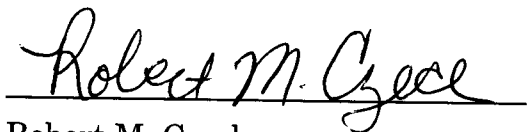


Re: Lisa Corley

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 29, 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. CSR 2457-15

AGENCY DKT. NO. N/A

**IN THE MATTER OF LISA CORLEY,
CAMDEN COUNTY CORRECTIONAL
FACILITY.**

John P. Rowland, Esq., for appellant Lisa Corley

Antonietta P. Rinaldi, Assistant County Counsel, for respondent Camden County
Correctional Facility (Christopher A. Orlando, County Counsel, attorney)

Record Closed: May 7, 2015

Decided: June 22, 2015

BEFORE **ROBERT BINGHAM II**, ALJ:

STATEMENT OF THE CASE

Appellant Lisa Corley, a correction officer, appeals a removal from employment by respondent Camden County Correctional Facility (CCCF) based upon charges of conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12).¹ The CCCF

¹ Corley was charged with violations of CCCF Rules of Conduct: 1.1 Violations in General, 1.2 Conduct Unbecoming, 1.3 Neglect of Duty, 3.2 Security, 3.6 Departmental Reports, 3.8 Use of Force (Non-lethal); Camden County Dept. of Corrections Policies: General Order (G/O) 13 Use of Force, G/O 73 Personal Conduct of Employees, G/O 74 Professional Code of Conduct, and Internal Affairs Order #001.

contends that Corley abused an inmate.

PROCEDURAL HISTORY

Corley was served with a Preliminary Notice of Disciplinary Action (PNDA) dated February 7, 2014, and an Amended PNDA dated November 21, 2014, issuing the above charges. On February 7, 2015, following a departmental hearing, a Final Notice of Disciplinary Action (FNDA) sustained the charges and imposed a removal from employment. Corley appealed and her appeal was filed at the Office of Administrative Law (OAL) on February 18, 2015, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 52:14B-1 to -15. The hearing was held on April 15 and 16, 2015, and the record remained open for post-hearing submissions. On May 7, 2015, the record closed upon receipt of post-hearing submissions.

FACTUAL DISCUSSION

Background

Appellant is a correction officer (CO) at CCCF, where she has been employed for five years and was assigned to the jail's admission's unit on October 30, 2013. On that date, she worked the midnight-to-8-a.m. shift. The admissions unit contains a centralized workstation in an area with transparent holding cells, access to other stations, and a video surveillance system (without audio).

During her assignment, an inmate named A.P. became agitated and appellant transferred her from cell 39, which she shared with another female inmate, to cell 38, which she occupied alone. Upon entry, appellant handcuffed her to a bench inside cell 38. At some point, A.P. requested to use the bathroom, but appellant said that she would have to wait. A.P. defecated on the cell floor, and threw soiled toilet paper toward the cell door. Appellant and another female CO, Tia Smith, subsequently transferred her to a shower area to perform a strip search before sending her to another unit. A disputed incident occurred in the shower, after which A.P. was taken to the other unit. A.P. complained and an investigation ensued. Consequently, CCCF charged

appellant with conduct unbecoming an employee, neglect of duty, and other sufficient cause, namely, violation of CCCF's rules and policies noted above, and it imposed a penalty of removal. The following reporting occurred in connection with that investigation.

Reports and Interviews

On October 31, 2013, appellant submitted a General Incident Report (R-7) stating that when she arrived on duty in the admissions department on October 30, A.P. was standing at the door to cell 39, asking when the nurse was coming. Appellant told her she would have to wait until the duty nurse "settled in" because it was change of shift. At "1215 hrs." A.P. was yelling "nurse, nurse" and said she "needed to see the nurse now," and if she did not, she was going to "wild out." A.P. began "yelling and screaming vulgar comments and banging on the cell door demanding to see the nurse." Appellant then relocated her from cell 39 to cell 38 and handcuffed her to the bench "for her own safety." A.P. then began screaming, "Corley I have a present for you." Appellant opened the cell door and saw that A.P. had defecated on the floor. A.P. then refused medical treatment when asked if she wanted to see the nurse. She was taken to the shower area for a strip search, but she refused to be searched. With the assistance of CO Smith, appellant removed A.P.'s clothes and shoes and no contraband was found. Appellant and Smith escorted A.P. to "2 North" without further incident. Appellant signed the incident report containing her statements, dated October 31, 2013.

Appellant also signed a Use of Force report, dated October 31, 2013, that summarized the incident with an identical narrative. (R-8.) The report lists the date and time of incident as October 30, 2013, at "0015 hours," and describes the type of force as "physical [and] mechanical." The report indicates that neither staff nor inmate was injured.

Internal Affairs investigator Joseph Coleman reviewed the video and interviewed A.P. and CO Smith. Captain Christopher Foschini, who was a lieutenant at the time, issued a memorandum dated November 15, 2013, placing the appellant on "no-inmate-

contact status,” and restricting her assignments to the “2nd, 3rd, or 5th floor Control Booth” until further notice. (R-11.) Foschini referred the matter to the Camden County Prosecutor’s Office on November 19, 2013, but it was returned to the agency for administrative action on October 6, 2014. Thus, Coleman and Foschini conducted CO Smith’s second interview on October 29, 2014. They interviewed appellant on November 3, 2014. And Coleman interviewed Sgt. Joseph Antrilli on November 10, 2014.

The November 3, 2014, interview of appellant by Coleman and Foschini was conducted in the presence of her attorney, and the interview was transcribed. (R-13.) Appellant then stated that A.P., who was in cell 38 (sic), was asking to see the nurse and appellant said she would have to “wait her turn.” Appellant told A.P., “When [the nurse] gets ready, she’ll get to you.” After a couple of minutes, A.P. began kicking and banging at the door and screaming at the nurses, so appellant warned that she would be put in the next cell if she did not relax. But a few minutes later A.P.’s behavior continued, including profanity, so appellant put her in the next cell and she complied. However, once the cell door closed, she began screaming and taunting appellant (singing, staring, cursing), and then asked if she could use the bathroom. Appellant replied that she would have to wait, noting her complaint behavior and the timing of her request (post-handcuffing), and A.P. continued to scream and complain.

At that point, appellant told CO John Straub that she would “be right back” and she went to her “happy place,” in other words, outside to smoke a cigarette. Appellant then told Sergeant Antrilli, who followed her outside, that A.P.’s screaming was getting other inmates “riled up.” About three minutes later, appellant went inside, and “it smelled like somebody took shit-flavored air freshener and sprayed it everywhere.” Smith and “the [unidentified] girl” seemed not to recognize appellant’s observation, and, when appellant reached the cell holding A.P.—who said, “Corley, come in here, bitch. I got a present for you, bitch”—she saw that A.P. had defecated on the floor. A.P. then picked it up and threw it at the door.² Appellant called both Sergeant Antrilli and the

² Appellant later stated that she did not observe this, but it was visible on the surveillance tape. (T20:892 to T21:904.)

nurse, to have A.P. moved to “medical lock.” Minutes later, when everyone was screaming to take her out of the cell, appellant removed A.P. for a strip search in the shower area.

