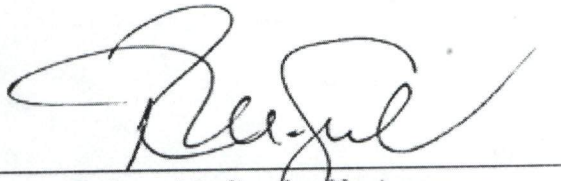


Re: Matthew Calio

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
JULY 13, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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 04011-16

AGENCY DKT. NO. 2016-3090

**IN THE MATTER OF MATTHEW CALIO,
CAMDEN COUNTY DEPARTMENT
OF CORRECTIONS.**

William B. Hildebrand, Esq. appearing for appellant, Matthew Calio (Law
Offices of William B. Hildebrand, attorneys)

Antonieta P. Rinaldi, Assistant County Counsel, appearing for respondent, Camden
County Department of Corrections (Christopher A. Orlando, County Counsel,
attorney)

Record Closed: April 13, 2017

Decided: May 30, 2017

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

STATEMENT OF THE CASE

Appellant, Matthew Calio (Calio or appellant), an employee of respondent, Camden County Department of Corrections (DOC), appeals from the determination of respondent that he be suspended for thirty days for an incident on August 24, 2015. Respondent argues that he violated: N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C.

4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause; Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security. The appellant denies the allegations and contends that he acted appropriately.

PROCEDURAL HISTORY

On September 21, 2015, the DOC issued a Preliminary Notice of Disciplinary Action suspending appellant without pay for thirty days. On February 17, 2016, the DOC issued a Final Notice of Disciplinary Action sustaining the charges and suspending the appellant from his position effective February 18, 2016, through March 18, 2016. Appellant filed a timely notice of appeal.

The Division of Appeals and Regulatory Affairs of the Civil Service Commission transmitted the case to the Office of Administrative Law, where it was filed on March 14, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on October 24, 2016. The record remained open until December 1, 2016, for the appellant to renew a Motion to Consolidate with CSV 05868-2016. The motion was received on December 5, 2016, and denied on February 10, 2017. Closing summations were ordered on April 7, 2017, with an extension granted to the parties until April 13, 2017, and the record closed on that date.

FACTUAL DISCUSSION

Testimony

Warden Karen Taylor testified for the respondent that she has been employed by the Camden County Correctional Facility for twenty years and had been appointed Warden on October 23, 2016. At time of this incident she maintained the rank of Captain.

On August 24, 2015, she noticed inmates sitting outside the kitchen and "disrupting activities." She contacted her subordinate officer to address the significant "security concern". She showed a video of the incident wherein Calio remained seated at a hallway desk immediately outside the kitchen. The video also showed an inmate sitting outside of the kitchen door next to Calio's desk, within arm's reach of Calio. (R-3 at 4:48-4:58 inmate on milk crate). She explained that Calio was told a week prior that he was not to allow inmates in the hallway. (R-2). As a result, a complaint was lodged by Lt. Sweeten against Calio. (R-4).

The violations in the complaint include: N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause. The warden explained that the allegations of insubordination were because of the safety concern for inmates in a hallway around the kitchen. Calio was told about this concern on August 19, 2015, in the kitchen passbook and chose to ignore it. (R-4). She explained that it was common for inmates to take advantage of officers and that usually leads to a "bad" end result. He was charged with violations of the C.C.C.F.: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security. (R-6).

With respect to violations of the C.C.C.F. General Orders, she explained the duties of a Kitchen Officer and noted that there was a violation of Order Number 8, which provides the need for security and control for civilians. (R-7). She also indicated violations of the C.C.C.F.'s General Order 73: Personal Conduct of Employees. Pointing to regulation numbers four and twelve, she noted that employees will comply with all departmental rules and regulations and all laws of the United States and the State of New Jersey, and that all employees are responsible to know all departmental policies as well as county policies and act in accordance with them, respectively. (R-8).

Finally, the Warden indicated that all sworn personnel will conduct themselves in accordance with the Constitution of the United States, the New Jersey Constitution and all applicable laws and rules enacted or established pursuant to legal authority. Sworn

personnel are also obligated to follow all other departmental and county policies. By not following the General Orders, Calio was in violation of the C.C.C.F.'s General Order number 74. (R-9).

After the disciplinary charges lodged by Lt. Sweeten were explained to Calio, he apologized and said that the "inmate was working" and that he was permitted to be in the hallway. It was at this time, that he was told about another disciplinary issue regarding his pat-down searches of inmates. He explained that he would improve his pat searches.

