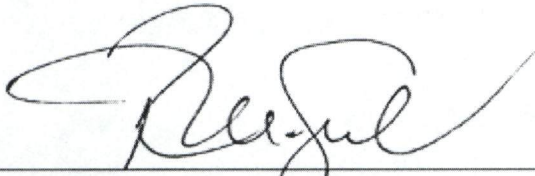


Re: Brandy Valasa

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
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00207-16

AGENCY DKT. NO. 2015-2274

**IMO BRANDY VALASA, MONMOUTH
COUNTY DEPARTMENT OF
CORRECTIONS AND YOUTH
SERVICES.**

Patrick J. Caserta, Esq., for Brandy Valasa, appellant

Steven Kleinman, Esq., for Monmouth County Department of Corrections and Youth Services, respondent (Andrea I. Bazer, County Counsel, attorney)

Record Closed: May 1, 2017

Decided: June 15, 2017

BEFORE CARL V. BUCK III, ALJ:

STATEMENT OF THE CASE

Appellant Brandy Valasa (Valasa) appeals from a Final Notice of Disciplinary Action (FNDA), dated January 21, 2015, suspending her for ten days from her position as a County Correction Officer with the respondent Monmouth County Correctional Institution (MCCI). The charges arose from her alleged removal and photocopying of official documents for her own personal use.

PROCEDURAL HISTORY

Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) on July 03, 2014, charging her with the following:

1. N.J.A.C. 4A:2-2.3(a)(3)
2. Violation of Monmouth County Sherriff's Office Department of Corrections Rules and Regulations
 - a. 3.20.030
 - b. 3.20.260
 - c. 4.30.020
3. Violation of Monmouth County Sherriff's Office Department of Corrections Policy and Procedures
 - a. 1-3.13
4. Violation of Monmouth County Policy 701 regarding Employee Conduct and Work Rules

The factual specifications in the PNDA allege that appellant removed official documents and a logbook for the purpose of photocopying pages for her personal use without first obtaining the appropriate authorization as detailed in the Department Rules and Regulations. (R-1)

On January 21, 2015, the MCCI issued a FNDA sustaining the above charges. Appellant appealed and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed on December 25, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on March 9, 2017. The record was held open for simultaneous written summations, which were filed on May 1, 2017, and the record closed on that date.

FINDINGS OF FACT

The following facts are not in dispute:

The MCCI is operated by the Monmouth County Sherriff's Office (Sherriff). Appellant is a corrections officer (CO) and has been an employee of the MCCI for approximately eleven years. On June 16, 2014, she was assigned to K-Pod. At 9.25 a.m., appellant removed the K-pod logbook from its standard location on the unit. She concealed the logbook in a sweater. She obtained the D/E keys from Officer Jamie Elliott. Appellant then opened the library door, returned the keys to Officer Elliott, entered the library and closed the library door behind her. She exited the library at 9.33 a.m. She returned to K-pod with the K-pod logbook similarly concealed in a sweater. (R-3, -4).

While in the library she used the library copier to make copies of page 100 of the logbook (R-5) and page 104 of the watch sheet pertaining to inmate L.S. (R-6).

TESTIMONY

In support of its case, respondent presented the testimony of **Lieutenant David Betten (Betten)**. He has been employed by the MCCI for approximately twenty years. He became a Sergeant in 2007 and was promoted to Lieutenant in 2010. He was the watch commander during the 7:00 a.m.-3:00 a.m. shift on June 16, 2014, and testified concerning the incident.

He testified that he had received a telephone call (from a source requesting anonymity) advising him to review the video outside the K-pod unit at a certain time. After review of the video tape, he went to Jeffrey Equils, principal investigator for MCCI to tell Equils what he had seen on the tape; to wit, confirming the details of the incident elaborated upon above.

Betten testified that it was not normal for the logbook to be removed unless it was "full" and needed to be replaced. He also testified that there was a procedure in place should copies of pages needed to be made. He testified that removal of the logbook was a safety concern for MCCI and contained sensitive information pertaining to medical issues of the inmates and security issues concerning K -pod. If there had been an official document request, such request would be dealt with by the MCCI custodian of records.

Principal Investigator Jeffrey Equils (Equils) also testified for respondent. He has been employed by MCCI for approximately twenty-five years, the past ten as a principal investigator. He is in charge of the Internal Affairs (IA) unit whose purpose it is to investigate any violation of policies and procedures by inmates or staff. He testified that the incident was reported to him by Betten; specifically, that the appellant may have removed the log book. He then reviewed the video of her actions.