A.P. refused to comply with the strip search. So, appellant took her top half and CO Smith her bottom half; they put her on the ground and removed her pants, shirt and shoes. When the search was completed, appellant “took her up to 2 [North].” Four hours later, Norton suggested that appellant write a report because A.P. alleged appellant had beat her.³ So, though appellant felt the incident was typical—stating, “that was a normal day for me”—she wrote her report that day and “put it on Franceschini’s desk” for her signature. She then admitted that she finished and printed it the next day, explaining, “[t]hey say we got 24 hours to write it.”

In follow-up questioning, appellant explained that A.P. was in cell 39 with another inmate when appellant initially encountered her. She was removed, not for problems with the other inmate, but for screaming/yelling and kicking/banging the cell door. Appellant confirmed her prior report that A.P. then was handcuffed to the bench (in cell 38) for her own safety, explaining that she was moved and cuffed because her behavior (in cell 39) was “erratic.” Though she was compliant in transitioning to cell 38, she was handcuffed to the bench as a customary “scare tactic for [inmates] to calm down and relax.” As to whether that was a policy, appellant explained, “I don’t know if it’s in the book but that’s what we use . . . regardless of if there is a standard policy. That’s how we do things in admissions . . . if we have somebody who’s acting erratic.” (T9:370; T12:509; T13:568.)⁴ However, appellant believes that since then, a policy has been implemented to require permission to handcuff inmates.

Appellant further explained that she told A.P. that she had to wait to use the bathroom “[b]ecause . . . when she was in the other cell, she didn’t complain about having to go to the bathroom. She was too busy calling me a bitch So it wasn’t

³ Appellant worked overtime, and during a later assignment she again encountered A.P. A.P. said that the appellant’s coworkers hate appellant and had told A.P. what to write. A.P. stated, “I’m going to get you fuckin’ fired.”

⁴ All references to the interview transcript (R-13) are to page and line numbers.

that I was denying her. She would have eventually gone. I was outside (to smoke a cigarette) for 2 or 3 minutes.” (T14:594-611.) She further explained, “It’s not that I didn’t think she had to go to the bathroom. But for one, I’m not your second servant.” (T16:702.)

Appellant estimated that the incident unfolded “about forty minutes into [her] day.” (T18:781.) And it was three or four minutes between the handcuffing and the defecating, though she went outside “a couple of minutes” after the handcuffing and remained outside “3 or 4 minutes.” (T15:653; 16:685.) So, appellant was outside “when she did it.” (T22:949.) When appellant returned from outside, A.P. had already “[gone] to the bathroom on the floor” (T19:831), and she was still clothed and handcuffed to the bench. (T21:916-22.)

Also, appellant had a conversation with a supervisor, Sergeant Antrilli, about A.P.’s behavior after she was handcuffed to the bench. But “he knew something was going on” beforehand because he was in the unit when she was “screaming at the top of her lungs.” (T19:817–18.) Appellant admittedly had not notified him when A.P. first began to act out because “it would have been a pointless conversation,” as he would not have intervened to speak with the inmate in any event.

At that point in the interview, the video was played and appellant gave further details. She transferred A.P. from cell 39 into cell 38 at 12:23, and A.P. was not then disruptive. Appellant handcuffed her to the bench at 12:24, left the cell, and went to smoke a cigarette. (T23:1009 to 24:51.) A.P. mentioned having to go to the bathroom “after [appellant] closed the door and maybe a few minutes after that,” perhaps “a minute or two after 12:24, rather than when appellant was inside cell 38.” (T24:1053 to 25:1090.) It was when appellant was seated, around the time that Smith came back.⁵ But by 12:36 both appellant and CO Smith were inside cell 38 trying to calm A.P. due to her yelling and screaming (not about using the bathroom). (T25:1115 to 27:1166.) And by 12:43, twenty minutes after A.P. was handcuffed, appellant admittedly had not yet gone to smoke. (T29:1269–75.) Appellant then stated her belief that at about 12:46,

⁵ As discussed below, the video depicts Smith returning to the area at 12:33:10.

when (with Smith in front of her) she let another inmate into another cell is when A.P. stated "she had to go." (T29:1277-92.)

In explaining why she walked away from A.P., who said she had to go to the bathroom, appellant said, "Because I don't jump as soon as somebody says something." (T29:1298 to 30:1301.) She admittedly did not know how badly A.P. needed to relieve herself. (T59:2616-42.) Appellant gave no reason as to why, by 12:52, she had not let A.P. use the bathroom, except to say that she could not recall the exact time when A.P. had asked. Appellant later stated that when A.P. asked to use restroom, at a point in time after being handcuffed, appellant told her, "You can wait." (T54:2384-99.)⁶ At one point, appellant said she never told CO Smith that A.P. had to wait (T55:2427-38), but, according to the transcript, she later said, "I told (Smith) that she can wait is what I said." (T60:2683.) And, appellant also later said that, although she did not know the time, A.P.'s request came right before she went to smoke and then returned in four minutes. (T60:2649-73.)

Appellant acknowledged that Sergeant Antrilli is not seen on the tape until 12:53, at which point she had not spoken to him about A.P. (T32:1402-13.) However, he was aware of her being cuffed to the bench for her disruptive behavior because "he was standing right there" (T32:1426); "he was likely at the location where appellant had to retrieve the handcuffs." (T33:1468 to 35:1529).⁷ Also, he knew A.P. was cuffed between 12:23 and 12:54 because, according to appellant, "We had to have some kind of conversation. . . . He yelled over at some point in time to ask about the girl. . . I said, 'I'm going to handcuff her to the bench.'" (T35:1565 to 36:1575.) So, although they had spoken about handcuffing A.P. to the bench, they had an actual conversation about it when appellant went outside to smoke. (T36:1595-1603.)

⁶ Appellant further stated, "I can't remember the time when things happen but I told you that right before I went to go smoke my cigarette. That is when she asked me. So right in that time is when she asked me if she could go to the bathroom and I told her she had to wait. And that is when I went outside and I went to go smoke. And when I came back in . . . that is when she defecated on the floor." (T54:2411-20.)

⁷ Appellant is somewhat sure, but not certain, that he was sitting in that section.

Appellant reiterated that although she did not “know every standard policy and procedure that’s in the book,” it was standard protocol in admissions to handcuff a disruptive inmate without supervisory approval. (T35:1583–93.) And A.P. remained in handcuffs for at least thirty-seven minutes “cause she was still yellin[g] and screamin[g] and kickin[g] . . . the floor.” (T37:1617–23.) But she did not charge the inmate for being disruptive because “this happens all the time” and, if there is a policy for charging disruptive inmates, “we don’t have to do it every single time.” (T39:1719–31.)⁸

Appellant went to smoke at approximately 1:01 and returned at 1:05, when she and Sergeant Antrilli reenter the video frame, at which point A.P. had been in handcuffs more than forty minutes (from 12:23) and had defecated on the cell floor. (T40:1763 to 41:1836.) So, 1:06 a.m. was the first time appellant noticed that A.P. had relieved herself. (T42:1874–81.) She never saw A.P. pull her pants down inside the cell, preparing to “go to the bathroom,” as she was fully clothed before appellant left to go outside. (T61:2730 to 62:2737.)

