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STATE OF NEW JERSEY

In the Matter of Ramona Carter
 Mercer County, Department of Public
 Safety

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-967
 OAL DKT. NO. CSV 12972-14

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ISSUED: OCTOBER 22, 2015 BW

The appeal of Ramona Carter, County Correction Officer, Mercer County, Department of Public Safety, 10 working day suspension, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on September 30, 2015. 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 21, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

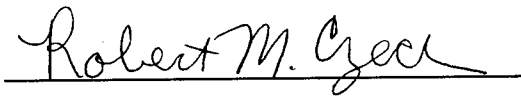
ORDER

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 appeals of Ramona Carter.

Re: Ramona Carter

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 21, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
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 12972-14

AGENCY DKT. NO. 2015-967

**IN THE MATTER OF RAMONA
CARTER, MERCER COUNTY
DEPARTMENT OF PUBLIC SAFETY.**

Mark W. Cantanzaro, Esq., for appellant (Law Offices of Mark W. Cantanzaro,
attorneys)

Kristina Chubenko, Assistant County Counsel, for respondent (Arthur R. Sypek,
Jr., County Counsel)

Record Closed: August 20, 2015

Decided: September 30, 2015

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

STATEMENT OF THE CASE

Respondent, Mercer County Department of Public Safety (hereinafter Appointing Authority), suspended appellant, Ramona Carter, for ten days alleging that appellant, a corrections officer, reported late for her scheduled tour of duty on December 16, 2013 and failed to hand scan in upon reporting for duty. The appointing authority alleges that a suspension for a period of ten days was the appropriate penalty.

Appellant was charged for this offense with a violation of N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause (R-1).

PROCEDURAL HISTORY

On December 24, 2013, the Appointing Authority issued a Preliminary Notice of Disciplinary Action setting forth the charges and specifications made against appellant for the December 26, 2013 lateness. After a departmental hearing on August 26, 2014, the Appointing Authority issued a Final Notice of Disciplinary Action (R-1) on September 19, 2014, sustaining the charge of other sufficient cause and suspending appellant from employment for ten days. Appellant appealed, and the matter was filed at the Office of Administrative Law on October 7, 2014 for hearing as contested cases pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on August 20, 2015 and the record closed after the hearing.

FACTUAL DISCUSSION

Richard Bearden testified on behalf of the Appointing Authority. He is the captain assigned to Mercer County Correctional Center (MCCC) and has been employed since 1990. He assists the warden and administers most discipline at MCCC. Captain Bearden drafted the original charges against appellant after receiving a time and attendance report from the personnel department (R-2). MCCC uses an automated timekeeping system called Kronos. The Kronos system records an employee's start time for payroll. The Appointing Authority's Kronos timekeeping policy is memorialized in Standard Operating Procedure (SOP) 137 (R-4). Correction Center employees must scan in and out each day. When an employee is late for a tour of duty, they are required to fill out a late slip which gets time stamped and signed by a shift commander.

On December 16, 2014, appellant was late for her shift on A-tour and filled out a late slip (R-2). She also failed to scan in using the Kronos system on that date and her salary was docked .52 hours due to the lateness (R-3). Appellant was charged in accordance with the MCCC table of offenses and penalties as a Step 3 offense for a

violation of administrative procedures and/or regulations involving safety and security and received a ten-day suspension (R-5).

Appellant called no witnesses and presented no additional exhibits to be considered. I therefore **FIND** as **FACT** that on December 16, 2014, appellant was late for her shift on A-tour and also failed to scan in using the Kronos system on that date. I also **FIND** as **FACT** that her salary was docked .52 hours due to the lateness and she received a ten-day suspension for failing to scan in. I further **FIND** as **FACT** that appellant was charged in accordance with the MCCC table of offenses and penalties as a Step 3 offense for a violation of administrative procedures and/or regulations involving safety and security and received a ten-day suspension (R-5).

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 her 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 has 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 contends that the charge cannot be sustained because SOP 137 does not specify that an employee can be disciplined for failing to sign in with the Kronos system. SOP 137 states "Correction Center employees must scan 'In and Out' each day. Failure to scan will result in no total hours in the Kronos system; therefore, no pay is logged for that day" (R-4 p. 1). According to SOP 137, failure to scan out two times during a pay period will subject an employee to an investigation and may result in disciplinary action (Ibid). Appellant argues that since there is no specific provision in SOP 137 that discusses the possibility of disciplinary action if an employee does not scan in, she cannot be subject to discipline. It is clear, however, that SOP 137 requires all MCCC employees to scan in prior to their tour of duty. Appellant was charged with a violation of administrative procedures and/or regulations involving safety and security and received a ten-day suspension (R-5). I **CONCLUDE** that appellant violated SOP

137, which is an administrative procedure involving safety and security. While SOP 137 is a time keeping policy, it is clear that in a correction center a system such as Kronos that records when employees enter and leave the facility involves safety and security, particularly in the case of a corrections officer since they interact with the inmates more regularly than other MCCC employees.

Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. I **CONCLUDE** that appellant's conduct was such that she violated this standard of good behavior. As such, I **CONCLUDE** that the Appointing Authority has met its burden of proof on this issue.

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 her actions arising out of this incident, appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause." Appellant was on Step 2 of the disciplinary process for violation of administrative procedures and/or regulations involving safety and security as she had previously been charged with this offense on August, 9, 2012 and March 1, 2013 (R-6). For this incident, she was suspended for ten days as a third infraction. A third infraction according to the MCCC table of offenses and penalties for a violation of administrative procedures and/or regulations involving

safety and security subjects an employee to discipline from five days suspension to removal. Appellant's suspension of ten days is consistent with the disciplinary process outlined in SOP 137 and in MCCC's table of offenses. After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violation is significant enough to warrant a penalty, which, in part, is meant to impress upon her, as well as others, the seriousness of any further infractions by her in that regard. Therefore, I **CONCLUDE** that the imposition of the ten-day suspension was the appropriate penalty and consistent with the penalties specified in SOP 137 and MCCC's table of offenses.

ORDER

I **CONCLUDE** that the Appointing Authority has sustained its burden of proof as to the charge of violation of 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 ten-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.

September 30, 2015
DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency:

September 30, 2015

Date Mailed to Parties:

September 30, 2015

cmo

APPENDIX
LIST OF WITNESSES

For Appellant:

None

For Respondent:

Captain Richard Bearden

LIST OF EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action dated September 19, 2014
- R-2 Attendance Notification dated December 16, 2013
- R-3 Appellant's December 16, 2013 time sheet record
- R-4 Standards and Operating Procedure 132
- R-5 Correction Center table of offenses and Penalties, Effective August 1, 2013
- R-6 Disciplinary History of appellant