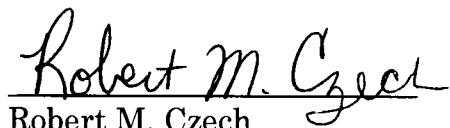


Re: Dominique Connors

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 06005-15

AGENCY DKT. NO. 2015-2828

**IN THE MATTER OF
DOMINIQUE CONNORS,
MERCER COUNTY DEPARTMENT
OF PUBLIC SAFETY.**

Paul L. Kleinbaum, Esq., for appellant Dominique Connors (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys)

Stephanie Ruggieri D'Amico, Esq., Assistant County Counsel, for respondent Mercer County Department of Public Safety (Arthur R. Sypek, Jr., County Counsel, attorney)

Record Closed: January 11, 2016

Decided: February 8, 2016

BEFORE **DEAN J. BUONO, ALJ**:

STATEMENT OF THE CASE

The appellant, Dominique Connors, a county corrections officer, appeals a ten-day suspension sought to be imposed by respondent, the Mercer County Department of Public Safety (hereinafter appointing authority), alleging that on November 12, 2012, the appellant accepted a position as a transportation officer and accepted a duty weapon

despite not being weapons qualified. The appellant was charged for this offense with violations: 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 and violations of administrative procedures; and regulations involving safety and security including Standard Operating Procedure (SOP) 442 "Carrying and Use of Firearms", SOP 285 "Transportation Officers" and SOP 238 "Correction Officers".

PROCEDURAL HISTORY

On December 25, 2012, the appointing authority issued a Preliminary Notice of Disciplinary Action. (J-2.) After a departmental hearing on March 12, 2015, the appointing authority issued a Final Notice of Disciplinary Action (J-3) on April 16, 2015, sustaining the charges and suspending appellant from employment for ten days. Appellant appealed, and the matter was transmitted to the Office of Administrative Law on April 27, 2015, for hearing as contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on December 1, 2015. The record remained open until January 7, 2016, for the parties to submit closing arguments. Both parties submitted closing arguments on January 11, 2016, and the record closed.

FACTUAL DISCUSSION

The parties agreed to the following Stipulations of Facts:

1. Correction Officer (CO) Dominique Connors has been employed by the Mercer County Corrections Center (MCCC) since on or about April 10, 2010. She graduated from the Academy on or about November 19, 2010.
2. Connors went out on Family and Medical Leave Act (FMLA) due to a work-related injury from October 8, 2012, through October 25, 2012.
3. At the time that she went out on FLMA leave, Connors' authorization to carry on-duty weapons was effective from May 19, 2012, to October 31, 2012.

4. On November 12, 2012, Connors was assigned to the B Tour Southeast 1 from 7:00 a.m. to 3:00 p.m.
5. Upon completing her shift on November 12, 2012, Connors was advised by Sergeant Mitchell that she would be held for overtime due to the late arrival of another officer, CO Brown. Mitchell assigned Connors to work transportation. Correction officers assigned to transportation are required to be qualified to carry weapons.
6. During the overtime shift, Sergeant Tucker ordered Connors to get a weapon and a holster and to accompany CO Coy to St. Francis Hospital to pick up two inmates and return with them to the facility.
7. After returning to the facility, Connors was also sent out with a discharge with CO Coy during which time she retained possession of the weapon.

TESTIMONY

Lieutenant Farah Fioravanti testified for the respondent that she has been employed by the Mercer County Correctional system for sixteen years, the last four years as a Lieutenant. She described the procedure that every CO would have to comply with to obtain a duty firearm for any corrections detail. Each officer is required to qualify twice per year during a three-week time frame when officers are required to sign-up and attend the one-day qualification for the duty sidearm, a Glock 17, and the Mossberg 12 gauge shotgun. The dates and times are posted in various areas throughout the facility to provide notice to each officer.

