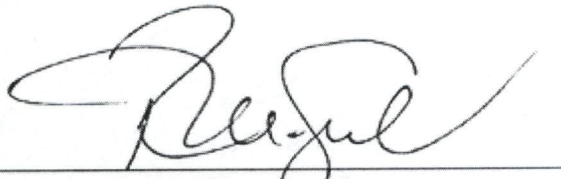


Re: Matthew Calio

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

A handwritten signature in cursive script, appearing to read 'R. Czech', is written over a horizontal line.

Robert M. Czech, 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 05868-16

AGENCY DKT. NO. 2016-3565

**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)

Record Closed: April 13, 2016

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 One Hundred Fifty (150) days for an incident on August 25, 2015. Respondent argues that he violated: N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; 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; 3.2 Security; General Order 73; General Order 74; General Order 79 and Post Order 8. The appellant denies the allegations and contends that he acted appropriately.

PROCEDURAL HISTORY

On October 1, 2015, the DOC issued a Preliminary Notice of Disciplinary Action suspending appellant without pay for 150 days. On March 25, 2016, the DOC issued a Final Notice of Disciplinary Action sustaining the charges and suspending the appellant from his position effective March 25, 2016, through August 21, 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 April 15, 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 04011-2016. The motion was received on December 5, 2016, and denied after oral argument. Closing summations were ordered for April 13, 2017, and the record closed.

FACTUAL DISCUSSION

Testimony

Sergeant Robert Parker (Parker) testified for the respondents and has been employed by the Camden County Department of Corrections for seventeen and one-half years. He is currently the Training Commander and on average performs twenty-five to thirty-five pat searches per day. He explained that the purpose of a pat search is to limit contraband entering and moving through the facility.

He demonstrated a pat search on another correction officer. The process can best be described as a thorough searching and touching of the body and extremities including under the arms and between the legs, to determine if any items are attempting to be concealed.

Warden Karen Taylor (Taylor) also testified for the respondent. 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 September 2, 2015, Captain Blackwell noticed Officer Calio was poorly searching inmates and said she would handle it. However, Warden Taylor reviewed the institutional video of the incident which was dated, September 2, 2015. Calio was observed from 7:08 a.m.-11:58 a.m. She articulated that it showed poor searches or no searches at all on inmates coming in or out of the kitchen area. (R-2). In fact, there was more than forty no searches, more than forty improper searches and only six acceptable pat searches.

The video was played and paused at several instances throughout the Warden's testimony:

- 7:15 a.m. air patdown (airpat); touches back and slides down outside of the hips)
- 7:25 a.m. "air pat" but did not check juice containers
- 7:27 a.m. "air pat" six inmates
- 7:32 a.m. no search at all

The Warden stated that what is "most shocking" is that Calio doesn't even get up from his chair. "Looking at the video five hours was enough". She was "very shocked" at what she saw. She was clear that Calio "was not being harassed" by her. In fact, she was simply looking out for the safety of the facility. "I'll make him do his job." "Failure to do your job will not be tolerated." The significant discipline requested was because Calio had been counseled about his poor search techniques on August 25,

2015, and apologized for it. Then, on September 2, his poor performance continued, evidencing that Calio simply "refused to do what he was told".

On cross-examination, the Warden conceded that inspection of juice containers and food trays is not specifically articulated in (R-9). However, it is mentioned in (R-12). Also, she does not know if any contraband got passed Calio. But, the only reason she does not know is because Calio did not do his job effectively to uncover any items. "Laziness is the case of improper searches and discipline has corrected it over the past year."

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 several character exhibits including: (A-1) Basic Training Certificate, (A-2) Oath of Office, (R-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 and September 2015, Calio was assigned to his kitchen "bid" post. Bid post are for officers to choose the post and bid on it. He completes 250 pat down searches per day and several thousand pat down searches per month. He never had a problem with contraband getting in the facility.

"Pat searches are a dangerous activity." "When you bend down to search it puts you in a very difficult and compromising position." He conceded that if you do not properly search individuals that is also dangerous. He recalled being confronted by Taylor in August about the quality of his pat down searches. His response to her was "Ma'am, I apologize. I'll do my best." After that he stated that he tried to do his best.

¹ Appellant submitted Exhibits labelled with "R". For ease of reading, the Exhibits are being referred to as "A" for appellant.

As a defense, Calio claims that there is no remedial training in pat down searches. He claims that he needs a refresher course. There are other aspects of law enforcement that require continued training, but not for searches. However, he admitted to violating Post Order Number 8 (R-9) which requires "searches of all inmates arriving/departing from the kitchen." He claimed that he didn't search everyone because that is "what the guys do". In fact, he reiterated that he did not make full searches of inmates "for his own safety" but "it gets done the way they want it now."

He believes that he used good judgment on that day and did nothing wrong; explaining that all the correction officers performed their duties the same way. He "didn't conduct proper pat searches for his own safety" and he lacked proper continued training.

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 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 Taylor was especially credible and persuasive. Her

testimony was clear and concise. It was obvious that her concerns regarding inmate searches 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. He admitted to not searching inmates but more disturbing is that Calio failed to grasp the gravity of his actions. He believes that he used good judgment and did nothing wrong. He explained that all the correction officers always performed their searches of inmates in the same manner as he had done. He "didn't conduct proper pat searches for his own safety" and his lack of access to training. Calio's attempt to shift the blame for this incident on his employer is unavailing. The dismissive comment that "it gets done the way they want it now" deeply concerns the undersigned.

