

B-38



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Ivette Arce,  
Department of Corrections

Request for Interlocutory Review

CSC Docket No. 2018-487

ISSUED: SEP - 6 2017 (HS)

The Department of Corrections, represented by Rimma Razhba, DAG, requests interlocutory review of the August 15, 2017 order of Administrative Law Judge Jeffrey R. Wilson (ALJ) in *Ivette Arce v. Department of Corrections*, CSC Docket No. 2017-3464, OAL Docket No. CSR 06166-17, pursuant to *N.J.A.C. 1:1-14.10(a)*.

In the attached letter dated August 24, 2017, the parties were informed that the appointing authority's request for interlocutory review was granted. The parties were also given the opportunity to submit additional arguments pursuant to *N.J.A.C. 1:1-14.10(d)*.

As background, the appellant, a former Senior Correction Officer, appealed her removal on charges. The appellant was served with a Final Notice of Disciplinary Action, removing her on charges of conduct unbecoming a public employee, other sufficient cause and violations of departmental policies and procedures, including the policy concerning improper or unauthorized contact with an inmate and undue familiarity with inmates, parolees and their families or friends. Specifically, the appointing authority asserted that the appellant was in an undue relationship with, and provided gifts to, K.H., an inmate, and G.T., K.H.'s mother. The case was transmitted to the Office of Administrative Law (OAL) for a hearing.

At the OAL, the appointing authority filed a motion for summary decision, arguing that the material facts of the case were not in dispute and it was entitled to

a favorable judgment as a matter of law. The appointing authority argued that law enforcement officers are held to a higher standard of conduct than other public employees and exceptions to progressive discipline have been made where the acts in question were egregious. The appointing authority contended that the appellant compromised her position and violated the policy prohibiting unduly familiar relationships between officers and inmates, which is crucial to maintaining the safety and security of the prison system. It maintained that the danger of improper or unauthorized contact between officers and inmates was well established. The appointing authority asserted that the appellant, despite being a long-term Senior Correction Officer who had all the requisite experience and training, chose to engage in personal relationships with K.H. and G.T. Specifically, it stated that the appellant admitted during her Special Investigations Division (SID) interview that she visited G.T.'s residence three or four times for the purpose of speaking with K.H. on the telephone and was the female in the recorded telephone calls with K.H.; that she led K.H. to believe that there was a relationship between them and told him over the telephone that she loved and missed him; that she discussed with K.H. the possibility of utilizing a cell phone for future communications with him rather than driving to G.T.'s residence; that she would frequently leave her assigned post at work to visit K.H. at his job assignment; that she purchased a greeting card and gave it to K.H.; that she had a personal relationship with, and bought a gift for, G.T.; and that she knew it was wrong to maintain the relationships with K.H. and G.T. The appointing authority also stated that cellular phone data revealed that the appellant contacted G.T. 54 times via text message or phone call and that the appellant did not request or receive permission of any kind to contact or correspond with either K.H. or G.T. In addition, the appointing authority contended that there were no issues of disputed fact as to the appropriateness of the penalty of removal in that the appellant knowingly created a major security risk by becoming unduly familiar with K.H. and G.T. Specifically, it argued that the appellant's misconduct endangered the safety of inmates, including K.H., her fellow officers and the public and caused her to forfeit the appointing authority's trust that she would present an image of authority to the inmate population. It further argued that her actions had the potential to destroy public confidence in her fellow officers and the appointing authority. As such, the appointing authority maintained that the appellant's severe and egregious conduct warranted her removal.

In response, the appellant argued that there were issues of material fact in dispute. Although she did not dispute the specific allegations, she argued that the exact nature of the alleged relationship was not clear. The appellant argued that, contrary to the appointing authority's allegations, she did not admit that she and K.H. were in love and expressed as much to each other. Further, she contended that there was no evidence that they ever engaged in any physical or sexual activity. The appellant maintained that it was critical that an accurate portrayal of the alleged relationship be developed and that she could not be penalized based on allegations of some undetermined amorphous conduct. She argued that most of the

evidence presented was hearsay and double hearsay and she was entitled to testify on her own behalf and cross-examine the witnesses against her. In addition, the appellant argued that removal was not an appropriate penalty and that a hearing was necessary to determine the appropriate penalty. She asserted that even if the accusations against her are correct, removal was inappropriate as her record was not blemished by any similar offenses and progressive discipline should have been followed. The appellant maintained that a penalty as severe as removal should not be imposed pursuant to a motion for summary decision without the benefit of an evidentiary hearing.