The qualification period in this case was scheduled from September 29, 2012, through October 20, 2012. (R-9.) Thereafter, if the individual qualifies, the Firearms Qualification List will reflect an "X" and the Authorized Duty Weapons Card expiration date will be updated. If the individual does not qualify either by failing to attend or failing

the qualification, the Firearms Qualification List will reflect a "DNQ" and the Authorized Duty Weapons Card will not be updated. If an officer does not qualify, he or she is not permitted to possess a duty firearm. Any officer who is assigned a duty from the institution that requires a duty firearm must see the Sergeant in the Master Control area. Thereafter, the Master Control Sergeant references the Firearm's Qualification list, and if qualified, issues the firearm to the officer.

On November 12, 2012, Lieutenant Fioravanti became aware that CO Connors accepted a position as a transportation officer and a duty weapon although she was not weapons qualified. Further review with Master Control Sergeant Tucker and the Firearm's Qualification List revealed that CO Connors was listed as "DNQ" due to an on the job injury which occurred October 8, 2012. (R-4.) CO Connors' Authorized Duty Weapons Card reflected an expiration date of October 31, 2012. (R-10.) Lieutenant Fioravanti stated that she telephoned CO Connors and asked her about qualification but did not recall the conversation. (R-2.)

Lieutenant Fioravanti further stated that Master Controller Sargent Tucker was required to check the firearms book and did not do that, so he failed to do his job. Lieutenant Fioravanti did not know if CO Connors had an affirmative obligation to report that she was not qualified with her duty weapon.

Captain Richard Bearden also testified on behalf of the respondent. He is the captain assigned to MCCC and has been employed there since 1990. He assists the warden and administers mostly discipline at MCCC. Captain Bearden drafted the original charges against appellant after receiving reports from: Internal Affairs (R-1); Lieutenant Fioravanti (R-2); Sergeant Tucker (R-3); Firearm's Qualification List (R-4); and the Authorized Duty Weapons Card (R-10). He reiterated the same procedure as Lieutenant Fioravanti for an officer to procure a duty weapon for assignment.

Captain Bearden described the actions of CO Connors as very serious. "Weapons are serious business" and "the public's safety is put at risk." He discussed violations of specific SOP's, including SOP 442 "Carrying and Use of Firearms." (R-6.)

Captain Bearden cited section four which indicated that it was the officer's responsibility to attend the mandatory semi-annual qualification. Also, he cited a violation of SOP 285 "Transportation Officers." (R-7.) He stated that the "Requisites" section states that COs hold a sacred trust and responsibility to the public that cannot be taken lightly. Transportation Officers must be currently qualified with the Glock 17 and Mossberg shotgun to have access to weapons.

Finally, Captain Bearden cited a violation of SOP 238 "Correction Officers." He pointed out that this SOP requires that if an officer has any doubt about anything pertaining to the post, or the discharge of duties, it is his or her responsibility to contact the immediate supervisor for direction. (R-8.) The appellant violated this SOP by not contacting a supervisor about weapons qualification. Captain Bearden replied pointedly when asked if CO Connors had a duty to report that she was not qualified. "She would have had the same responsibility if she didn't have a driver's license." He said, "That the responsibility is on the officer."

Captain Bearden testified that on November 12, 2012, CO Connors accepted a position as a transportation officer and accepted a duty weapon despite not being weapons qualified. The appellant was charged in accordance with the MCCC table of offenses and penalties as a Step 6 offense for a violation of administrative procedures and/or regulations involving safety and security. The penalty ranges from a reprimand to removal. The appellant received a ten-day suspension. (R-11.)

Dominique Connors testified on her own behalf that she has been employed by the MCCC since on or about April 10, 2010. She graduated from the Academy in November, 2010. She went out on FMLA leave due to a work-related injury from October 8, 2012 through October 25, 2012. At the time that she went out on FLMA leave, her authorization to carry on duty weapons was effective from May 19, 2012 to October 31, 2012.

CO Connors was aware of the semi-annual firearms qualification and the posting as referenced in R-9. She usually qualifies during the last week because less

individuals are qualifying at that time and there is less pressure. She wanted to wait until the end of qualifications but they ended on October 20, 2012.