After hearing the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, that on August 25, 2015, Calio was counseled that the searches he was making on inmates were not proper. I **FURTHER FIND**, on September 2, 2015, Calio was observed failing to search inmates and making improper searches.

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)(1) Incompetency, Inefficiency, Failure to Perform Duties; 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; 3.2 Security; General Order 73; General Order 74; General Order 79 and Post Order 8.

Initially, Calio has been charged with a violation of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties. Calio testified that he failed to search inmates entering and leaving the kitchen. Also, the record reflects in the testimony and video Calio performing "airpats" on some inmates and on many occasions, there was no search of some inmates. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of Incompetency, Inefficiency,

Failure to Perform Duties. Charges of violation of N.J.A.C. 4A:2-2.3(a)(1) are hereby **SUSTAINED**.

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 was counseled by Taylor in August about the quality of his pat down searches. His response to her was "Ma'am, I apologize. I'll do my best." After that, his testimony was that "he tried to do his best." Yet, he also testified that he "didn't conduct proper pat searches for his own safety" and his lack of access to training. His disregard of a direct order is evidence of insubordination. His argument to the contrary is not lucid nor comprehensible. 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 tends 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 Correction Officer not searching or performing an "airpat" on an inmate in a prison. Also, the same officer disregarding a direct order and allowing inmates in a correctional facility to walk freely through the institution without searches. I **CONCLUDE** that appellant's actions constitute unbecoming conduct, and the charge of N.J.A.C. 4A:2-2.3(a)(6) 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 correction officer in a correctional facility failing to search inmates. I **CONCLUDE** that appellant’s actions constitute neglect of duty, and the charge of N.J.A.C. 4A:2-2.3(a)(7) 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; 3.2 Security; General Order 73; General Order 74; General Order 79 and Post Order 8.

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, 74, 79 and Post Order 8.

Post Order 8 (R-9) 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 some of the inmates were searched and others were not. Also, in many case the "airpat" search was performed. Appellant did not fulfill the requirements of Post 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-10) 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-11) addresses "Professional Code of Conduct." Testimony revealed that appellant violated Section 1 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.

General Order 79 (R-12) addresses "Search of Inmates (Pat Searches)." Taylor testified that appellant violated this order in its entirety.

"A "PAT SEARCH" is a search of an inmate's person and his/her clothing while the inmate is clothed...." It articulates the procedure and mechanics for conducting such a search. The record reflects that appellant by his own admission did not comply with the General Order 79. I **CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of this section and the charge is hereby **SUSTAINED**.

Having met its burden in demonstrating violations of General Orders 8, 73, 74 and 79, 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-8). 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-8). I find the record to support a claim that would clearly substantiate this charge. The fact that appellant fails to acknowledge the security concern in improperly searching or failing to search an inmate 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 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 One-Hundred-Fifty-Day suspension. Considering the record in the present matter including the appellant's cavalier attitude, disciplinary record, the nature of the job duties and the nature of the charges, I **CONCLUDE** that the respondent's action suspending appellant for One Hundred-Fifty days without pay be modified to One-Hundred-Eighty days.

DECISION AND ORDER

I **ORDER** that the charges of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; 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; 3.2 Security; General Order 73; General Order 74; General Order 79 and Post Order 8 also be **SUSTAINED**. The charge of 2.10 Inattentiveness to Duty is hereby **DISMISSED**. I **FURTHER ORDER** respondent's imposition of a One-Hundred-Fifty-Day suspension without pay is **MODIFIED** to One-Hundred-Eighty days.

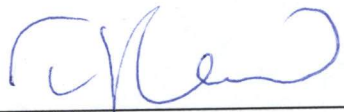
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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:

May 30, 2017

Date Mailed to Parties:

May 30, 2017

/vj

LIST OF WITNESSES:

For Appellant:

Matthew Calio

For Respondent:

Sergeant Robert Parker

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 Servicer Honor (Five Years)
- A-5 Memorandum: Employee of the Month, 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 Kitchen Officer Post Order Number 8
- A-13 Blank
- A-14 Certificate of Appreciation
- A-15 Memorandum: Volunteer

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action (31A), dated October 1, 2015

- Final Notice of Disciplinary Action (31B), dated March 25, 2016
- R-2 Video and Timeline
 - R-3 Supervisor's Complaint Report Authored by Taylor, dated September 9, 2015
 - R-4 Rebuttal by Calio, dated September 12, 2015
General Incident Report (Rebuttal) by Calio, dated September 13, 2015
 - R-5 Policy and Procedure Sign-In-Sheet for 2011
 - R-6 Academy Tests Taken by Calio
 - a) Master Test for Agency Training dated march 16,2001
 - b) Role of a Correctional Officer, dated April 11, 2001
 - c) Search of a Person Test, dated April 14, 2001
 - R-7 Curriculum from Calio's Correctional Academy Titled (10.6 Search of Persons)
 - R-8 Camden County Department of Corrections Rules of Conduct
 - R-9 Camden County Department of Corrections Post Order Number 8 Kitchen Officer
 - R-10 Camden County Department of corrections General Order Number 73
Personal Conduct of Employees
 - R-11 Camden County Department of Corrections General Order Number 74
Professional Code of Conduct
 - R-12 Camden County Department of Corrections General Order Number 79
Search of Inmates (Pat Searches)
 - R-13 Calio Chronology of Discipline