



**STATE OF NEW JERSEY**

In the Matter of Antonio Santos  
Mercer County,  
Department of Public Safety

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2014-1178  
OAL DKT. NO. CSV 16160-13

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**ISSUED: OCTOBER 20, 2016      BW**

The appeal of Antonio Santos, County Correction Officer, Mercer County, Department of Public Safety, 15 working day suspension, on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on February 4, 2016. 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.

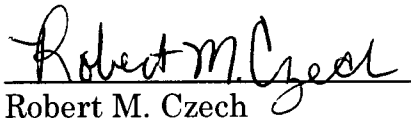
**ORDER**

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 Antonio Santos.

Re: Antonio Santos

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 16160-13

AGENCY DKT. NO. 2014-1178

**IN THE MATTER OF ANTONIO  
SANTOS, MERCER COUNTY  
DEPARTMENT OF PUBLIC SAFETY.**

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**Jason LeBoeuf, Esq.**, for appellant (Law Office of Jason LeBoeuf, attorney)

**Stephanie Ruggieri D'Amico**, Assistant County Counsel, for respondent (Arthur  
R. Sypek, Jr., County Counsel, attorney)

Record Closed: December 21, 2015

Decided: February 4, 2016

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

**STATEMENT OF THE CASE**

Respondent, Mercer County Department of Public Safety (hereinafter, Appointing Authority), suspended appellant Antonio Santos, for fifteen working days. The Appointing Authority alleges that appellant, a Corrections Officer, failed to contact his Sergeant to inform him that recreation was ready for inmates causing an unnecessary drain on County resources on December 16, 2012, and that a suspension for a period of fifteen 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; N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause; and violation of rule, regulation and procedures (R-3).

### **PROCEDURAL HISTORY**

On January 1, 2013, 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 11, 2013, the Appointing Authority issued a Final Notices of Disciplinary Action (R-3) on October 17, 2013, sustaining the charges in the Preliminary Notice and suspending appellant from employment for fifteen working days. Appellant appealed, and the matter was filed at the Office of Administrative Law on November 7, 2013, 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 November 17, 2015. The parties filed post-hearing briefs and the record closed on December 21, 2015.

### **FACTUAL DISCUSSION**

**Farah Fioravanti** testified on behalf of the Appointing Authority. She is a Lieutenant assigned to the Mercer County Correction Center (MCCC) and was on duty on C Tour (3:00 p.m. to 11:00 p.m.) on December 16, 2012. She has been employed by the Appointing Authority for over fifteen years (four years as a Lieutenant). On December 16, 2012, Lieutenant Fioravanti was not appellant's supervisor but did issue him a weapon after line-up. Appellant was assigned as the Recreation Officer and was working in the tower overlooking the recreation yard. According to the Standard and Operating Procedures (SOP) 489, the Yard/Tower Officer is responsible for maintaining security while inmates are in the yard for recreation. The Yard/Tower Officer is responsible for checking the yard and advising his supervisor that the yard is ready for inmate recreation. Appellant did not communicate with master control. The inmates refused to go outside for recreation and approximately two hours after Fioravanti issued appellant his weapon, he returned it. Had appellant checked in as required, he would

have been advised that recreation was not going to occur and he would have been reassigned. Appellant was reassigned to a living unit after he returned from the tower. This was not the first time that appellant was assigned this post. Lieutenant Fioravanti issued a report summarizing the incident (R-1) and also signed Sergeant Mizsak's report as his supervisor (P-3).

**George Mizsak** is a Sergeant at the MCCC and has been employed by the Appointing Authority for thirteen years. On December 16, 2012, he was working C Tour as the New Jail Sergeant. His duties included New Jail recreation and he was appellant's supervisor. Appellant, having been assigned as Yard/Tower Officer, was tasked with reporting to the recreation yard, conducting a perimeter check and contacting master control and his Sergeant to advise that recreation was ready to start. Recreation usually starts between 3:30 p.m. and 3:45 p.m. Due to the cold and rainy weather conditions, the inmates refused to go out in the yard for recreation. Appellant never contacted Sergeant Mizsak to let him know he was in the tower and that the yard was secured and ready for recreation. Sergeant Mizsak did not conduct a check of the yard as would have been required of him pursuant to SOP 489, because he was advised that the inmates refused recreation. He spoke to appellant approximately two hours later and prepared a report approximately one hour after he saw appellant (P-3).