On November 12, 2012, CO Connors was assigned to the B Tour from 7:00 a.m. to 3:00 p.m. Upon completing her regular shift, she was advised by Sergeant Mitchell that she would be held for overtime due to the late arrival of another officer and assigned to work transportation. CO Connors was aware that correction officers assigned to transportation are required to be qualified to carry weapons. However, CO Connors did not tell any supervisor that she was not qualified because she thought she was qualified. CO Connors stated she was out on FMLA during regular qualification and knew that there would be an upcoming makeup range session. She was under the impression that the only way an officer is not qualified is if you do not qualify at the range. Furthermore, she had previously been given a duty weapon on November 9, 2012, for a hospital trip. All of these facts led her to believe that she was weapons qualified.

During the overtime shift, Sergeant Tucker ordered CO Connors to get a weapon and a holster and to accompany Officer Coy to St. Francis Hospital to pick up two inmates and return with them to the facility. After returning to the facility, Connors was also sent out with a discharge with Officer Coy during which time she retained possession of the weapon.

CO Connors believed that she was qualified and was just following orders. However, when confronted with the Weapons Card, she testified that there was an expiration date imprinted on it of October 31, 2012. She understood it to be expired on October 31, 2012.

I therefore **FIND** as **FACT** that on November 12, 2012, appellant accepted a position as a transportation officer and accepted a duty weapon despite not being weapons qualified. The appellant received a ten-day suspension. (R-11.)

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 correction officer subjects her to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). Such 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." 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).]

When evaluating evidence and testimony in cases of this nature, it is not uncommon that there are differing points of view. When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973).

However, the finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which would impact the charges and the penalty. Mitigating circumstances must be taken into consideration when determining whether there is just cause for the penalty imposed.

Appellant has been charged with N.J.A.C. 4A:2-2.3(a)(6). Conduct unbecoming a public employee has been defined as 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)).

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.

Finally, appellant has been charged with violations of administrative procedures and/or regulations involving safety and security including SOP 442 “Carrying and Use of Firearms”, SOP 285 “Transportation Officers” and SOP 238 “Correction Officers”.

Appellant contends that these charges cannot be sustained because she reasonably believed that her firearms qualification remained valid on November 12, 2012. In fact, CO Connors was out during regular qualification and knew that there would be an upcoming makeup range session. Also, CO Connors was under the impression that the only way an officer is not qualified is if you do not qualify at the range. Furthermore, she had been given a duty weapon on November 9, 2012, for a hospital trip. All of these facts led her to believe that she was weapons qualified. I do not believe that a reasonable CO can come to that conclusion.

She knew that the expiration date on her weapons card was October 31, 2012, and that she failed to attend the mandatory weapons qualification despite being aware of the qualification dates. Therefore, I **CONCLUDE** that appellant violated N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee by accepting a firearm for the transportation detail knowing that the Firearm Qualification Card had an expiration date of October 31, 2012. Weapons are serious business and the public's safety was put at risk by appellant not being weapons qualified. The reason for semi-annual weapons qualification is to insure that each officer has the capability and capacity to operate and function the weapons. As such, I **CONCLUDE** that the appointing authority has met its burden of proof on this issue.

She was also charged with 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. I **CONCLUDE** that appellant's conduct was such that she violated this standard of good behavior. As such, I **CONCLUDE** that the appointing authority has met its burden of proof on this issue.

Lastly are the alleged violations of administrative procedures and/or regulations involving safety and security including SOP 442 "Carrying and Use of Firearms", SOP 285 "Transportation Officers" and SOP 238 "Correction Officers". They are similar to the above analysis in that the inmate and public's safety is of paramount concern. She had an affirmative obligation to report that she was not weapons qualified. I **CONCLUDE** that appellant's conduct was such that she violated these standards by accepting the firearm while not being qualified. 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.

This matter, of course, does not call for removal, but it does call for consideration of the aggravating and mitigating factors in determining the appropriate discipline to be imposed.

For her 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”; N.J.A.C. 4A:2-2.3(a)(11), “Other Sufficient Cause” and violations of administrative procedures and/or regulations involving safety and security including SOP 442 “Carrying and Use of Firearms”, SOP 285 “Transportation Officers” and SOP 238 “Correction Officers”.