In reply, the appointing authority argued that even assuming that it was disputed whether the appellant had a sexual or romantic relationship with K.H., this was not a material fact in dispute. It noted that its policy expressly prohibited any and all personal relationships with inmates, unless they are family members, and provided that staff could not contact or correspond with an inmate or an inmate's family without written permission. The appointing authority maintained that whether or not the appellant actually engaged or intended to engage in a sexual or dating relationship with K.H. is inconsequential. Rather, it contended that the material issue is whether the appellant engaged in any form of a personal relationship with K.H. and G.T., which she undoubtedly did. In addition, the appointing authority maintained that removal was warranted, arguing that courts have upheld removal of Correction Officers for far less egregious conduct.

In the attached order, the ALJ denied the motion for summary decision, determining that issues of material facts exist and the record should be fully developed at an evidentiary hearing.

In the instant request for interlocutory review, the appointing authority argues that the ALJ's order did not identify any specific material facts in dispute that required denial of its motion for summary decision. The appointing authority contends that, at best, the appellant disputes that she had a sexual or dating relationship with K.H. It argues that even if this fact is viewed in the light most favorable to the appellant, it is still entitled to summary decision because a romantic, sexual or dating relationship is not required to establish a violation of its policy prohibiting undue familiarity. The appointing authority asserts that the nature of the relationship is not relevant as it is undisputed that any relationship with an inmate outside the course of normal duties is prohibited and any type of unreported, personal relationship between an officer and an inmate or inmate's family constitutes undue familiarity. It also argues that the ALJ's order did not identify numerous additional undisputed facts. The appointing authority reiterates the arguments from its summary decision motion.

In response, the appellant, represented by Michael L. Testa, Esq., maintains that the ALJ correctly denied the motion for summary decision because there are

issues of material fact and reiterates arguments from her response to the summary decision motion.

### CONCLUSION

Upon a review of the record, the Civil Service Commission (Commission) finds that the appointing authority's request for interlocutory review should be granted, and the order of the ALJ should be reversed. *See e.g., In the Matter of Sabrina Cheng, Catastrophic Illness in Children Relief Fund* (CSC, decided June 9, 2010) (Commission granted interlocutory review and reversed the ALJ's denial of the appointing authority's motion for summary decision in a good faith layoff appeal).

*N.J.A.C. 1:1-12.5(b)* provides that a motion for summary decision may be granted:

if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.

*See also, Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995).*

In the instant matter, the appellant has not demonstrated that there is a genuine issue as to any **material** fact. The record indicates that the appellant *admitted* during her SID interview that she visited G.T.'s residence three or four times for the purpose of speaking with K.H. on the telephone and was the female in the recorded telephone calls with K.H.; that she led K.H. to believe that there was a relationship between them; that she discussed with K.H. the possibility of utilizing a cell phone for future communications with him rather than driving to G.T.'s residence; that she would frequently leave her assigned post at work to visit K.H. at his job assignment; that she purchased a greeting card and gave it to K.H.; that she had a personal relationship with, and bought a gift for, G.T.; and that she knew it was wrong to maintain the relationships with K.H. and G.T. Moreover, on appeal, she does not dispute these admissions. Although the ALJ's order indicates, and the appellant argues, that it was not clear if the relationship between the appellant and K.H. was of a dating, physical or sexual nature, this is not an issue as to a *material* fact. In this regard, the record reflects that the appellant was not charged with having a dating, physical or sexual relationship with K.H. Moreover, a dating, physical or sexual relationship is not required to support a charge of undue

familiarity. See e.g., *In the Matter of Dawn Linthicum* (CSC, decided February 6, 2013) (Commission upheld removal of Senior Correction Officer who gave gifts of *de minimis* value to an inmate's toddler daughter who came to visit). As such, the above-noted admissions of the appellant are sufficient to support the charges, including that she had improper or unauthorized contact with an inmate and was unduly familiar with an inmate and his family. Furthermore, it is noted that the penalty in a disciplinary matter is reviewed by the Commission *de novo*. A penalty of removal for the misconduct at issue here is appropriate where the underlying nature of the relationship is surreptitious, compromising or illicit, even where the employee does not possess a prior disciplinary record. See e.g., *In the Matter of Artella Richardson* (MSB, decided March 23, 2005) (former Merit System Board upheld removal of Assistant Supervisor of Recreation who delivered items directly to an inmate without the knowledge of prison officials and engaged in almost daily conversations with the inmate that disclosed extremely personal information). Accordingly, based on the egregiousness of the appellant's misconduct, her removal was warranted.

