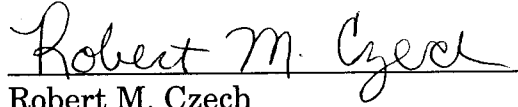




DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION  
JULY 15, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

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 368-14

AGENCY DKT. NO. 2014-1608

**IN THE MATTER OF RONALD MILLER,  
SOUTH WOODS STATE PRISON,  
DEPARTMENT OF CORRECTIONS.**

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**James Heise**, PBA Local 105, for appellant Ronald Miller, pursuant to N.J.A.C.  
1:1-5.4(a)(6)

**Kathleen Asher**, Legal Assistant appearing for respondent South Woods State  
Prison, Department of Corrections, pursuant to N.J.A.C. 1:1-5.4(a)2

Record Closed: May 19, 2015

Decided: June 16, 2015

**BEFORE W. TODD MILLER, ALJ:**

**STATEMENT OF THE CASE**

Appellant Ronald Miller (Miller) appeals the imposition of a ten-day suspension. Appellant was charged with a violation of 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, violation of Human Resources Bulletin 84-17, as amended, B-2, neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would result in danger to person or property; and E-1 violation

of a rule, regulation, policy, order, or administrative decision. For the reasons discussed below, all the charges are **DISMISSED**.

### **PROCEDURAL HISTORY**

The appellant requested a fair hearing and the matter was transmitted to the Office of Administrative Law on January 10, 2014, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. After several adjournments related to procedural issues and settlement attempts, the matter was heard on April 10, 2015, and May 19, 2015.

### **SUMMARY OF THE TESTIMONY**

Ronald Miller is employed by the New Jersey Department of Corrections (NJDOC). His title is Senior Corrections Officer. Miller has been employed as a corrections officer for approximately seventeen years. He has an excellent work record and exemplary performance appraisals.

The incident in question occurred on November 11, 2013, which was a state holiday. Miller was assigned to supervise a cleaning detail of three minimum-security inmates. They were assigned the duties of stripping and waxing the floors in the administration building, while management was off due to the holiday.

Miller drew a detailed diagram<sup>1</sup> of the administration floor layout during the hearing (C-1). Miller checked to make sure that all of the administrative offices were locked and the floor was secured prior to starting the detail. The hallways are not in a straight line but rather turn at right angles. There is a large glass atrium that separates the conference room area from the women's and men's locker rooms. This permits some of the floor area to be observed through the glass from distant hallways. Other areas of the hallways are blocked from continuous viewing due to the right angles.

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<sup>1</sup> The parties stipulated that drawing was reasonably accurate.

Miller permitted one inmate to wax the floor at one end of the hallway near the command post/conference room while the other two inmates were stripping the floor near the gym. The inmates could not be constantly observed, based upon the floor plan. Miller walked back and forth in the halls and supervise the inmates while they were performing their tasks albeit, in separate locations. Miller knew where the inmates were at all times. He could hear the machines running and would walk back and forth through the halls checking on the inmates. Miller explained that this is how he and most other officers supervise minimum-security details that wax and strip floors.

Miller is a diabetic. He determined that he should check his blood sugar, because he felt somewhat weak, shaky and tired. Miller is provided an accommodation in connection for his diabetic disability (A-6). He is permitted to have a diabetic testing kit with him, but he forgot to bring his kit to work. Therefore, he called his fiancée from his cell phone so she could bring the kit to work (A-5). Miller's fiancée also works for the NJDOC.

Miller made three attempts to contact his fiancée around noontime as verified by his cell phone records (A-5). The first attempt was to call their home's landline. Miller's fiancée did not answer. Miller then attempted to contact his fiancée on her cell phone. Again, she did not answer. But Miller's fiancée quickly called him back on his cell phone. Each of the aforementioned calls lasted less<sup>2</sup> than one minute or two minutes as confirmed by Miller's cell phone records. Indeed, Miller's cell phone records do not depict any other cell phone calls being made by him during the entire shift. These independent records do not appear to have been reviewed by the NJDOC prior to bring the current charges.

Miller did not want the inmates to hear his conversation or reveal his diabetic condition. Therefore, Miller made the phone calls to his fiancée from a conference room on the same floor that the inmates were performing their duties. The conference

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<sup>2</sup> The cell phone records purported charge by the minute therefore a call that last thirty seconds is listed as one minute and a call that lasted just over one minute is recorded as two minutes. Miller testified that two of his calls were less than one minute because he was only leaving short voice messages.

room was located in the middle of the floor between the areas where the inmates were working.

