

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
THE 6TH DAY OF JUNE, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 15732-17

AGENCY DKT. NO. N/A

2018-1068

**IN THE MATTER OF TIA SMITH,
CAMDEN COUNTY DEPARTMENT
OF CORRECTIONS.**

Stuart Alterman, Esq. for appellant Tia Smith (Alterman and Associates, LLC, attorneys)

Antonietta Rinaldi, Esquire, Assistant County Counsel, for respondent, Camden County Department of Corrections (Christopher A. Orlando, County Counsel, attorney)

Record Closed: April 19, 2018

Decided: April 23, 2018

BEFORE DOROTHY INCARVITO-GARRABRANT, ALJ:

STATEMENT OF THE CASE

Appellant, Tia Smith, a County Correction Officer at the Camden County Correctional Facility (CCCF), operated by the Camden County Department of Corrections, (respondent or CCDOC), appeals from the determination of respondent that she be terminated, pursuant to a first Final Notice of Disciplinary Action (FNDA), dated October 3, 2017, for violations of N.J.A.C.4A:2-2.3(a)(1) Incompetency, Inefficiency,

Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically violations of C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Unbecoming Conduct; 1.3 Neglect of duty; 1.4 Insubordination; 2.1 Abuse of Sick Leave; 2.4 Reporting Off Sick; 2.12 Fictitious Illness or Injury Reports; Internal Affairs Order #001; General Order #28, General Order #73; General Order #74. (R-9.)

The appellant denies the allegations that she falsified information or lied during an internal investigation, that she lied to her supervisor, that she faked an illness to extend her vacation, and that she failed to notify respondent that she was leaving her place of sick confinement.

PROCEDURAL HISTORY

On March 28, 2017, respondent issued a first Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications against appellant. (R-9.) Following a departmental hearing on July 18, 2017, the respondent issued a Final Notice of Disciplinary Action on October 3, 2017, sustaining the charges brought in the preliminary notices and terminating appellant from employment. (R-9.) Appellant filed a timely notice of appeal. The matter was transmitted to the Office of Administrative Law on August 26, 2016, for hearing as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The hearing in this matter was held on March 27, 2018, and March 28, 2018. The parties filed post-hearing briefs and the record closed on April 19, 2018.

FACTUAL DISCUSSION

Testimony

For Respondent

Joseph Coleman (Coleman), Sergeant, is an Internal Affairs (IA) Investigator. He has been employed by respondent for twenty-one years and has been an investigator for twelve years. On February 14, 2017, he was referred appellant's matter to conduct an IA

investigation about her absence from her shifts, which involved a vacation in Las Vegas and an alleged sick call out of work.

As part of his investigation, Coleman reviewed the Absentee Log, Sick Visitation Report, and the Unusual Incident Report. (R-2-R-4.) During his employment as an investigator, his job duties included conducting investigations, interviewing witnesses, reviewing documents and evidence, and writing reports.

Coleman conducted two IA interviews of the appellant. The first was conducted on February 17, 2017. (R-5a.) This was four days after appellant returned from a vacation to Las Vegas, and three days after, she called out sick after her vacation. The second was on February 28, 2017, after appellant had presented an itinerary of her trip to Coleman. (R-7.)

Coleman testified that appellant told him that she went on a four-day Las Vegas trip with her girlfriends for her birthday between Thursday, February 9, 2017, and February 13, 2017. Appellant explained that she found out about the trip a few days before she left, since it was a surprise present.

Coleman stated that appellant knew she had to work on Monday morning, February 13, 2017, the return date for the trip. Appellant did not put in a slip to request off on February 13, 2017, which Coleman noted. The itinerary which appellant subsequently produced after the interview, in response to Coleman's request, indicated that appellant was scheduled to fly to Las Vegas on February 11, 2017 at 7:00 a.m. and return from Las Vegas to Newark on February 13, 2017 at 4:35 p.m.

Coleman testified that appellant stated she attempted to change her flight to return earlier before she left. Appellant indicated that the cost of a ticket was not an issue. However, appellant never changed her flight or bought a different ticket to return earlier. Also, appellant called Vegas.com, the travel company through which the reservation was placed, before she left on Friday, February 11, 2017. Vegas.com advised that the entire trip would have to be cancelled and that there would be a \$200 per person cancellation fee. As a result, she did not change her flight.

Appellant went to Las Vegas. Subsequently, on Sunday, February 12, 2017, appellant and her friends went on an ATV excursion in the desert. Appellant alleged she became sick after the excursion.

Coleman testified that appellant made the following statements during her first interview:

1. She left for Las Vegas on Thursday;
2. She did not book her trip because it was a gift from her friends;
3. She found out about the trip a couple days before she left and this was when she first knew the dates for departure and return;
4. She was going to catch an earlier return flight. She had called Vegas.com to change her flight before she left, but the cancellation fees were \$200 per person and she decided not to cancel;
5. She went on an ATV excursion on Sunday, February 12, 2017, after which in the afternoon she became ill;
6. She called out of work sick for her Monday, February 13, 2017, morning shift, from Las Vegas on Sunday around noon because she was not feeling well;
7. She said she left at 4:00 a.m. for the airport in Las Vegas by herself. Her friends left at 6:00 a.m. for the airport;
8. She understood that she could not make it back for her Monday, February 13, 2017 shift (or tour of duty).; and
9. She stated she knew she had to get back for her Monday shift; however, when she became ill on Sunday, she said "forget it."