**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-4) and SOP 489 (R-2). Appellant previously received a ten-day suspension for sleeping on duty, neglect and violation of rules (R-5) and was charged with a fifteen day suspension for this incident as progressive discipline.

### **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:

On December 16, 2012, appellant was assigned as the Recreation Officer and was working in the tower overlooking the recreation yard. Appellant did not communicate with master control or his Sergeant that the yard was secure and ready for recreation to begin as required by SOP 489. The inmates refused to go outside for recreation and approximately two hours after Fioravanti issued appellant his weapon, he returned it. This was not the first time that appellant was assigned this post. Sergeant Mizsak was working the C Tour as the New Jail Sergeant. His duties included New Jail recreation and he was appellant's supervisor. Recreation usually starts between 3:30 p.m. and 3:45 p.m. Appellant never contacted Sergeant Mizsak to let him know he was in the tower and that the yard was secured and ready for recreation. Sergeant Mizsak spoke to appellant approximately two hours later. Sergeant Mizsak did not conduct a check of the yard as would have been required of him pursuant to SOP 489, because he was advised that the inmates refused recreation.

### **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 that appellant failed to report to his Sergeant that the outside perimeter was secure and sat in the tower for approximately two hours. 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 489. SOP 238 (R4) provides in relevant part that it is a Correction Officer’s responsibility to contact their immediate supervisor for direction if in doubt about anything pertaining to their post or discharge of their duties.

In addition, SOP 489 (R-2) provides in relevant part as follows:

E. 3. The Yard Officer will contact the Area Supervisor and Master Control to affirm the outer perimeter is secure.

I **CONCLUDE** that appellant’s conduct violated SOP 238 and SOP 489 as he did not contact his Sergeant or master control to affirm the outer perimeter was secure and did not make any inquiry as to why recreation was not conducted. Appellant instead sat in the tower for approximately two hours even though recreation is only scheduled for one hour. See, SOP 489 E.7 (R-2).

There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term “neglect” connotes a deviation from normal standards of conduct. In In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977),



neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961)

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.

Appellant argues that there is an uneven application of the proposed violations of SOPs by the Appointing Authority. Namely it is asserted that Lieutenant Fioravanti violated SOP 489 by only issuing appellant a weapon and not a bullhorn as required. Appellant also asserts that Sergeant Myszak never followed up on any of his duties as it related to recreation. He did not inform Lieutenant Fioravanti that recreation would not be conducted. Whether appellant's actions were appropriate is what this tribunal has been charged with deciding. Whether other violations occurred by other individuals is on no moment.

### **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 fifteen-day suspension. This suspension is consistent with the theory of progressive discipline as appellant previously received a ten-day suspension for sleeping on duty, neglect and violation of rules. 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 fifteen-day suspension was appropriate.

### **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."

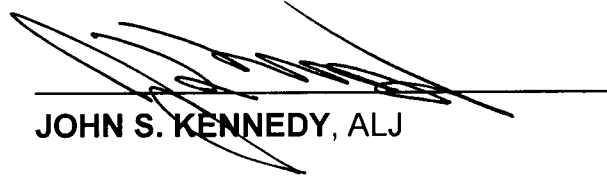
Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**. Appellant will receive a fifteen-day suspension.

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.

February 4, 2016  
DATE

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

Date Received at Agency:

2/4/16  
\_\_\_\_\_

Date Mailed to Parties:

2/4/16  
\_\_\_\_\_

JSK/vj

**APPENDIX**

**LIST OF WITNESSES**

**For Appellant:**

None

**For Respondent:**

Lieutenant Farah Fioravanti

Sergeant George Mizsak

Captain Richard Bearden

**LIST OF EXHIBITS**

**For Appellant:**

P-1 Not admitted

P-2 Not admitted

P-3 Sergeant Mizsak report, dated December 16, 2012

P-4 Not admitted

P-5 Not admitted

P-6 Not admitted

P-7 Appellant's disciplinary history

P-8 Not admitted

**For Respondent:**

R-1 Lieutenant Fioravanti report, dated December 16, 2012

R-2 SOP 489

R-3 Final Notice of Disciplinary Action, dated October 17, 2013

R-4 SOP 238

R-5 Final Notice of Disciplinary Action, dated November 4, 2011