Lieutenant William Peachey (Peachey) happened to pass by the conference room when Miller was making the calls. Miller's fiancée called exactly when Peachey walked into the conference room so Miller immediately hung up out of respect to the Lieutenant. Peachey observed that Miller was seated at the conference table in the conference room with his feet up. The conference room lights were off. Peachey stated that Miller could not see any of the inmates from the conference room from where he was seated. Miller did not recall if he was seated or standing when Peachey entered the room.

Peachey agreed that Miller's use of the cell phone was permitted. But in Peachey's opinion, Miller looked too relaxed as if he was not supervising the inmates on an ongoing basis. Therefore Peachey decided to initiate an investigation and Miller was eventually charged with neglect of duty and a violation of the NJDOC rules, regulations and procedures associated with supervising minimum-security inmates. Again, Peachey did not review the cell phone records or the diabetes accommodation as part of his investigation (R-2).

Miller explained that it is very common that minimum-security inmates perform their task without continuous non-stop, direct "line of eyesight" supervision. Miller has been supervising work details of this nature for many years. Sometimes he has up to ten inmates. In order for a detail of ten to work effectively, the inmates have to break into smaller groups. The corrections officers walk back and forth to between the respective work locations and supervise them.

In this instance, the stripping and waxing functions were separated. The inmates use heavy equipment described as large rotating mechanical machines for stripping and waxing. The most efficient way for this detail to be completed timely and efficiently is to have the stripping performed first, followed by the waxing. The inmates performing the stripping eventually move ahead of the inmate performing the waxing.

Miller's representative questioned Peachey on the topic of minimum-security inmates being separated and permitted to work outside the line of sight of the supervising officer. Peachey confirmed that other officers at South Woods State Prison (SWSP) are permitted to allow their minimum-security details to work in separate locations and be supervised accordingly.

Another situation that Peachey was questioned about was the SWSP gasoline station. Peachey agreed that a vetted minimum-security inmate is permitted to pump gasoline for the facility and he is not continuously supervised (even though access to gasoline could be extremely dangerous).

Another example presented to Peachey was in regard to bathroom breaks for officers supervising minimum-security details. Peachey admitted that if Miller had to take a bathroom break during his tour of duty; he could do so without running afoul of the SWSP inmate supervision rules and policies. No coverage was necessary so long as the bathroom breaks were of short duration. Peachey noted that it would be good practice to simply let a supervisor know that a break was being taken.

Peachey explained that he did not charge Miller because the inmates were separated in different hallways. He simply thought Miller looked too comfortable on his phone in the conference room. The perception was that Miller was loitering or loafing in the conference room. Indeed, when Peachey questioned Miller specifically where all the members of his detail were located, Miller accurately provided Peachey with the number of inmates and their present location (R-2).

Miller was required to prepare a special report regarding the incident. In his report, he did not mention anything about calling his fiancée and requesting his diabetic kit (R-10). Miller explained that at the time he wrote the report he did not think that his diabetes was relevant. Rather, Peachey was questioning whether Miller knew where his detail was located, how many were in his detail, and what they were doing.

Therefore, Miller's special report addressed those issues and not the reasons why he was on his cell phone.

Miller also expressed concern regarding the motivation for the department's actions. Peachey is not Miller's supervisor. Miller explained that his fiancée filed a harassment complaint against a well-liked ranking officer. Her administrative hearing on the harassment complaint was scheduled for November 12, 2013 (the next day). The charges against this officer were very serious and the ranking officer was eventually fired, but then re-hired and assigned to another facility. Miller posited, without specific proofs, that his charges were an attempt to intimidate his fiancée. The timing of the charges was curious and the fact that Miller was performing the supervision of minimum-security inmates in the same manner he had been for years made him more suspicious.

Major William Valrrell (Valrrell) testified. Valrrell explained that officers are not permitted to separate the minimum-security inmate details into groups and allow them to work out of sight of the supervising officer (IMP 130; Q; R-4). However, Valrrell's testimony was at odds with that of Peachey and Miller – both confirmed that in practice at SWSP low risk inmates are permitted to be separated during work details. Appellant's representative again presented the example of the unsupervised inmate at the SWSP gas station as confirmation that minimum-security inmates do perform details without constant "line of sight" supervision. Valrrell explained that these inmates are specially vetted by a risk assessment committee.