At the shower, A.P. refused to remove her clothing for the strip search (for appellant, but not for CO Smith), and sat on the bench in a fetal position with her hands folded. Appellant placed her on the ground (by grabbing her shirt), held her upper half, and removed her top, while CO Smith held her lower half and removed her pants and shoes. But appellant never struck her. Following the search, A.P. clothed herself and appellant took her upstairs. (T43:1901 to 46:2060.)

Appellant started writing her report on October 30, after Norton spoke to her about writing one, and she completed and printed it on October 31. She believed she had twenty-four hours within which to write the report. And, but for Norton’s suggestion she would not have written one, because she typically writes them only in cases involving a physical altercation, rather than something as “petty” as this matter

⁸ Appellant later explained that admissions is a front-line type of environment for dealing with inmates who are angry and/or under the influence, so things are handled differently although the same rules and policies that pertain to other areas apply. (T56:2471 to 59:2609.)

(T47:2075 to 49:2156.)⁹ Also, appellant wrote her use-of-force report that day. The only physical force was “just for the handcuffs,” “the mechanical force,” and “tryin[g] to get her clothes off,” which involved “none.” Appellant then explained that she grabbed A.P.’s arms “to move her arm back to get her arm through the sleeve [of her shirt].” (T52:2293 to 53:2333.) During the course of the interview, appellant admitted that she had become irritated by A.P.

A Supervisor’s Staff Complaint Report dated November 12, 2014, (R-14) specified alleged violations by appellant, and it was signed by her to acknowledge receipt. In particular, it alleged that on October 30, 2013, appellant transferred A.P. from cell 39 to cell 38 and handcuffed her to the bench as a “scare tactic.” When A.P. asked to use the bathroom, appellant told CO Smith to disallow it. Appellant subsequently observed A.P. lower her pants and defecate in the cell, while handcuffed to the bench, where she remained until appellant took her to the shower area some twenty minutes later. At that location, appellant punched A.P. in the rib area when she refused to be strip-searched. Further, appellant allegedly lied during her Internal Affairs taped interview, including statements that (1) appellant told Sergeant Antrilli that she was handcuffing A.P. to the bench, and (2) that she did not see A.P. remove her pants and defecate on the floor. Finally, appellant failed to timely submit a general incident report before her shift ended on the incident date.

Appellant’s last written statement, dated November 12, 2014, (R-16) was a “Rebuttal To The Supervisor’s Staff Complaint Report.” In it, she described A.P.’s request to see the nurse and her own reply that she would have to wait. She described A.P.’s subsequent behavior as agitated, belligerent, insulting and disruptive, including her continuous banging and kicking on the door of cell 39. She thus moved A.P. to cell 38 for her own safety and that of “the other female inmates in cell #39.” A.P. promised to annoy appellant and, once inside cell 38, flailed her arms, kicked the cell floor and yelled vulgar comments toward appellant. Soon thereafter, as appellant spoke with

⁹ Appellant explained that originally her report was “generated as informational. Just to know what happened for that day. Not to charge the girl with anything.” She continued, “Cause I have people who piss and take dumps in the cells all the time tryin’ to be funny. They poop on the tray. I would be writing people every single day if I wrote a situation for that. So for me that’s—it’s petty” (T52:2337–45.)

CO Smith, A.P. said that she had to use the bathroom. Appellant told her she would have to wait and "went outside on the sally port with Sgt. Antrilli." Upon her return approximately four minutes later she smelled a foul odor and then saw feces on the cell (38) floor; it was right in front of the door, meaning A.P. had thrown it. Appellant phoned Sergeant Antrilli and informed him of the incident. She then escorted A.P. to the shower area, but A.P. refused to be strip-searched. So, appellant and CO Smith had A.P. "taken to the cell floor," appellant removing the upper half of her clothing and CO Smith removing the lower half. No contraband was found, and A.P. voluntarily put on her clothing. At no point was she assaulted, and she was returned to "2 North" without incident.

Appellant further explained that during her interview she could not give exact times that A.P. asked to use the bathroom, as the incident had been over a year ago and the tape did not contain audio. But in the interview she did explain that when A.P. asked, appellant "immediately retreated outside with Sergeant Antrilli to smoke a cigarette," as had been her prior intention. She never denied A.P. the right to use the bathroom, rather, she simply told her that she would have to wait. She explained in the interview that she was not inside the facility when A.P. defecated on the floor and did not witness it. Further, before she left the facility for her break, A.P. was completely clothed. And the tape shows A.P. throwing soiled toilet paper at the cell door, but does not show appellant anywhere near her at that time. Appellant further relayed that A.P.'s behavior was malicious and directed only toward appellant, expressing the view, "If [A.P.] had to use the facilities that badly she could have asked any one of the many numerous officers that were working down there."

Finally, appellant reiterated her understanding that she had twenty-four hours within which to complete a general incident report. Further, when her report was submitted, there was no complaint either of lateness or of unauthorized handcuffing of an inmate. Had there been any actual wrongdoing, it would have been brought to her attention immediately, or at least during the three months that appellant was "still in the facility on no inmate contact." The statement concluded with the assertion that her prior statements are factual and those in the Supervisor's Staff Complaint Report are not, and that she did not violate any policies and procedures.

At some point after interviewing appellant and Sergeant Antrilli in November 2014, Coleman generated an undated Internal Affairs Report (R-5) regarding the excessive force complaint by A.P. based upon the October 30, 2013, incident. The report states that Coleman received a "request slip" from A.P. alleging that appellant assaulted her in the shower. (R-6.) He reviewed appellant's General Incident Report and Use of Force Report, as well as the CCTV system (video), and his report describes its depiction of the incidents involving cells 39 and 38, and appellant escorting A.P. to and from the shower area. According to Coleman's report, on November 4, 2013, he interviewed A.P. regarding her allegations that she was cuffed to the bench and disallowed use of the bathroom, and later kicked and punched by appellant in the shower area. He interviewed CO Smith on November 15, 2013. (R-10.) Both he and Foschini conducted CO Smith's second interview on October 29, 2014. (R-12.) They both interviewed appellant on November 3, 2014. (R-13.) And Coleman interviewed Sergeant Antrilli on November 10, 2014. (R-15.) Coleman's report concluded that appellant handcuffed A.P. to the cell bench as a "scare tactic," "when she was not a threat to anyone or herself," and left her there when she had to use the bathroom, causing her to defecate on the cell floor. It further concluded that appellant struck A.P. in her rib area at the female shower and lied about not striking her. Finally, it recommended the violations contained in the FNDA.