He testified that C.O.s are not given the authority to make copies of logbooks. He requested Betten to make a report of the incident. He also spoke with appellant who admitted she had made a copy of a page of the logbook and a copy of a watch sheet. Equils testified that appellant told him that she was concerned about a supervisor not performing their duties, but appellant declined to name the supervisor.

He further testified as to the MCCI "Confidentiality Statement" signed by appellant (R-14); specifically referencing sub section III:

III. I will not remove confidential information from the agency except as authorized, by the appropriate administrator, in the performance of my duties, including, but not limited to consumer records, charts, correspondence or any other form of written or electronic documentation.

Brandy Valasa testified on her own behalf. She has worked at MCCI for approximately eleven years. She testified that on June 16, 2014, Sergeant Rutkowski was the sergeant in charge of the K-pod zone. The logbook was kept in the panel area in a secure location. Inmates were located in five separate pods off the panel area. On

the date in question two inmates were in the area for disciplinary reasons with twenty-three-hour lockdown stages and were to be monitored every thirty minutes for safety and security.

She testified that she had a concern with Rutkowski's signature on two watch sheets where he signed twice. She admitted that she did place the logbook under her sweater, she did remove the logbook from the area in which it was kept, and she did make copies from the logbook. However, she testified that she violated no rules in doing so.

Appellant testified that she made two copies from the logbook and gave those documents to Equils when Equils questioned her about the logbook. She testified that while in training she was told by the training department that she could have copies of any document that contained her name. She further testified that she did not remember asking anyone for approval to make these copies, nor did she tell anyone that she made the copies.

She testified that she was aware of several internal investigations at MCCI (one of which dealt with her husband, Anthony Valasa, who also worked at MCCI). She concealed the logbook as she was not sure what the situation at the facility was on that date relating to a number of these ongoing investigations. She again testified that she copied the pages out of a concern regarding the actions of Rutkowski.

LEGAL ANALYSIS AND CONCLUSION

A civil service employee's rights and duties are governed by the Civil Service Act and the regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. A civil service employee who engages in misconduct related to his or her duties or who gives another just cause may be subject to major discipline. N.J.A.C. 4A:2-2.2 -2.3(a). In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a

preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. Super. 550 (1982); Atkinson v. Parsekian, 37 N.J. Super. 143 (1962).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant seeking a ten-day suspension. The appellant is charged with, among other things, conduct unbecoming a public employee and other sufficient cause. She is also charged with a violation of MCCI Rules and Regulations 3.20.030, 3.20.260 and 4.30.020, Policy and Procedure 1-3.13 Code of Ethics Policy and Monmouth County Policy 701 regarding Employee Conduct and Work Rules. The charges all relate to the appellant's removal of the K-pod logbook and photocopying pages from the log book for personal use without first obtaining appropriate authorization.

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). 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)).

Lieutenant Betten and Investigator Equils testified as to the information received regarding copying pages from the logbook by appellant and the policies, procedures and charges stemming from that action on the part of appellant. The videotape revealed that appellant did remove the log book under a sweater, took the D/E keys to open the library, entered the library at 9:25 a.m. on June 16, 2014 and exited at 9:33 a.m. Appellant admitted that she copied pages from the logbook; albeit out of a concern regarding a procedure violation by another officer, Sergeant Rutkowski.

Appellant testified that she did not consider this action to be a violation of any rule at MCCI.

The issue of credibility is not in contention as appellant admitted the activity which is at the crux of the disciplinary charges.

Based on the testimony and findings, I **CONCLUDE** that the respondent has satisfied its burden of proving that appellant violated Monmouth County Sheriff's Office Department of Corrections Rules and Regulations 3.20.030, 3.20.260, and 4.30.020. Further, I **CONCLUDE** she has violated the Code of Ethics Policy 1-3.13 and County Policy 701 regarding Employee Conduct and Work Rules and that her actions constituted conduct unbecoming a public employee. I **CONCLUDE** that the charges are **SUSTAINED**.