Valrrell testified he thought Miller had the conference room door closed and that the inmates were not in Miller's area. The facts as developed by Peachey and Miller confirm the conference room door was not closed (R-2; and testimony). Also, one inmate was just outside the conference room in the same hallway while the other two inmates were down the hall, but out of sight of Miller (C-1). Therefore, Valrrell did not have a full grasp of facts as they actually occurred.



## **FINDINGS OF FACT AND CREDIBILITY**

1. Appellant is an eighteen-year veteran corrections officer and is assigned to SWSP. He has an excellent work history with one, two-day suspension in 1999 and one commendation in 2003.

2. Appellant is a diabetic and is permitted to carry a diabetic testing kit at work.

3. Appellant was permitted to use his cell phone on November 11, 2013, for a very short duration to contact his fiancée so she could bring his diabetic kit to work. Appellant used the privacy of a conference room to make to contact with his fiancée because the call was medical in nature.

4. Appellant was assigned a detail of three minimum-security inmates on November 11, 2013. The detail assigned was to strip and wax the administration building floors during a holiday, when the building was locked down and empty.

5. Appellant allowed the inmates to work independently on the same floor while appellant walked back-and-forth supervising their work.

6. When questioned by Peachey, appellant knew where all his inmates on detail were working, notwithstanding his short cell phone call to his fiancée.

I found appellant credible and reliable. His cell phone records were provided in discovery. They are independent and reliable records that confirmed that appellant was not using his cell phone for unauthorized personal calls during his tour of duty, prior to Peachey arriving. Appellant is a confirmed diabetic with an accommodation. He wanted his fiancée to bring the diabetic kit to work. Peachey never questioned Miller why he was on his cell phone (R-2). Peachey's first and only question to Miller was where the inmates were in his detail (R-2). Miller promptly and accurately described where everyone was in his detail (R-2). Peachey and Miller credibility explained that SWSP permits minimum-security inmates to perform their assigned work in the general

vicinity of the supervising officer; albeit not continuously (second by second) in the line of sight of that officer.

### **APPLICABLE LAW**

The burden of persuasion rests with the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in proceedings before an administrative agency. Atkinson v. Parsekian, 37 N.J. 143 (1962). An appeal requires the Office of Administrative Law to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

Although the term "neglect of duty" is not defined under 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. Avanti v. Department of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Township Dep't of Law and Pub. Safety, 92 N.J.A.R.2d (CSV) 214; O'Bricks v. Township of Pennsauken, 97 N.J.A.R.2d (CSV) 617 (employee's conduct of repeatedly failing to report to work as scheduled constituted neglect of duties).

### **CONCLUSIONS**

Appellant is charged with neglect of duty for violating the NJDOC rules and regulations. The primary rule or policy under consideration is Minimum Unit Grounds Detail # 671 found under the Internal Management Procedures #130 (IMP #130). This policy states:

#### **Q Inmate Supervision:**

Inmates on this detail are to be **under observation and continually counted**. Maintain control of inmates at all times. If an inmate cannot be located when checked, this should be considered an escape. The Minimum Unit Sergeant will be notified immediately. As inmates finish assignments, and are awaiting further duties, stage them in the Fenced area adjacent to the property trash area roll up doors.

Additionally, the Detail Officer must monitor inmate:

- 1 Job performance
- 2 Compliance with safety standards
- 3 Conduct in interaction with the general public or civilian staff to ensure that disruptive behavior such as verbal abuse, catcalls, waving, horseplay, etc. is not tolerated. These occurrences must be addressed immediately. Depending on the severity of the violation, the officer will give a verbal counseling or disciplinary report, which may result with the inmate being returned to the institution.

Here, Miller was assigned a detail of three minimum-security inmates to strip and wax the floors in the administration building while it was effectively closed for a holiday. Cell phone records confirmed that Miller used his phone around noontime for no more than four minutes. Miller's shift started at 8:00 a.m. and the detail started at 10:00 a.m. There were no other calls made by Miller during his tour of duty indicating that he was loafing earlier in the shift before Peachey entered administration building (A-5). This information (cell phone records) corroborated that Miller was not loafing or idle - talking on his cell phone or misusing his cell phone during his tour of duty.