Warden Owens was disappointed at Calio because he disregarded her order and the safety concern for the facility. The kitchen is a place where a lot of contraband exists (kitchen cutlery and utensils) and there is a high security risk if any of the contraband should make its way into the general population. It was obvious that he failed to comprehend the gravity of his actions/inactions.

On cross-examination, Warden Taylor testified that on the twenty-fourth, she saw inmates in the hallway and told Lt. Sweeten to address her concern and he did. (R-4). He instructed Calio to put the order in the passbook and not to have inmates in the hallway. (R-2). Also, the person on the crate was a runner. His job as it related to the kitchen was to get trays off the elevator and transfer them to the kitchen staff. She indicated that at one point there were "several inmates" in the hallway, not just the runner, which is unacceptable.

Matthew Calio has been a Correction Officer for Camden County for sixteen years. He was hired on March 12, 2001. The facility works on twelve hour shifts.

He introduced a number of character exhibits including: (A-1 Basic Training Certificate), (A-2 Oath of Office), (A-3 Prosecutor's Letters), (A-4 Service Honor), (A-5 Employee of Month), (A-6 Certificate of Appreciation), (A-7 Pay Records (perfect attendance), (A-8 Attendance Awards), (A-9 Performance Evaluations, (A-10 Warden's Award 5/2001), (A-11 Officer of the Year 10/2011), (A-12 Unemployment

Tribunal), (A-13 Pass Book note from August 19, 2015), (A-14 Certificate of Appreciation), (A-15 Volunteer for 911 request).¹

In August 2015, Calio was assigned to a kitchen "bid" post. A "bid" post is an officer's personal selection of posting but bid by that officer. On August 19, 2015, he made the first entry in the passbook. That was the result of a discussion with Captain Taylor regarding inmates in the hallway outside the kitchen. It was common for inmates be in the hallway, "playing nerf football" but Captain Taylor wanted everyone in the kitchen for security reasons, even the runner who is always in the vestibule doors.

The common practice at the time was to have the runner in the hallway to make the process of unloading the trays from the elevator. However, he believed, the runner was not blocking the door or goofing off and he is still in "disbelief" that it is a breach of security. Calio was adamant that he "did not agree" with Taylor. He thought when he was given the order that it was meant only for people who weren't working. The runner was working. It was simply a "misunderstanding". He said that he apologized for the "misunderstanding" but believed he was complying with the order. Also, he has already been punished by being assigned to "three south", which is an undesirable post.

He believes that he used good judgment on that day and did nothing wrong. He explained that all the corrections officers always performed their duties in the same manner as he had done. He was not insubordinate because he believed "all inmates in kitchen" meant only the inmates who were not working at the time.

FINDINGS OF FACT

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div.1961). A credibility determination

¹ At the hearing, Calio's exhibits were marked "R". However, for ease of this Decision, they have been changed to "A" to represent the Appellant.

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). Also, "[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).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The testimony of Warden Taylor was especially credible and persuasive. Her testimony was clear and concise. It was obvious that her concerns regarding inmates in the hallway were to promote the safety of the inmates and individuals working in the facility.

Conversely, Calio's testimony was not credible. Calio's own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. It was disturbing that Calio failed to grasp the gravity of his actions. He believes that he used good judgment and did nothing wrong and explained that the corrections officers always performed their duties in that manner. He was not insubordinate because he believed "all inmates in the kitchen" meant only the ones who were not working. These comments deeply concerned the undersigned because it was apparent that Calio did not comprehend the fact that dangerous contraband (knives, forks, spoons, kitchen utensils) exist in the kitchen and pose a significant threat to all personnel and inmates in the facility if it were to find its way into general population. Calio's takes the position that other corrections officers always performed their duties in the same manner, so it is acceptable.

After hearing the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, that on August 19, 2015, Calio made an entry in

the passbook that all inmates must be in the kitchen. I **FURTHER FIND**, on August 24, 2015, Warden Taylor noticed inmates sitting outside kitchen and "disrupting activities." I **FURTHER FIND**, that a video showed an inmate sitting outside the kitchen door next to Calio's desk, within arm's reach of Calio.

CONCLUSIONS OF LAW

Civil service employees' 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 Cnty. 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. 1 1A:1-2(a). A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 1 1A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2- 2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Merit System Board requires the OAL to conduct a hearing de novo to determine the appellant'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). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104

(App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

The respondent sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(2) (Insubordination); N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty); N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause); Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security.