PENALTY

Once a determination is made that an employee has violated a statute, rule, regulation, etc., concerning his/her employment, the concept of progressive discipline must be considered. West New York v. Bock, 38 N.J. Super. 500 (1962). While this case did not specifically use the phrase "progressive discipline," its facts strongly suggest that a record of progressive discipline should precede the ultimate penalty, which is removal. The concept of progressive discipline involves consideration of the number of prior disciplinary infractions, the nature of those infractions and the imposition of progressively increasing penalties. It is well settled that correction officers, like police officers are held to a higher standard of conduct than other public employees because of the sensitive nature of the position they occupy. Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. Super. 80 (1966). It has also been noted in corrections cases, that failure to adhere to security precautions could have potentially serious consequences, which may give rise to a more serious penalty regardless of the lack of any past disciplinary consequences. I/M/O Martha Hicks and Antonio Price, OAL Dkt. Nos. CSV 11373 and CSV 11494-13; 2014 N.J. Agen. Lexis 469 (2014).

The appellant received a ten-day suspension for her removing, concealing, and copying pages from the K-pod logbook at MCCI. She failed to adhere to behavior which goes beyond that expected from a Corrections Officer, from whom a higher standard of behavior is expected and required. The penalty is appropriate under the circumstances and is sustained. I therefore **CONCLUDE** that a ten-day working day suspension is appropriate under these circumstances.

DECISION AND ORDER

For the reasons stated above, I hereby **ORDER** that appellant's appeal is **DISMISSED**, and respondent's proposed ten-day suspension of Valasa is **AFFIRMED** based upon appellant's violation of N.J.A.C. 4A:2-2.3(a)(3), conduct unbecoming a public employee and other sufficient cause; violation of Monmouth County Sherriff's Office Department of Corrections Rules and Regulations Sections 3.20.030, 3.20.260 and 4.30.020; violation of Monmouth County Sherriff's Office Department of Corrections Policy and Procedures Section 1-3.13 Code of Ethics Policy and violation of Monmouth County Policy 701 regarding Employee Conduct and Work Rules.

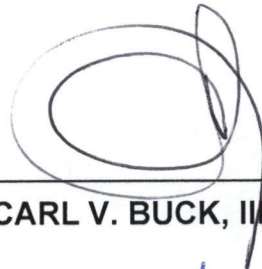
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, P.O. 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.

June 15, 2017

DATE



CARL V. BUCK, III, ALJ

Date Received at Agency: _____
6/15/17

Date Mailed to Parties: _____
6/15/17

/lam

LIST OF EXHIBITS

For appellant:

None

For respondent:

- R-1 Preliminary Notice of Disciplinary Action-Brandy Valasa (ten-day suspension effective TBD), dated July 3, 2014
- R-2 Final Notice of Disciplinary Action (ten-day suspension effective January 24, 2015), dated January 21, 2015
- R-3 Uniform Staff Report-Lieutenant David Betten, dated June 16, 2014
- R-4 Electronic Surveillance Review Form, dated June 16, 2014
- R-4a Video Recording of Incident on thumb drive, dated June 15, 2014
- R-5 MCCI Logbook, page 11, dated June 15, 2014
- R-6 MCCI Daily Inmate Watch Sheet for L. Stevens, dated June 15, 2014
- R-7 Uniform Staff Report-Brandy Valasa, dated June 16, 2014
- R-8 Memorandum from Principal Investigator Jeffrey Equils to case file, dated June 17, 2014
- R-9 MCCI Logbook, page 100 [complete], dated June 15, 2014
- R-10 MCCI Rules and Regulations 3.20.030, 3.20.260 and 4.30.020, dated May 2008-January 2014
- R-11 Acknowledgement of Receipt of MCCI Rules and Regulations, signed by Brandy Zarkovacski, date February 17, 2010
- R-12 Employee Guide to Policies, Benefits and Services-Policy 701, dated January 2017
- R-13 Employee Acknowledgement Form for Employees Guide, signed by Brandy Zarkovacski, date February 16, 2010
- R-14 Confidentiality Statement signed by Brandy Zarkovacski, dated February 16, 2010

R-15 Preliminary Notice of Disciplinary Action-Anthony Valasa (removal effective TBD), dated August 28, 2014

R-16 Official Reprimand, Brandy Zarkovacski, dated March 10, 2008

R-17 Post Order/Job Description #21, dated March 17, 2014

LIST OF WITNESSES

For appellant:

Brandy Valasa

For respondent:

Lieutenant David Betten

Principal Investigator Jefferey Equils