When Peachey entered the conference room, he instantly questioned Miller where his detail was located and how many were in his detail. Miller provided Peachey the precise location of all three inmates (R-2). This confirmed that Miller must have been supervising the inmates by walking back and forth in the hallways or else he would not have known the precise location of everyone in his detail.

Peachey and Miller both interpreted and explained that in practice IMP #130 Q permits minimum-security inmates to perform their work outside the of the constant or direct line of sight of their supervisor – so long as the supervisor continuously roams between their respective locations. And these same witnesses confirmed that short

bathroom breaks are permitted without requiring backup or replacement supervisors. Valrrell disagreed with their interpretation and practice. Valrrell was not sure how the supervisors were enforcing IMP #130 Q in practice, since he is generally not on the floor in the facility. But he would apply IMP #130 Q more strictly than Peachey.

Under the circumstances presented above, it did not appear that Miller was neglectful, loafing or idle. Rather he was using his cell phone to contact his fiancée out of concern that he might need to check his blood sugar. I found Miller to be credible and reliable as to his reasoning for calling his fiancée. It is also plausible that Miller would step into a separate room, out of earshot of the inmates, to discuss his medical circumstances. Peachey rightfully thought Miller looked too comfortable when he entered the conference room because he was seated. But the conference room lights were off and there were no other cell phone calls during Miller's tour of duty. This clearly indicates that Miller was not hanging out in the conference room talking on his cell phone, but rather, was using the room for a short private matter – much like a bathroom break. A warning would have been sufficient after a full investigation - particularly since Miller's cell phone records failed to depict any other calls during his shift. Finally, one might infer that Miller was just about to remain seated and have a long personal call with his fiancée. But that would be speculation and contrary to the actual evidence and records admitted into evidence.

I **CONCLUDE** that NJDOC/SWSP failed to meet its burden of proof that appellant neglected his duties or was otherwise idle or loafing. I **CONCLUDE** that NJDOC/SWSP failed to meet its burden of proof that appellant violated IMP #130 Q (or any other rule or policy) as it is used, interpreted and applied at SWSP.

### **ORDER**

Based upon the fact finding and credibility determinations set forth above, it is **ORDERED** that the charges of 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 - violation of Human Resources Bulletin 84-17, as amended, B-2, neglect of duty, loafing, idleness or willful failure to devote attention to

tasks which would result in danger to person or property; and E-1 violation of a rule, regulation, policy, order, or administrative decision are **DISMISSED**.

I further **ORDER** that appellant receive back pay, service credit and all other emoluments for any suspension which may have been served as a result of the charges from this incident. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned or that could have been earned by appellant during this period. Proof of income shall be submitted by or on behalf of appellant to the appointing authority within thirty days of issuance of this decision. Pursuant to N.J.A.C. 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

June 16, 2015

DATE

W. Todd Miller

W. TODD MILLER, ALJ

Date Received at Agency:

June 16, 2015

Date Mailed to Parties:

6-19-15

/jb/lam

**WITNESSES AND DOCUMENTS IN EVIDENCE**

**WITNESSES**

**For appellant:**

Ronald Miller

**For respondent:**

Lieutenant William Peachey

Major William Valrell

**EXHIBITS**

**For appellant:**

- A-1 Intentionally Omitted
- A-2 N.J.A.C. Chapter 10A
- A-3 Intentionally Omitted
- A-4 Weingarten Rights
- A-5 Appellant's Cell Phone Records
- A-6 Diabetes Accommodation Memorandum
- A-7 Internal Management Procedure #130
- A-8 Appellant's Performance Appraisal

**For respondent:**

- R-1 Preliminary and Final Notice of Disciplinary Action
- R-2 Special Report – Lieutenant William Peachey

- R-3 Daily Schedule – November 11, 2013
- R-4 Internal Management Procedure #130
- R-5 Department of Corrections Handbook
- R-6 Law Enforcement Rules and Regulations
- R-7 South Woods New Hire Material Check List
- R-8 Appellant's Work/Disciplinary History
- R-9 Department of Corrections Human resource Bulletin 84-17
- R-10 Special Report from Appellant

By the ALJ:

- C-1 Drawing of Administration Floor Plan by Appellant