the phone picked up but no one answered. She could hear the appellant talking to the inmate. She heard him call the inmate "stupid" and an "idiot" and to "shut the fuck up." Appellant continued yelling at the inmate so Lt. Oliver called the shift commander, Lt. James, and asked him to come to her office. While Lt. James was in her office Oliver observed appellant in front of the inmate's cell with a trash bag. She heard appellant say to the inmate "the baby your girlfriend is carrying is not your baby, it's my baby and when I'm going to go home I'm going to fuck your girlfriend in the ass." Appellant then walked back to his desk and noticed that the telephone is off the hook. He spoke into the telephone but Lt. Oliver did not respond. He then hung up and called Lt. Oliver back and asked her if she called him. She responded that "the question should be why are you talking to an inmate like that?" Appellant apologized and Lt. Oliver instructed him to write an incident report. In appellant's incident report he states that Lt. Oliver was illegally eavesdropping or wiretapping his phone line and that anything Lt. Oliver alleges to have heard him say is inadmissible in any investigation (R-4). Lt. Oliver asserts that she did not tamper with the phones and did not eavesdrop. She would need a Communication Data Warrant in order to obtain information from appellant's telephone. Appellant brought his complaints against Lt. Oliver to the county prosecutor's office but Oliver is not aware of any investigation conducted. Lt. Oliver turned the matter over to the warden and she had no involvement in the discipline process. Appellant's incident report also states that he was instructing the inmate to remove pictures from the wall and floor areas and not to obscure his face or the view into the cell (R-4).

**Richard Bearden** also testified on behalf of the Appointing Authority. He is the captain assigned to MCCC and has been employed since 1990. He assists the warden and administers most discipline at MCCC, and he prepared the charges against appellant in this case. It was his recommendation based on the reports submitted that appellant violated SOP 238 (R-7) and SOP 004 (R-8). Appellant was charged in accordance with the Mercer County Table of Offenses and Penalties section C3-Personal Conduct and D16-Intentional abuse or misuse of authority or position (R-9). Bearden agreed that appellant was enforcing institution rules, consistent with his

assigned post, when he instructed the inmate to remove pictures from the wall and floor areas and not to obscure his face or the view into the cell.

**Kevin Broadbent**, appellant, next testified on his own behalf. He has been a corrections officer for fourteen years and was on "B tour" assigned to the Star PC unit on March 11, 2014. On that day he logged in to the unit logbook that inmate D in cell S5 was "stating his abnormal behavior and banging on the door" (E-1). He called the area sergeant to report the inmate's behavior. The inmate was banging on the cell door, had thrown trash throughout his cell and magazines were posted all over the walls and covering the light inside the cell. The inmate was verbally abusive to the sergeant when he came to the unit and appellant was instructed to do whatever was necessary to get the inmate to clean up his cell. He was not yelling at the inmate, rather giving him orders to clean up his cell. When appellant called the sergeant to advise that the inmate was acting up, he is seen on the surveillance video picking up the telephone, speaking and then hanging up (R-2). Appellant then walked back over to the inmate's cell and asked him what was going on and again instructed the inmate to clean up his cell. He did not curse at the inmate or threaten to do harm to his girlfriend. The inmate was talking about his girlfriend and baby. Appellant is aware that the inmate does not have a girlfriend and told the inmate that he does not have a girlfriend or a baby. He took out a trash bag as a constructive tool to get the inmate to comply by showing him the he was serious about going into his cell and taking out his belongings if he did not clean up the cell. At this time he and the inmate began arguing and the inmate told appellant if he came into his cell the inmate would knock him out. The inmate was cursing and threatened to rape appellant's wife and daughter but he did not enter this into the unit logbook. He admits yelling at the inmate but only because the inmate was yelling and appellant wanted to be heard. He told the inmate that he was going to take all of his shit and put him in restraints if he did not comply. Appellant asserts that he did not make threatening statements about the inmate's girlfriend or baby.

Appellant only authored his incident report because he was ordered to do so by Lt. Oliver. When he completed the report he turned it into his area sergeant who signed off on the report and gave him a counseling session which he considered a form of discipline. His sergeant later told him he was being charged because he made

statements in his incident report about Lt. Oliver tampering with the telephone and eavesdropping on him. Appellant feels that the discipline is in retaliation for reporting Lt. Oliver to the prosecutor's office and that Internal Affairs normally would not be concerned about an event like this.

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521-22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep't, 182 N.J. Super. 415, 421 (App. Div. 1981).

In judging the strength of the evidence, I **FIND** as **FACT** that the testimony presented by Lt. Oliver was sincere and credible. Lt. Oliver testified as to what she heard and that she called the shift commander in to listen as well. It is undisputed that when she spoke to appellant Lt. Oliver ordered him to write an incident report. Some type of exchange must have precipitated this action. Appellant himself admits that he

was yelling at the inmate but denies using foul and abusive language. I further **FIND as FACT** Oliver's rendition of the disputed facts to have a greater "ring of truth" than the scenario offered by appellant. Other than appellant's testimony that the discipline was in retaliation to his statements about Oliver in his incident report and because he reported the incident to the prosecutor's office, the record is devoid of evidence suggesting that any of the Department's witnesses harbored some type of bias or motive to fabricate their version of the relevant events. Lt. Oliver ordered appellant to write an incident report before any allegation was made against her. Plainly, on balance, appellant has the greater stake in the outcome of this proceeding.