Regarding the charge of insubordination, to the extent that appellant is charged with violation of Rule of Conduct 1.4, which addresses Insubordination and Serious Breach of Security, consideration of such violation will be addressed in concert with the current analysis. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

'Insubordination' is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

In the present matter, appellant's disregard of a direct order is evidence of insubordination. His argument that it was simply a "misunderstanding" is not lucid nor comprehensible. He was given a direct comprehensible order and chose his own convenient interpretation. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of insubordination. Charges of violations of N.J.A.C. 4A:2-2.3(a)(2) and Rule of Conduct 1.4 are hereby **SUSTAINED**.

Respondent also sustained charges against appellant for Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which 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 Atlantic 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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a public employee disregarding a direct order and allowing inmates in a correctional facility to do as they pleased. I **CONCLUDE** that appellant's actions constitute unbecoming conduct, and the charge of such is hereby **SUSTAINED**.

The respondent also sustained charges for a violation of N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty). Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal

standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R. 2d (CSV) 214.

Again, it is difficult to contemplate a more basic example of neglect of duty than the image of a public employee in a correctional facility failing to follow a direct order from a superior officer. I **CONCLUDE** that appellant's actions constitute neglect of duty, and the charge is hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause). Specifically, appellant is charged with violations of the Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 2.10 Inattentiveness to Duty and 3.2 Security.

It is noted that the Preliminary and Final Notices of Disciplinary Action (R-1) indicate the sustained charges and conclude with the words "et al." Obviously, such amorphous terminology taken literally would constitute insufficient notice to appellant of the charges faced, and would be impossible to prepare to defend. Accordingly, I **CONCLUDE** that the consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause) will be limited to the regulations, rules and General Orders specifically enumerated in the Final Notice of Disciplinary Action (R-1). Additionally, Rules of Conduct 1.2, 1.3, and 1.4 have been addressed within the discussion of violations of N.J.A.C. 4A:2-2.3(a)(2), (6) and (7).

As such, appellant is charged with violating Rule of Conduct 1.1, Violations in General, which is a charge of "Failure to comply with regulations, orders, directives or practices of the department, whether verbal or written by the Warden or his designee." (R-6). The rule provides that:

Any employee who violates any rule, regulation, procedure, order or directive, either by an act of commission or omission, whether stated in this manual or elsewhere, or who violates the standard operating procedure as dictated by departmental practice, is subject to disciplinary action in accordance with the New Jersey Department of Personnel (Civil Service) rules and regulations. Disciplinary actions shall be based on the nature of the rule, regulation, procedure, order, or directive violated, the severity and circumstances of the infraction and the individual's record of conduct.

Violation of this rule would seem to be implicated by the appointing authority's allegations of violations of General Orders 73, and 74 as well as Post Order 8.

Post Order 8 (R-7) addresses the duties of a kitchen officer. Section 4 of this order states that "Provides security and control for civilians."

The record reflects in the testimony and video that a lack of control of the inmate seated in the hallway. Appellant did not fulfill the requirements of General Order 8. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of Post Order 8 and the charge is hereby **SUSTAINED**.

General Order 73 (R-8) addresses "Personal Conduct of Employees." Captain Taylor testified that appellant violated sections 4 and 12, of this order.

Section 4 states that "Employees will comply with all departmental rules and regulations and all laws of the United States and the State of New Jersey." The record reflects that appellant did not comply with the General Order he was accused of violating. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Section 12 states that, "Employees are responsible to know all departmental policies as well as county policies and act in accordance with them." Irrespective of whether the appellant was aware or unaware of the specific requirement of Post Order 8, ultimately it is his responsibility to know. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Based on the foregoing, I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of General Order 73.

General Order 74 (R-9) addresses "Professional Code of Conduct." Testimony revealed that appellant violated sections one of this order.

Section 1 states that, "Sworn personnel will conduct themselves in accordance with the Constitution of the United States, the New Jersey Constitution and all applicable laws and rules enacted or established pursuant to legal authority. Sworn personnel are also obligated to follow all other departmental and county policies." The evidence in the record demonstrates that appellant not only violated Post Order 8 but also N.J.A.C. 4A:2-2.3(a)(2) (Insubordination); N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty) and therefore this supports a finding of a violation of this section. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Based on the foregoing, I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of General Order 74.

Having met its burden in demonstrating violations of General Orders 73 and 74, as well as Post Order 8, I **CONCLUDE** that the appointing authority has demonstrated a violation of Rule of Conduct 1.1 Alleged violations of Rules of Conduct 1.2 and 1.4 having already been addressed, I **FURTHER CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, is hereby **SUSTAINED**.