Rules and Policies

Pursuant to Rule 1.1 of the Camden County Department of Corrections Rules of Conduct (the Rules), an employee who violates any rule, regulation, procedure, order, or directive is subject to disciplinary action. (R-17.)¹⁰

¹⁰ The Rules, in pertinent part, include proscription of the following conduct:

- (1) unbecoming conduct (Rule 1.2), or that which "brings the department into disrepute, reflects discredit upon the employee as a member of the department, or which impairs the operation or efficiency of the department or the employee";
- (2) neglect of duty (Rule 1.2), "the failure to perform or the negligent performance or compliance to any rule, regulation, directive, order or standard operating procedure as dictated by department practice or is

Pursuant to Camden County Department of Corrections Gen. Order #036, Restraints, “[t]he use of restraint equipment is intended to prevent escape, assault, or the commission of some other offense by violent or disruptive offenders; to protect staff and offenders; and under circumstances approved by the Warden or his/her designee. The use of restraints is sometimes necessary in the detention environment.” (R-20.)
Further:

[i]ndividuals that require restraints to prevent injury to themselves or others shall be placed in handcuffs and shackled, and placed in a cell by their self. An officer will continuously observe the inmate. The immediate supervisor must be notified immediately and shall inform the shift commander of the actions. All officers involved in the action shall file all appropriate reports. **Restraints shall be removed promptly when the reason for their initial use has ceased to exist or sufficiently abated.**

.....

Whenever an inmate is restrained due to an incident other than normal operations such as routine movement, (i.e., physical altercation, cell extraction, etc.) report will be written by the correctional personnel involved. **The report is to be**

published, which causes any detriment to the department, personnel, any inmate, prisoner, or to any member of the public”;

(3) (breach of) security (Rule 3.2), “any act of commission or omission tending to undermine security shall constitute a breach of security including, but not limited to: (a) failure to ensure adequate vision of the cells and cellblocks, and (e) failure to use or properly apply restraining devices when necessary;

(4) departmental reports—failure to submit a report within a prescribed time (Rule 3.6), “personnel shall submit all necessary reports . . . prior to going off duty after request by the supervisor or of an incident necessitating a report.”

(5) excessive or improper use of force (non-lethal) (Rule 3.6), “Personnel shall not inflict corporal punishment on the person of any inmate, prisoner, or other person, nor shall they strike or lay hands on an inmate, prisoner, or other person unless it is in self-defense or unless to prevent escape, serious injury to person or property, to quell the disturbance, or affect an arrest where resistance is offered. In all circumstances, only the amount of force necessary to accomplish the desired result is to be used.

submitted to the appropriate supervisor before the end of the tour of duty.

[ibid.]

Pursuant to Camden County Department of Corrections Gen. Order #013, Use of Force, force may be used to defend one's self or another, or to prevent serious property damage, escape, a riot or disturbance, and suicide or attempted suicide. (R-19.) It may also be used to enforce facility regulations or "where a ranking supervisor officer believes that the inmate's failure to comply constitutes an immediate threat to facility security or personal safety." (ibid.) But force "may not be used to punish, discipline or retaliate against an inmate." (ibid.) Also, staff who employ or witness force, or receive use-of-force allegations must immediately report the incident to their immediate supervisor and prepare a written report of the incident before leaving the facility.

Pursuant to Camden County Department of Corrections Gen. Order #073, Personal Conduct of Employees, employees must conduct themselves in a fashion that "will not bring discredit or criticism to the department." (R-21.) Under that provision, employees (1) are to always treat fellow employees, offenders and the public with respect and courtesy, (2) are not to exhibit behavior that demonstrates prejudice or holds any person, group or organization up to ridicule or contempt, and (6) will cooperate and provide full disclosure in any department investigations involving employee or offender misconduct. (ibid.)

Pursuant to Camden County Department of Corrections Gen. Order #074, Professional Code of Conduct, conduct that detracts from a professional and ethical manner is prohibited. Misconduct is defined as "an act or omission by an employee . . . that may result in disciplinary action by the agency or appointing authority. (R-22.) Prohibited conduct includes use of "derogatory language or actions which are intended to embarrass, humiliate, or shame a person, or do anything intended to incite another to violence." (ibid.) Employees are required to carry out their duties with "integrity, fairness and impartiality." (ibid.)

Pursuant to Camden County Department of Corrections Internal Affairs Order #001, as it pertains to the interview of a subject officer, during any Internal Affairs interview, employees are “obligated to answer all questions truthfully or he/she will be subject to disciplinary action, up to and may include termination.” (R-18.)

I **FIND AS FACT** all of the above, as to the undisputed background facts, the occurrence of interviews and generation of reports as described, and the existence of the applicable CCCF rules and policies.

Testimony

The following summarizes the testimony of respondent’s witnesses. Appellant did not call any witnesses to testify.

CHRISTOPHER FOSCHINI, a twenty-year CCCF employee and currently a captain in its Internal Affairs unit, where he has worked for eighteen years, testified as to his involvement in the investigation. He reviewed A.P.’s complaint (R-6) and then had investigator Joseph Coleman gather incident reports. He reviewed appellant’s incident report (R-7), signed by her and dated October 31, 2013, as well as the surveillance video (R-9). He conferred with Coleman, listened to an audio recording of A.P.’s interview with Coleman, and reviewed Coleman’s Internal Affairs report (R-5). He described A.P.’s allegation that, following an exchange of words between her and appellant, appellant refused her request to use the bathroom, causing her to defecate on the cell floor, and later assaulted her in the shower. Foschini placed appellant in no-inmate-contact status (R-11), and he briefed the warden. He also referred the matter to the county prosecutor’s office in November 2013, but the matter was returned for administrative action in October 2014.

Foschini participated in the second interview of CO Smith (R-12), who then described appellant as denying A.P.’s request to use the bathroom and as striking A.P. in the shower. He also referenced the Internal Affairs interview of Sergeant Antrilli (R-15), who said he was not made aware that A.P. was cuffed to the bench, and confirmed that policy does not allow such cuffing as a “scare tactic.”

Foschini also participated in an interview of appellant. He described appellant as “not cooperative,” and as “rude, ignorant and disrespectful,” criticizing her “tone” and attempts to “talk over you.” Appellant had stated that she moved A.P. to cell 38 for being disruptive, yet she did not charge her, as protocol required. She had stated that A.P. was kicking and banging but, according to Foschini, that is not a threat. And no one had reported that A.P. was disruptive when she was handcuffed. Appellant also stated that she cuffed A.P. to the bench as a scare tactic, which is not a policy. She also said A.P. asked to use the bathroom at 12:23, but changed her story after he showed her the video. Appellant said she did not write a report that day because she had twenty-four hours to do so; however, the report is actually due at the end of the shift. Foschini further testified that appellant was untruthful, misleading, and hampered the investigation.

Foschini described the surveillance video footage (R-9) from various angles; first, a wide view of the admissions area depicts a common workstation and the cells, including cell 38—for problem inmates—and cell 39. In that view, he identified appellant and CO Smith, transporting A.P. to cell 38. What appears as a hallway on the left is an entry to the “sergeant’s area,” which one can enter at that point and then “go around and reenter (the admissions station)” at the point depicted in the lower left side of the video frame. He also identified CO Straub as the male officer sitting at the workstation desk (12:25:37), and CO Stiano as the male officer walking behind CO Straub (12:25:37) and then to the doorway of cell 38, where he stood and appeared to converse with A.P. (12:26:58). CO Joseph Rouh enters at 12:42:57 and escorts two inmates toward cell 37 at 12:53:42.