### **FINDINGS OF FACT**

After carefully reviewing the exhibits and documentary evidence presented numerous times during the hearing, and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

Appellant was assigned to Star PC on March 11, 2014 for the 7:00 a.m. to 3:00 p.m. shift. Lt. Oliver called the Star PC unit but no one answered, so she accessed the Star PC unit surveillance camera from her office and observed appellant standing in front of one of the cells. She called the unit again and the phone picked up but no one answered. She could hear the appellant talking to the inmate and heard him call the inmate "stupid" and an "idiot" and to "shut the fuck up." Lt. Oliver called the shift commander, Lt. James, and asked him to come to her office. While Lt. James was in her office Oliver observed appellant in front of the inmate's cell with a trash bag and heard him make verbally abusive comments to the inmate. Lt. Oliver instructed appellant to write an incident report. In appellant's incident report he states that Lt. Oliver was illegally eavesdropping or wiretapping his phone line and that anything Lt. Oliver alleges to have heard him say is inadmissible in any investigation. Appellant brought his complaints against Lt. Oliver to the county prosecutor's office. Lt. Oliver turned the matter over to the warden and she had no involvement in the discipline process. Appellant's incident report also states that he was instructing the inmate to



remove pictures from the wall and floor areas and not to obscure his face or the view into the cell which is consistent with the duties of his assigned post.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, 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, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant's status as a corrections officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). 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." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become "tinderboxes."

[Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).]

Appellant was charged with "Conduct unbecoming a public employee." N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has 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)). Such misconduct need not necessarily "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 which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." 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)).

I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee. The basis for the charge of conduct unbecoming was the verbally abusive manner in which appellant spoke to the inmate. Appellant's conduct was such that it could adversely affect the morale or efficiency of a governmental unit or destroy public respect in the delivery of governmental services.

Appellant has also been charged with violating SOP 238 and SOP 004. SOP 238 (R7) provides in relevant part as follows:

Correction officers are the embodiment of authority while on duty. Never abuse this authority or in any way bring dishonor or disgrace upon yourself. To do so damages the image of this Department and all of Law Enforcement and has far reaching ramifications. Always conduct yourself in a professional manner and be in proper uniform while on duty. Take initiative within the scope of your duties and live up to the expectations all Law Enforcement strive for.

As correction officers, your primary function is to manage all inmates under your charge to assure a secure and safe environment. Security, safety is staff and inmates, and prevention of contraband make up the foundation upon which every other practical corrections application are built on. Effective officers will utilize their authority and perform their assigned duties in a professional, respectful, and consistent manner.

In addition, SOP 004 (R8) provides in relevant part as follows:

1.02.2 Officers/Correctional Employees are responsible for compliance with the lawful content of all current departmental rules, orders, and other directives whether transmitted in writing or verbal.

\*\*\*\*\*

1.03.1 Officers/Correctional Employees have the right to be treated with respect by their Superior Officers, as well as by their peers, inmates, subordinates, and the public. Although it is recognized that respect cannot be mandated by rules or regulations, nevertheless, it is required that Officers/Correctional Employees show proper courtesy, attention, and consideration in their interactions with respect to Superior Officers, other employees, inmates, and with people in the community.

\*\*\*\*\*

1.03.05 Officers/Correctional employees shall not mistreat persons who are in their custody, but shall handle such persons in accordance with the law and departmental procedures. Inmates shall be protected by adult county correctional facility staff from personal abuse, corporal punishment, personal injury, disease, property damage and harassment. In accordance with the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C., et. seq., zero tolerance for the incidence of sexual assault shall be

maintained at adult county correctional facilities. Appropriate disciplinary action shall be taken against facility staff who engage in abusive behavior and, when necessary, these cases will be referred to the county prosecutor.

I **CONCLUDE** that appellant's conduct violated SOP 238 as he did not conduct himself in a professional manner while on duty. I also **CONCLUDE** that appellant's conduct violated SOP 004 as his conduct rises to the level of mistreatment outlined in 1.03.05.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause." Other sufficient cause 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. Appellant's conduct was such that he violated this standard of good behavior. As such, I **CONCLUDE** that the Appointing Authority has met its burden of proof on this issue.

### **PENALTY**

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

For his actions arising out of this incident, appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)(6) "Conduct unbecoming a public employee" and N.J.A.C.

4A:2-2.3(a)(11), "Other sufficient cause." Appellant was charged with a thirty-day suspension. This suspension is consistent with the disciplinary process outlined in MCCC's table of offenses. After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon him, as well as others, the seriousness of any further infractions by him in that regard. Therefore, I **CONCLUDE** that the imposition of the thirty-day suspension was appropriate and consistent with the penalties specified in MCCC's table of offenses.

### **DISPOSITION**

I **CONCLUDE** that the Appointing Authority has sustained its burden of proof as to the charges of violation of N.J.A.C. 4A:2-2.3(a)(6) "Conduct unbecoming a public employee" and N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause."

Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**. Appellant will receive a thirty-day suspension.

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 30, 2015  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

November 30, 2015

Date Mailed to Parties:

November 30, 2015

cmo

**APPENDIX**  
**LIST OF WITNESSES**

**For Appellant:**

Kevin Broadbent, Appellant

**For Respondent:**

Lieutenant Phyllis Oliver  
Captain Richard Bearden

**LIST OF EXHIBITS**

**Joint Exhibits:**

J-1 Final Notice of Disciplinary Action dated October 2, 2014

**For Appellant:**

E-1 B Tour log book dated March 11, 2014

**For Respondent:**

R-1 Incident Report prepared by Lt. Oliver dated March 11, 2014  
R-2 Video Surveillance dated March 11, 2014, Oliver's view  
R-3 Video Surveillance dated March 11, 2014, other view  
R-4 Incident Report prepared by Appellant dated March 11, 2014  
R-5 Inmate mental health progress report dated September 30, 2013  
R-6 Not admitted  
R-7 SOP 238  
R-8 SOP 004  
R-9 Correction Center table of offenses and Penalties, Effective Date 8/1/13

R-10 Disciplinary History of appellant