Therefore, it is appropriate to grant interlocutory review and reverse the ALJ's order denying the appointing authority's request for summary decision. In doing so, the Commission grants the appointing authority's request for summary decision and finds that its action in removing the appellant was justified. As such, the appeal regarding the removal is hereby denied, and this constitutes the final administrative action in this matter.

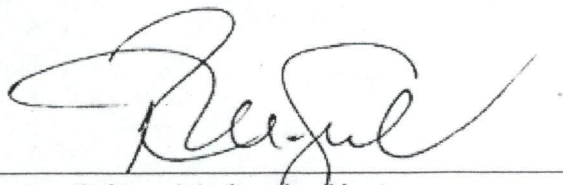
### ORDER

Therefore, the appointing authority's request for interlocutory review is granted and the ALJ's August 15, 2017 order is reversed.

It is further ordered that the appeal regarding the removal is denied.

This is the final administrative determination in this matter. Any further review should be in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>TH</sup> DAY OF SEPTEMBER, 2017



Robert M. Czech, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachments

- c: Rimma Razhba, DAG  
Michael L. Testa, Esq.  
ALJ Jeffrey R. Wilson  
Clerk, OAL Trenton  
Beth Wood



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER ON MOTION FOR**  
**SUMMARY DECISION**

OAL DKT. NO. CSR 06166-17

AGENCY DKT. NO. N/A

**IN THE MATTER OF IVETTE ARCE,  
SOUTH WOODS STATE PRISON.**

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**Michael L. Testa, Esq.**, for appellant, Ivette Arce (Testa Heck Testa & White,  
PA, attorneys)

**Rimma Razhba**, Deputy Attorney General, for respondent, South Woods State  
Prison (Christopher Porrino, Attorney General of New Jersey, attorney)

BEFORE **JEFFREY R. WILSON**, ALJ:

**STATEMENT OF THE CASE**

Appellant, Ivette Arce, a Senior Corrections Officer, appeals her removal effective May 1, 2017, for conduct unbecoming a public employee. The respondent, South Woods State Prison (SWSP), alleges that Arce had an undue relationship with an inmate and the inmate's mother.

### PROCEDURAL HISTORY

The appellant filed a timely appeal of the removal and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL, where it was filed on May 1, 2017, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. The respondent filed a motion for summary decision on June 23, 2017. (R-1.) The appellant filed her response on July 13, 2017. (A-1.) The respondent filed a rebuttal, letter brief on July 24, 2017. (R-2.)

### FACTUAL DISCUSSION AND FINDINGS

The following facts of this case are not in dispute; therefore, I **FIND** as **FACT**:

1. The appellant was employed as a Senior Corrections Officer at SWSP during all relevant times.
2. On October 29, 2016, the Special Investigations Division of the Department of Corrections (SID) received information from a confidential witness regarding possible undue familiarity between the appellant and SWP inmate K.H.
3. Based upon the forgoing, the SID began an investigation into the appellant's relationship with the Inmate, K.W., and his mother, G.T.
4. The investigation resulted in the appellant being charged with the following violations:
  - N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming a public employee
  - N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause
    - **HRB 84-17 as amended. C. Personal conduct:**
      11. Conduct unbecoming an employee;
    - **HRB 84-17 as amended. D. Safety and Security Precautions:**
      4. Improper and unauthorized contact



with inmate – undue familiarity with inmates, parolees, their families or friends;

- o **HRB 84-17 as amended. D.** Safety and Security Precautions: 7. Violation of administrative procedure and/or regulation involving safety and security;
- o **HRB 84-17 as amended. E.** General: 1. Violation of a rule, regulation, policy, procedure, order or administrative decision