Foschini then described footage from a second camera angle, from approximately eight feet above the cells, showing cells 37 (left) and 38 (right). From that view, he described the door to cell 38 as having a (solid) bottom portion, approximately three feet high, and an upper portion made of glass through which the inside is visible. The bottom portion of the cell’s front wall is not that much higher, and its upper portion also contains glass through which a bench can be seen inside the cell. And that bench has an “O ring,” as do, he believes, other cells. According to Foschini,

neither of those lower solid portions, nor a horizontal bar across the upper glass portion of the wall, would obstruct the view inside, and one could see if an individual were sitting on the floor.

A third angle, depicting video footage at 1:05, shows Sergeant Antrilli (leaning) and CO Stiano (standing) on the left. A door that leads to the sally port, where officers go to smoke, is in the bottom right corner. According to Foschini, key times in the video footage are: (1) 12:23, when A.P. is moved to cell 38; (2) 12:36, when appellant and CO Smith enter cell 38; (3) 12:45, when A.P. lowers her pants and appellant appears to be looking at her; and (4) 1:05, when appellant reenters the unit and enters cell 38 after A.P. defecated on the cell floor.

On cross-examination, Foschini conceded that he was not a witness to the incident and had no firsthand knowledge regarding it. The basis for his testimony was reviewing the video, interviewing appellant, being present for the interview of CO Smith and Sergeant Antrilli, and reviewing the audio of the initial interview of CO Smith. As for A.P.'s request slip (R-6), it is in handwritten form without either a signature or a date, and he was not present when it was authored or submitted. He also does not know whether any Internal Affairs officer was present when the document was prepared. But it is date-stamped as received by Internal Affairs, and appellant saw it but never challenged its authenticity. And as for Coleman's Internal Affairs report (R-5), Foschini "assisted" in its preparation because he reviewed "the audios" and together they "went over this case thoroughly." There are no medical reports, nurse's reports, or any other reports to indicate that A.P. was injured by appellant, as far as Foschini is aware.

KAREN TAYLOR, an administrative captain and eighteen-year employee at CCCF, testified that her duties include the oversight of disciplinary matters, including the issuance of discipline for the staff that involves a review of Internal Affairs reports, videos, and pertinent policies. She annually reviews the agency's policies, which are issued to employees, who are then expected to familiarize themselves with them.¹¹ In this case, she received and reviewed the Supervisor's Staff Complaint Report by

¹¹ Policies and procedures are also available on the jail computer at all times and are accessible for staff.

investigator Joseph Coleman, dated November 6, 2014, and the video and information provided by Captain Foschini. She also helped to prepare the PNDA (J-1a) and signed the amended PNDA (J-1b) and FNDA (J-2a, J-2b), after conferring with and providing a recommendation to the warden, who ultimately recommends the penalty.

According to Taylor, in this case there were violations of the rules of conduct, both generally (Rule 1.1) and in particular, as follows. Conduct unbecoming (Rule 1.2) is shown in the video, as that which puts the department in disrepute, or discredits it, as appellant's job involves the professional custody and care of inmates who are presumed innocent. Neglect of duty (Rule 1.3) occurred by appellant's failure to document use of force and the improper use of restraints, the latter of which is proscribed by General Order 036, by unprofessionally cuffing an inmate to the bench while disallowing use of the restroom. Taylor noted that A.P. was compliant upon transfer to cell 39 and, without causing disruption, was immediately cuffed to the bench without cause. According to Taylor, restraining someone as a form of punishment is inexcusable. That policy also requires use of shackles, constant monitoring, and submission of a report to the supervisor before the end of tour, none of which were done. Further, the same rules apply in admissions as throughout the jail.

A security violation (Rule 3.2) occurred by appellant's failure to properly apply a restraint device, as appellant handcuffed A.P. to the bench and left her, when the policy requires a presence at all times when an inmate is cuffed. Also, the inmate was not shackled, as provided in the policy. Appellant also used unnecessary force (Rule 3.8) and failed to document the use of force (Rules 3.6, 3.8).

Appellant violated Internal Affairs Order #001 (R-18) by "lying to internal affairs," specifically, telling a story that was inconsistent with the events depicted on the video, and not being forthcoming with the information she had.¹² She violated General Order

¹² Taylor gave the example of appellant's version describing the total time of handcuffing as minimal, when it actually was more than forty minutes. Also, she stated A.P. was noncompliant, when she was in fact compliant while walking into cell 38. And an amount of time had elapsed before appellant went on break, rather than—as she stated—her taking a break immediately after A.P. requested use of the bathroom.

#13, Use of Force (R-19), because no permissible uses of force occurred; rather, there was impermissible force, as appellant punched A.P., and force may not be used to punish, discipline, or retaliate.¹³ Additionally, she failed to immediately report an incident involving force and prepare a written report regarding same before leaving the facility. She violated General Order #73, Personal Conduct of Employees (R-21), because (1) she did not conduct herself in a manner that would not bring discredit or criticism to the department, (2) her behavior displayed prejudice, and (3) she did not make full disclosure of the incident. She violated General Order #74, Professional Code of Conduct (R-22), by failing to comport herself in a professional and ethical manner and to execute her duties with integrity, fairness and impartiality, and by using derogatory language or actions to embarrass, humiliate, or shame an inmate. For example, appellant's actions disallowing the inmate's use of the bathroom upon request;¹⁴ handcuffing her—against policy and procedure—and instructing a fellow officer not to remove the handcuffs; keeping A.P. handcuffed for a prolonged time after her request to use the bathroom; and not charging her with the alleged disruptive behavior, were all in violation of General Order #73 and General Order #74.

The Video

The video depicting the admissions area (R-9, wide angle, "ADM II 1240") begins when CO Straub and another male officer enter and sit at the workstation (11:46). Appellant enters, stops at the upper quadrant of the workstation—which appears to be opposite cell 38—and then disappears into an adjacent room (11:47). Appellant returns to the workstation, eventually speaking with the male officers before then walking past cell 39 (11:48 to 11:51). She seems to glance toward someone appearing to be inmate A.P., who is standing in the door of cell 39, and appellant raises her arms while passing by and then walking out of view. Upon returning, she stops in front of cell 39, observes and possibly converses with A.P., who is still standing at the cell door. Once at the

¹³ Taylor acknowledged that appellant denied striking A.P.

¹⁴ According to Taylor, it is not common for inmates to defecate in the admissions unit, although she has known it to occur in the mental health ward, where it is a different circumstance, related to the inmate's mental health issues.

workstation, appellant speaks to CO Straub while gesturing toward cells 38 and 39 (11:51:55). Then, while speaking with another inmate from cell 37, at her workstation, appellant approaches cell 39, where A.P. has been standing in the door (11:55:19). The cell door opens, another female inmate exits and sits at CO Straub's workstation, and appellant retrieves and hands A.P. a white object before the cell door then closes. (11:55:45). CO Smith enters the area (11:56:05) as appellant continues to process an inmate at her workstation, and A.P. remains standing in the doorway of cell 39. A.P. moves away from the doorway and, after walking around awhile inside the cell, appears to sit (on the bench) as appellant processes the next inmate (12:07). The other female inmate returns to cell 39, where A.P. remains seated (12:08).