Appellant was on first infraction of the disciplinary process. (R-11.) For this incident, she was suspended for ten days. A first infraction according to the MCCC table of offenses and penalties for a violation of administrative procedures and/or regulations involving safety and security subjects an employee to discipline from reprimand to removal. Appellant’s suspension of ten days is consistent with the disciplinary process outlined in MCCC’s table of offenses.

The aggravating factors include the fact that the infraction involved the possession of a firearm when the officer was not qualified to possess one and the necessity for order and discipline to be enforced in the jail facility. The security of the inmates and staff depends upon adherence by everyone to the rules and procedures. Disrespect of those rules and orders given by superior officers cannot be tolerated.

In mitigation, the disciplinary history of the appellant is not so substantial as to warrant discipline beyond the ten-day suspension proposed in this matter.

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 violation is significant enough to warrant a penalty, which, in part, is meant to impress upon her, as well as others, the seriousness of any further infractions by her in that regard.

Therefore, I **CONCLUDE** that the imposition of the ten-day suspension was the appropriate penalty and consistent with the penalties specified in MCCC's table of offenses.

ORDER

Having **CONCLUDED** that the appointing authority has sustained its burden of proof regarding the violations 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" and violations of administrative procedures and/or regulations involving safety and security including SOP 442 "Carrying and Use of Firearms", SOP 285 "Transportation Officers" and SOP 238 "Correction Officers," I hereby **ORDER** that the action of the appointing authority imposing a ten-day suspension is **AFFIRMED**.

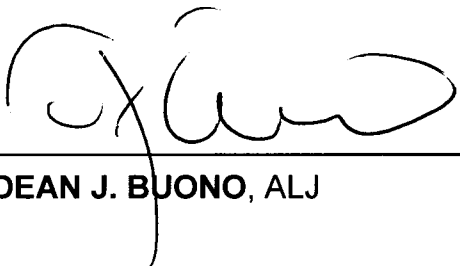
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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. 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.

2/8/16
DATE


DEAN J. BUONO, ALJ

Date Received at Agency:

February 8, 2016.

Date Mailed to Parties:

February 8, 2016.

/dm

APPENDIX
LIST OF WITNESSES

For Appellant:

Dominique Connors

For Respondent:

Lieutenant Farah Fioravanti

Captain Richard Bearden

LIST OF EXHIBITS

For Appellant:

P-1 Preliminary Notice of Disciplinary Action, dated December 25, 2012, to Sargent Samuel Tucker

For Respondent:

- R-1 Internal Affairs Investigation Report, dated December 19, 2012
- R-2 Report prepared by Lieutenant Farah Fioravanti (undated)
- R-3 Report prepared by Sargent Samuel Tucker, Jr. (undated)
- R-4 Firearm Qualification List
- R-5 Tour Assignment Sheet for November 12, 2012
- R-6 SOP 442: Firearms – Authorization to Carry, dated March 10, 2011
- R-7 SOP 285: Post Orders – Transportation Officer, dated May 19, 2011
- R-8 SOP 238: Post Orders – Correction Officer (General), dated December 6, 2010
- R-9 Memorandum, dated September 11, 2012, from Lieutenant W. Roe Chmura to all Shift Commanders and Master Control Sergeants Re: Fall Range Session 2012 Re-Qualifications
- R-10 Authorized On-Duty Weapons Card issued to Officer Dominique Connors
- R-11 Mercer County Public Safety Table of Offences and Penalties (excerpt)

Joint Exhibits:

- J-1 Stipulation of Facts
- J-2 Preliminary Notice of Disciplinary Action, dated December 25, 2012
- J-3 Final Notice of Disciplinary Action, dated April 16, 2015
- J-4 Report prepared by Officer Dominique Connors, dated November 14, 2012
- J-5 Memorandum, dated November 8, 2012, from Raissa L. Walker, Director of Employee Relations to Corrections Officer Dominique Connors Re: Workers Compensation covered under FMLA