### LEGAL ANALYSIS AND CONCLUSIONS

N.J.A.C. 1:1-12.5(b) provides that a motion for summary decision may be granted if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. See also Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). The opposing party must submit responding affidavits showing that there is indeed a genuine issue of material fact, which can only be determined in an evidentiary proceeding, and that the moving party is not entitled to summary decision as a matter of law. Failure to do so, entitled the moving party to summary judgment. Id. at 520. Moreover, even if the non-moving party comes forward with some evidence, the courts must grant summary judgment if the evidence is “so one-sided that [moving party] must prevail as a matter of law.” Id. at 536. If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). However, “the court must grant all the favorable inferences to the non-movant.” Brill, supra, 142 N.J. at 536.

Here, the respondent alleges that the appellant was unduly familiar with an inmate and his mother. The exact nature of the relationship is not clear to this tribunal. The respondent infers that the relationship was of a dating/sexual nature. The appellant argues that there is no evidence of any physical or sexual activity. It is critical that an accurate portrayal of the alleged relationship be fully developed.

argues that there is no evidence of any physical or sexual activity. It is critical that an accurate portrayal of the alleged relationship be fully developed.

I **CONCLUDE** that under the Brill standards, this matter is not appropriate for summary disposition. The appellant raised some "colorable inferences" or contested facts regarding the nature of her alleged relationship with an inmate and his family and the underlying facts surrounding the same. The issues presented by the appellant in her opposition papers are sufficient to raise disputed facts in the record.

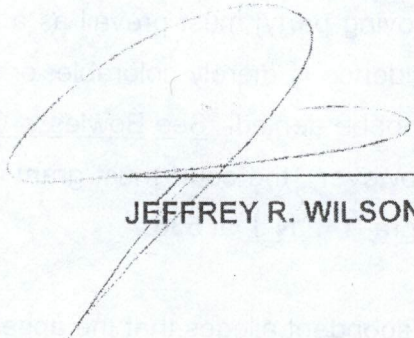
Accordingly, I **CONCLUDE** that because material facts remain in dispute, this matter is not ripe for a determination on a motion for summary decision. Accordingly, I **CONCLUDE** that the respondent's motion should be denied.

**ORDER**

It is hereby **ORDERED** that respondent's motion for summary decision is **DENIED**. A peremptory hearing shall be heard in the Office of Administrative Law, 1601 Atlantic Avenue, Atlantic City, New Jersey 08401, on August 21, 2017, at 9:30 a.m.

This order may be reviewed by the **CIVIL SERVICE COMMISSION** either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

8-15-17  
DATE

  
\_\_\_\_\_  
JEFFREY R. WILSON, ALJ

JRW/dm

WITNESSES

For Appellant:

None

For Respondent:

None

EXHIBITS

For Appellant:

A-1 Appellant's submission in opposition to respondent's Motion for Summary Decision, filed July 13, 2017

For Respondent:

R-1 Respondent's Motion for Summary Decision, filed June 23, 2017

R-2 Respondent's rebuttal, letter brief, filed July 24, 2017



**State of New Jersey**  
**CIVIL SERVICE COMMISSION**  
PO Box 317  
TRENTON, NJ 08625-0317

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

ROBERT M. CZECH  
*Chair/ Chief Executive Officer*

August 24, 2017

Rimma Razhba, DAG  
Department of Law and Public Safety  
P.O. Box 112  
Trenton, New Jersey 08625-0112

Michael L. Testa, Esq.  
Testa Heck Testa & White, P.A.  
P.O. Box 749  
Vineland, New Jersey 08362-0749

**Re: Request for Interlocutory Review**  
**Ivette Arce v. Department of Corrections**  
**CSC Docket No. 2017-3464; OAL Docket No. CSR 06166-17**

Dear Ms. Razhba and Mr. Testa:

Please be advised that the Department of Corrections' request for interlocutory review has been granted in the above matter. Although we have previously received submissions from the parties on this matter, either party may submit additional written arguments. Please submit any additional written arguments by close of business on August 29, 2017 to:

Hari Sundar  
Personnel and Labor Analyst  
Civil Service Commission  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312  
Fax: (609) 984-0442

Sincerely,

Robert M. Czech  
Chairperson

c: The Honorable Jeffrey R. Wilson  
Clerk, OAL Trenton