A.P. again stands in the doorway of cell 39 while appellant processes an inmate at the workstation (12:09:35), and A.P. begins moving around and gesturing with her hands (12:13:06). As A.P. becomes slightly more demonstrative, appellant and CO Smith observe her before temporarily going into an adjacent "sergeant's" area, out of view (12:22:15). Appellant re-enters (from a different vantage point) and approaches cell 39 (12:23), opens the door, and escorts A.P. into cell 38, assisted by CO Smith, who re-enters the video frame on the left side (12:23:21). Appellant and CO Smith enter the cell behind A.P. and, when they exit, appellant returns to her workstation across from cell 38. Minutes later, while appellant remained seated at her workstation, Officer Stiano enters the admissions area and goes to the doorway of cell 38 (12:25:45), where he stands for more than a minute before closing the door and leaving the area (12:27:07).

A short while later, appellant and CO Smith converse with one another, and then converse with CO Straub (12:34:30), before CO Smith enters cell 38, followed by appellant (12:36:45). They exit within minutes and, as they continue to converse, appellant temporarily sits at her workstation (12:39:05) before checking on another inmate in cell 37.

Appellant then escorts an inmate from cell 37 to her workstation (12:41:05). After speaking with him, she returns the inmate to cell 37 and stands at its open door (12:46:19). She looks into cell 37 and, as its door closes, she turns around, faces

toward cell 38, and gestures with her left hand toward cell 38 (12:46:37), with CO Smith alongside her. She walks past cell 38 (on her left) with her head turned toward it, and then makes a u-turn past her workstation and walks in the opposite direction, glancing to her right toward the front of cell 38 (12:46:45). At that time, both she and CO Smith exit the area. Appellant then returns and sits at her workstation again (12:47), and continues to do paperwork.

CO Smith, holding blue gloves, re-enters the area, and another male officer who appears to be Stiano enters the area at about that time (12:59:07). The four officers, including appellant, who takes a stretch, have a brief discussion before Smith glances into cell 38 and appellant leaves the area (12:59:16 to 12:59:47). There appears to have been no communication between appellant and A.P. after A.P. was transferred to cell 38, while appellant was outside the cell.

At that point, it appears that Straub, who is seated at the desk, speaks with officer Stiano. A third male officer, believed to be Sergeant Antrilli, enters the area and joins the other two at the workstation, where the three of them have a discussion (1:04:32).

Approximately five minutes after leaving, appellant re-enters the admissions area (1:05:37), puts on blue gloves, looks into cell 38 and then enters the cell (1:06:20). Within a minute, CO Smith follows appellant into the cell (1:06:47), before both officers escort A.P. out of the cell and away from the area (1:06:28). Approximately fifteen minutes later, appellant returns to her workstation (1:21:30).

The video from a surveillance camera just above the front of the cell 38 (R-9, "CELL #38 1223 HRS") first shows A.P. emerging from the adjacent cell (cell 39), with appellant following behind her. Appellant escorts her (on the right side) into cell 38, joined by CO Smith, who approaches on the left, apparently from the area of the workstation, directly opposite cell 38 (12:23). Once A.P. is inside, she assumes a position with both hands against the wall, as appellant appears to produce handcuffs (12:23:35). A.P. then turns around and sits on the bench alongside the wall, and appellant bends forward toward A.P., for about ten seconds, before the officers exit, the

cell door closes and both officers walk out of view (12:24). Through the glass portion of the cellblock, A.P. is seen seated on the floor with at least one of her hands cuffed to a bench. Shortly thereafter, Stiano opens the door and speaks with her from the doorway, as she remains seated on the floor; he then closes the door and walks away (12:25:47 to 12:27). A.P. remains seated and begins to shake her arms, the handcuffs occasionally glimmering through the glass (12:28-31; 12:32:07 to 12:36). Her feet are still. Smith approaches the door, signals (for another officer) and enters the cell with appellant following suit (12:36:32). They stand in front of A.P. and apparently speak with her before exiting, closing the door, speaking to each other, and walking out of view (12:39.) A.P. is then seen sitting still with her back against a partial wall adjacent to the bench, until she eventually stands and bends forward almost ninety degrees toward the bench (12:46:30).

A.P. then removes her pants and begins to squat on the bench (12:46:37). At this time, appellant, who was in front of the adjacent cell 37, turns toward cell 38 and proceeds to walk past cell 38, on her left, with her head turned toward the front glass portion of the cell (12:46:37). And appellant appears to make a slight gesture with her left hand, in which she held some papers, as she passes the front of the cell (12:46:39). A.P. can next be seen wiping herself and the floor with toilet paper and tossing it toward the cell door, before then pulling up her pants and sitting on the bench (12:48:20). At this time, the cell glass bears a reflection of what appears to be an officer sitting at the workstation across from cell 38. Once A.P. is seated on the bench, male officers transport inmates to and from the adjacent cell 37. A.P. relocates to sit on the floor (12:57) and, minutes later, CO Smith, who has blue gloves, looks into cell 38 through the door, turns around, and walks out of view (12:59:39). At least five minutes later, appellant approaches, puts on blue gloves, and then enters cell 38, followed by Smith, and they eventually escort A.P. from the cell, appellant holding her right arm (1:07:25). Toilet paper and smear marks can be seen on the floor just inside the cell. As they exit, a male officer hands gloves to CO Smith, before they disappear from view.

A third view (R-9, "ADM 10106 HRS") shows A.P. being escorted by appellant and CO Smith en route to the shower area (1:07:05). Appellant is later seen reentering that area (1:20:14)

A fourth view (R-9, "ID STA 0113 HRS") shows A.P. being escorted by appellant, a male officer, and CO Smith, presumably from the shower area (1:13:20).

Summary

Judicial rules of evidence generally do not apply to administrative-agency proceedings, N.J.R.E. 101(a)(3), and under the residuum rule, hearsay is admissible to corroborate or support competent evidence. N.J.A.C. 1:1-15.5(b). Under this rule, hearsay "may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it." Weston v. State, 60 N.J. 36, 51 (1972). Thus, the ultimate finding must be supported by a residuum of competent evidence.¹⁵

Here, the interview statements of Tia Smith (R-10, R-12) and Joseph Antrilli (R-15), the summary of their statements and those of A.P. contained in Coleman's Internal Affairs report (R-5), A.P.'s "Request Slip" (R-6), Coleman's description of the video contained therein, and Foschini's testimony repeating any such statements are all hearsay, as none of those persons testified. While admissible under the residuum rule, no weight is given to any such hearsay statements not corroborative of the events depicted on video, which is authentic and competent evidence, as specifically described above. Although appellant did not testify, her statements are not excluded as hearsay,

¹⁵ The provisions of N.J.A.C. 1:1-15.5, otherwise known as the Residuum Rule, state, in pertinent part:

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

as they are statements of a party-opponent under N.J.R.E. 803(b)(1), and they bear sufficient indicia of reliability to be assessed and given the appropriate weight in light of all the evidence.

Further, making factual findings requires a weighing of the credibility of the witnesses, *i.e.*, “an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it ‘hangs together’ with other evidence.” Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). “The 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.) (citation omitted), certif. denied, 10 N.J. 316 (1952). 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). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954).