Finally, the respondent sustained charges of 2.10 Inattentiveness to Duty and 3.2 Security.

2.10 Inattentiveness to Duty is defined as "Personnel shall not engage in any activities or personal business which could cause them to neglect or be inattentive to duty." (R-6). I find nothing in the record to support a claim that would substantiate this charge, therefore I **CONCLUDE** that the charge of a violation of 2.10 Inattentiveness to Duty, is hereby **DISMISSED**.

3.2 Security is defined as "[p]ersonnel shall exercise a scrupulous regard for security in their dealings with inmates and with regard to the Correctional Facility in general. Any act of commission or omission tending to undermine security shall constitute a breach of security." (R-6). I find the record to support a claim that would clearly substantiate this charge. The fact that appellant continues to fail to see the security concern in an inmate seated at such a proximate location to the security desk is troublesome. Therefore, I **CONCLUDE** that the charge of a violation of 3.2 Security, is hereby **SUSTAINED**.

PENALTY

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, *supra*, 38 N.J. 523-24. Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See Henry v. Rahway State Prison, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a fixed and immutable rule to be followed without question. Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Carter v. Bordentown, 191 N.J. 474 (2007).

The record reflects that appellant has been reprimanded on two occasions for Neglect of Duty and suspended on two occasions for Conduct Unbecoming. The first

suspension was for Three days and the second for Fifteen days. Despite this fairly unremarkable disciplinary record, it is noted that a single charge of Incompetency, Inefficiency or Failure to Perform Duties by itself, can be sufficient grounds for termination in the absence of any other disciplinary history. Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (NOTE: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

"In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn't balance the books, after the auditors tried three times to show him how).

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that "[t]he [MSB's] application of progressive discipline in this context is misplaced and contrary to the public interest." The court determined that Klusaritz's prior record is "of no moment" because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

Considering the foregoing, the respondent seeks a Thirty-Day suspension. Considering the record in the present matter including the appellant's disciplinary record, the nature of the job duties and the nature of the charges, I **CONCLUDE** that the respondent's action suspending appellant for Thirty Days without pay was justified.

DECISION AND ORDER

I **ORDER** that the charges of N.J.A.C. 4A:2-2.3(a)(2) (Insubordination); N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming); N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty); N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause) be **SUSTAINED**. I further **ORDER** that the charges of violating Camden County Correctional Facility Rules of Conduct (C.C.C.F.): 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination and 3.2 Security also be **SUSTAINED**. The charge of 2.10 Inattentiveness to Duty is hereby **DISMISSED**. I **FURTHER ORDER** respondent's imposition of a Thirty-Day suspension without pay 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.

May 30, 2017

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

5/30/17

Date Mailed to Parties:

5/30/17

/vj

LIST OF WITNESSES:

For Appellant:

Matthew Calio

For Respondent:

Warden Karen Taylor

LIST OF EXHIBITS:

For Appellant:

- A-1 Basic Training Completion Certificate
- A-2 Oath of Office
- A-3 Prosecutor Letters
- A-4 Service Honor (five years)
- A-5 Memorandum: Employee of the Month, dated August 20, 2009
- A-6 Certificate of Appreciation (ten years)
- A-7 Excerpts from Pay Records
- A-8 Perfect Attendance Awards
- A-9 Performance Evaluations 2014
- A-10 Warden's Award
- A-11 Officer of the Year Award
- A-12 Unemployment Appeals Examiner's Decision
- A-13 Kitchen Pass-on-Notes
- A-14 Certificate of Appreciation
- A-15 Memorandum: Volunteer

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action (31A), dated September 21, 2015
and Final Notice of Disciplinary Action (31B), dated February 17, 2016
- R-2 Notes form Kitchen Pass-On-Book by Calio, dated August 19, 2015
- R-3 Video
- R-4 Supervisor's Complaint Report Authored by Lt. Harry Sweeten, dated
August 24, 2015
- R-5 General Incident Report (Rebuttal) by Calio, dated August 25, 2015
- R-6 Camden County Department of Corrections Rules of Conduct
- R-7 Camden County Department of Corrections Post Order Number 008
Kitchen Officer
- R-8 Camden County Department of Corrections General Order Number 73
Personal Conduct of Employees
- R-9 Camden County Department of Corrections General Order Number 74
Professional Code of Conduct
- R-10 Calio Chronology of Discipline