Foschini did not witness and has no firsthand knowledge of the incident. The basis for his testimony was reviewing the video, interviewing appellant, being present for the interview of CO Smith and Sergeant Antrilli, and reviewing the audio of the initial interview of CO Smith. His appearance and demeanor were forthright and, despite a clear suggestion of bias—as when he referred to appellant as “ignorant”—he gave a credible account of background events; the video’s scene, cast and chronology; and his familiarity with CCCF’s policies and procedures.

Taylor also did not witness and has no firsthand knowledge of the incident. The basis for her testimony was reviewing the Supervisor’s Staff Complaint Report by investigator Joseph Coleman, as well as the video and information provided by Foschini. Based upon her thorough familiarity with CCCF’s policies and procedures, and her role in the disciplinary process, she also helped to prepare the PNDAs and FNDA. By her appearance and demeanor, and the manner of her testimony, she presented as a knowledgeable, candid and credible witness.

Based upon the testimony and exhibits, as well as the opportunity to observe the appearance and demeanor of the witnesses, I further **FIND AS FACT**:

1. While detained in cell 39, A.P. began to move around and gesture with her hands, gradually becoming more demonstrative as appellant worked in close proximity, but she did not appear to pose a threat to the safety of herself or the other female inmate in the cell.
2. At 12:23, appellant removed A.P., who was compliant, and transferred her to cell 38, with the assistance of CO Smith.
3. Appellant immediately handcuffed A.P.'s one hand to the "O ring" on the bench in cell 38, without disruptive behavior or any apparent threat posed on the part of A.P., or any prior supervisory approval. Shackles were not applied.
4. Appellant stated that she had handcuffed A.P. as a "scare tactic" to calm her down and, in any event, she used that restraint without regard to standard policy, which disallows the use of restraints in the manner employed by appellant.
5. Appellant left A.P. handcuffed unnecessarily, for a prolonged period of time, and did so without constantly monitoring her.
6. A.P. told appellant of the need to relieve herself, at the very least, between 12:23, when she was placed in cell 38, and 12:37, when appellant and CO Smith entered the cell again, as there was no obvious communication when appellant was outside the cell.
7. For no apparent reason, appellant deliberately ignored A.P.'s request to use the bathroom. Appellant had, however, admittedly become irritated by A.P.

8. When A.P. removed her pants and began to relieve herself inside cell 38, appellant was not outside of the admissions unit, but rather standing by cell 37 and then walking past cell 38, while looking and gesturing toward cell 38.

9. At approximately 12:46, appellant observed A.P. remove her pants, squat alongside the bench and begin to defecate on the floor of cell 38.

10. A.P. had requested to use the bathroom at least ten to twenty-three minutes before defecating on the floor of cell 38.

11. For approximately twenty minutes, appellant ignored A.P.'s condition after she had defecated on the floor in cell 38, while appellant continued to work in and around her workstation opposite that cell and then took a five-minute cigarette break.

12. Appellant's conduct displayed a callous indifference toward the basic needs of an inmate in her custody and care.

13. A.P. did refuse being strip-searched in the shower area and appellant, with the aid of CO Smith, placed her on the floor to remove her clothing for that purpose. Appellant held A.P.'s arm and removed her top, while CO Smith removed her pants.

14. Appellant denied striking and kicking A.P. in the shower and there is no competent proof to the contrary.

15. Appellant did not provide an incident report or use-of-force report before the end of her shift that began on October 30, 2013.

16. Appellant's conduct with regard to the incident on October 30, 2013, without regard to the discipline of other employees, reflects poorly upon the agency and would tend to undermine public confidence in it.

17. Appellant failed to comply with rules, policies and orders of CCCF, including those relative to security, use of restraints, and personal and professional conduct.

18. Appellant was deceptive and made misstatements during the investigation of this matter, including but not limited to those regarding: (1) the amount of time that had elapsed when A.P. was handcuffed, requested use of the bathroom, relieved herself, and was taken to the shower, relative to appellant's actions; (2) whether appellant observed A.P. remove her pants; (3) whether appellant was in the admissions unit when A.P. defecated on the cell floor; and (4) whether appellant had notified Sergeant Antrilli when she handcuffed A.P. to the bench.

LEGAL ANALYSIS AND CONCLUSION

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6, including conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)(6), neglect of duty, N.J.A.C. 4A:2-2.3(a)(7), and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). On appeal from the imposition of such discipline, the appointing authority has the burden of proving justification for the action, N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a), and the employee's guilt by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Preponderance may be described as the greater weight of the credible evidence. State v. Lewis, 67 N.J. 47 (1975).

"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 for government employees and confidence in the operation of governmental services. Karins v. City of Atl. 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)). Thus, unbecoming conduct may include behavior that is improper under the circumstances; it may be less serious than a violation of the law, but it is inappropriate on the part of a public employee.

“Neglect of duty” has been interpreted to mean that “an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge.” In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term “neglect” means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” means conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

The general causes for discipline set forth in N.J.A.C. 4A:2-2.3(a) include the present offense of other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). In this matter, the specific charges include violations of CCCF Rules of Conduct: 1.1 Violations in General, 1.2 Conduct Unbecoming, 1.3 Neglect of Duty, 3.2 Security, 3.6 Departmental Reports, 3.8 Use of Force (Non-lethal); Camden County Dept. of Corrections Policies: General Order (G/O) 13 Use of Force, G/O 73 Personal Conduct of Employees, G/O 74 Professional Code of Conduct, and Internal Affairs Order #001.

Here, after transferring A.P. to cell 38, appellant immediately handcuffed her while she was being compliant, and left her handcuffed unnecessarily despite her request to use the restroom. Appellant then ignored her request for at least ten to twenty-three minutes, telling her to wait, causing A.P. to then defecate on the cell floor.

Further, appellant observed A.P. remove her pants and relieve herself while handcuffed to the bench, and she callously further ignored her condition for approximately another twenty minutes.

Indeed, her attitude toward and treatment of A.P., and her disregard for policy, are reflected in her own statements. As to a policy for handcuffing an inmate who is deemed disruptive to the bench, "I don't know if it's in the book but that's what we use . . . regardless of if there is a standard policy." In response to A.P.'s request to use the restroom, appellant told her, "You can wait." As to why A.P. had to wait to use the bathroom, regardless of how badly she needed to relieve herself, "She would have eventually gone. . . . It's not that I didn't think she had to go to the bathroom. But for one, I'm not your second servant." (T16:702.) "Because I don't jump as soon as somebody says something." (T29:1298 to 30:1301.) And during the investigation, notwithstanding the passage of time, she misrepresented numerous events relative to the incident, as is evident from a careful review of the video alone.

Appellant undoubtedly neglected her duty to adequately safeguard the welfare of an inmate in her care. She clearly deviated from the normal standard of conduct, as set forth in the pertinent policies and procedures. Further, her conduct was unbecoming. She did not uphold 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, supra, 258 N.J. Super. at 40 (citation omitted). A correction officer is expected to exercise a high degree of self-restraint and controlled behavior when exercising his or her duties involving the custody and care of an inmate population. To the contrary, appellant's actions and omissions offended "publicly accepted standards of decency." Karins, supra, 152 N.J. at 555 (citation omitted), and certainly would tend to undermine public confidence in the CCCF's handling of its inmates.

Additionally, she committed numerous violations of CCCF's rules and orders. Conduct unbecoming (Rule 1.2) is evident, as appellant's behavior would tend to discredit CCCF and undermine public confidence in it, because her job involves the professional custody and care of inmates presumed innocent. Neglect of duty (Rule 1.3) occurred by appellant's improper use of restraints, which is proscribed by General

Order 036, by immediately and unprofessionally cuffing a compliant inmate to the bench while disallowing use of the restroom, and providing neither constant monitoring nor submission of a report to the supervisor before the end of her shift. And the same conduct, including failure to properly apply a restraint device, constituted a security violation (Rule 3.2). Appellant violated Internal Affairs Order #001 (R-18) by being deceitful to Internal Affairs," specifically, telling a story that was inconsistent with the events depicted on the video, and not being forthcoming with the information she had.¹⁶ She violated General Order #73, Personal Conduct of Employees (R-21) because (1) she did not conduct herself in a manner that would not discredit CCCF, (2) her behavior displayed a callous indifference toward the inmate's welfare, and (3) she did not make full disclosure of the incident. She violated General Order #74, Professional Code of Conduct (R-22) by (1) failing to comport herself in a professional and ethical manner and to execute her duties with integrity, fairness and impartiality, and (2) by using derogatory language or actions to embarrass, humiliate, or shame an inmate.¹⁷

I therefore **CONCLUDE** that respondent has met its burden of proof, by a preponderance of credible evidence, to sustain the charges of neglect of duty, conduct unbecoming, and other sufficient cause, namely, the above violations of CCCF's rules and policies, except for Rule 3.8 and G/O 13, regarding use of force (non-lethal), as there was no competent proof of the underlying allegation that appellant assaulted A.P. in the shower.

¹⁶ As Taylor noted, appellant's version described the total time of handcuffing as minimal, when it actually was more than forty minutes. Also, she stated that A.P. was noncompliant, when she was in fact compliant while walking into cell 38. And an amount of time had elapsed before appellant when on break, rather than—as she stated—her taking a break immediately after A.P. requested use of the bathroom.

¹⁷ The examples previously noted apply: disallowing the inmate's use of the bathroom upon request;¹⁷ handcuffing her—against policy and procedure—and instructing a fellow officer not to remove the handcuffs; keeping A.P. handcuffed for a prolonged time after her request to use the bathroom; and not charging her with the alleged disruptive behavior. All were in violation of General Order #73 and General Order #74.

Penalty

Generally, consideration must be given to the concept of progressive discipline, involving penalties of increasing severity. West New York v. Bock, 38 N.J. 500 (1962). However, progressive discipline is not a “fixed and immutable rule to be followed without question.” Carter v. Bordentown, 191 N.J. 474, 484 (2007). It is well established that when the misconduct is severe, when it is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest, progressive discipline need not apply. In re Herrmann, 192 N.J. 19, 28 (2007); In re Stallworth, 208 N.J. 182 (2011). It has been held that termination without progressive discipline is appropriate in circumstances where an employee cannot competently perform the work required of the position. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305, 317 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007).

Appellant argues that she has no disciplinary history but for one minor reprimand. On January 3, 2014, she received a written reprimand for a violation of CCCF’s sick-leave policy, specifically, failure to submit a doctor’s note to excuse her absence from work. (R-23.) Respondent asserts that appellant’s conduct was “inhumane” and so egregious that she poses a clear threat to the safety and security of both inmates and staff, and thus must be removed from employment.

When taking into account the nature and circumstance of the incident and the related violations; appellant’s lack of prior record, but for a minor reprimand; the potential adverse impact on the agency, including its inmate population and staff; appellant’s attitude, based upon the record; and the potential for such behavior to recur, it is inescapable that appellant’s continued employment at the CCCF, which must operate with the discipline and precision required of a paramilitary organization, would be detrimental to the institution and it would be contrary to the public interest.

Accordingly, I **CONCLUDE** that respondent’s imposition of removal is the appropriate penalty in this matter.

DECISION AND ORDER

Respondent has proven by a preponderance of the credible evidence the charges of conduct unbecoming an employee, neglect of duty, and other sufficient cause, namely, violations of CCCF's rules and orders: Conduct unbecoming (Rule 1.2), Neglect of duty (Rule 1.3), Security (Rule 3.2), Departmental reports (Rule 3.8), Internal Affairs Order #001, Personal Conduct of Employees (Gen. Order #73), and Professional Code of Conduct (Gen. Order #74).

Therefore, it is hereby **ORDERED** that the charges, as set forth in the above paragraph, are **SUSTAINED**, and in light of the seriousness of these infractions, and for the reasons set forth above, respondent shall be **REMOVED** from employment as a correction officer at the CCCF.

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. 40A:14-204.

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.

June 22, 2015
DATE



ROBERT BINGHAM II, ALJ

Date Received at Agency:

6/22/15

Date Mailed to Parties:

6/22/15

/lam

APPENDIX

EXHIBITS

Joint:

- J-1a Preliminary Notice of Disciplinary Action (31A), dated February 7, 2014
- J-1b Preliminary Notice of Disciplinary Action (31A), dated November 21, 2014
- J-2a Final Notice of Disciplinary Action (31B), dated February 4, 2015
- J-2b Final Notice of Disciplinary Action (31C), dated February 4, 2015

For Appellant:

None

For Respondent:

- R-5 Internal Affairs Report
- R-6 Inmate Request Slip authored by Inmate A.P.
- R-7 General Incident Report authored by C/O Lisa Corley, dated October 13, 2013
- R-8 Use of Force Report authored by C/O Lisa Corley, dated October 31, 2013
- R-9 Video
- R-10 Internal Affairs Interview of C/O Tia Smith, dated November 15, 2013
- R-11 Memorandum placing C/O Lisa Corley on No Inmate Contact by Lieutenant Christopher Foschini, dated November 15, 2013
- R-12 Internal Affairs Interview of C/O Tia Smith, dated October 29, 2014
- R-13 Internal Affairs Interview of C/O Lisa Corley, dated November 3, 2014
- R-14 Supervisor's Staff Complaint Report by investigator Joseph Coleman, dated Novembers 6, 2014
- R-15 Internal Affairs Interview of Sergeant Joseph Antrilli, dated November 10, 2014
- R-16 Rebuttal authored by C/O Lisa Corley, dated November 12, 2014
- R-17 Camden County Department of Corrections Rules of Conduct
- R-18 Camden County Department of Corrections Internal Affairs Order #001

- R-19 Camden County Department of Corrections General Order #013 Use of Force
- R-20 Camden County Department of Corrections General Order #036 Restraints
- R-21 Camden County Department of Corrections General Order #073 Personal Conduct of Employees
- R-22 Camden County Department of Corrections General Order #074 Professional Code of Conduct
- R-23 C/O Lisa Corley Chronology of Discipline

WITNESSES

For Appellant:

None

For Respondent:

Christopher Foschini
Karen Taylor