Coleman requested that appellant produce the following after the interview:

1. Airline Ticket Stubs for your Departure and Arrival;
2. Receipt for the purchase of your Airline Tickets;
3. Total cost for you Airline Tickets; and
4. Your Trip Itinerary that Includes Dates and Hotel Information. (R-5b.)

Coleman interviewed appellant again on February 28, 2017, after she produced her itinerary in response to his requests. He conducted this second interview because he believed the itinerary information contradicted her prior statements. The itinerary showed appellant had booked and paid for the trip on January 29, 2017, even though appellant said she only knew about the trip a few days before she left.

During this interview, appellant confirmed that the itinerary was correct and that she left on Friday, February 11, 2017, and not Thursday, February 10, 2017, as she stated previously. Also, the itinerary showed appellant was to return to Newark at 4:35 p.m. on Monday, February 13, 2017. Coleman stated that this raised a red flag for him because there was no way appellant could have made it back for her shift beginning at 6:45 a.m.

Coleman stated that appellant confirmed it was her Visa card that was used to book the trip. She told him that her card was used by her friends to do this because they did not have a credit card. This information was not provided to Coleman during the first interview.

Coleman testified that appellant made the following additional statements during her second interview:

1. She was on the phone with Cook at which time she provided Cook with her credit card number and Cook booked the trip;
2. She called Vegas.com to change the flight to return before Monday;
3. She called Spirit Airlines on Saturday, February 11, 2017 to change her flight;
4. She stated "I could have just paid, I guess not to go...I just know that before I left, I should have just tried to switch the day like you said last time or I could have tried to put in for that day."

Coleman testified about his conclusions. He stated he discussed this investigation with Deputy Warden Foschini who recommended that Coleman generate a Supervisor's

Staff Complaint. Coleman was not the final decision maker about the charges or the penalty.

Christopher Foschini (Foschini), Deputy Warden testified that he has been employed by the CCDOC for twenty-three years. He supervised the IA Division since 2005. His duties included being responsible for overseeing IA, policy and procedures, operations, and discipline at CCCF. He reviewed the investigation and materials in this matter. He approved the charges in this matter.

He spoke with Coleman prior to the first interview and between the two interviews. He also discussed the facts and findings with Warden Karen Taylor and Director Owens, who were the final decision makers. Foschini discussed appellant's prior discipline with them too.

Foschini stated that termination was recommended for appellant because she lied during the IA investigation and violated several policies. Foschini testified that appellant had changed her story about who booked and paid for the trip, lied about being sick on February 13, 2017, while in Las Vegas, had not obtained a plane ticket to return for her Monday shift, and failed to provide any proof that she had made any attempt to return earlier than planned. Appellant's prior discipline was taken into consideration.

Foschini testified about appellant's violations of pertinent policies and procedures. IA Order #001 requires that, "[e]mployees being questioned are obligated to answer all questions truthfully or he or she will be subject to disciplinary action up to an may include termination." Appellant was not truthful during her IA interview.

Appellant violated the following Rules of Conduct:

1. 1.2 Conduct Unbecoming: because she brought the department into disrepute by lying during her IA interview, calling out from her shift while in Las Vegas when she was not ill, and knowing that she was unable to attend work because she had not obtained a ticket to return in time for her shift.

2. 1.3 Neglect of Duty: when she lied to IA, called out sick from Las Vegas, and was untruthful about her whereabouts after her return from Las Vegas.
3. 1.4 Insubordination: when she failed to obey her supervisors' orders by lying to IA and to Lieutenant Earl O'Connor, Shift Commander, when she told him she was at her residence and she was not because she had just landed in Newark.
4. 2.1 Abuse of Sick Leave: when she when she advised that she was at her residence and she was not because she had just landed in Newark.
5. 2.4 Reporting Off Sick: when she feigned an illness in Las Vegas and called out sick because she could not return to New Jersey for her shift. (R-11.)

Foschini testified that appellant also violated General Order (GO) #28 Section 2, subparagraph F and subparagraph C relative to reporting sick, because appellant was not permitted to leave her place of confinement during her scheduled tour of duty except for the purpose of seeking medical attention. (R-12.) Appellant was to notify her Shift Commander that she left her place of confinement; the reason she was leaving her residence, the date, her name, the time and the purpose and estimated time of return. Appellant relayed untruthful information and did not report leaving her place of confinement and flying home.

Foschini further testified that appellant violated GO#073 Personal Conduct of Employee when she failed to come to work, failed to advise she was leaving her place of confinement, failed to comply with all department rules and regulations, and failed to cooperate and provide truthful and full disclosure in IA investigations after having been provided notice that she had to be truthful. (R-13.) Appellant violated GO #074 Professional Code of Conduct because she was unprofessional when she lied during her interview. (R-14.)

Foschini testified that appellant was required to bring in a doctor's note when she returned to work after having called out sick the day after vacation. Appellant failed to bring in such a doctor's note. As a result, the Shift Commander automatically brings

charges. That occurred here by way of written reprimand. (A-1.) That was separate from these charges.

Foschini recommended termination.

For Appellant

Cachet Cook (Cook) testified that she has been appellant's friend since they were twelve years old. She knew appellant was a Corrections Officer and knew that she had off on weekends. She would do anything for appellant.

She and Adams wanted to give appellant a Las Vegas trip for her birthday. Initially, they were going to use her mother's casino comps to book it. However, she was unable to do this.

Subsequently, Cook testified that she booked the Las Vegas trip approximately a week before appellant's birthday on February 7th. Cook could not recall whether she told appellant before or after her birthday about the trip. The trip was a present from Cook and Adams. They used appellant's credit card for the trip and were intending to each pay one-half of the costs of appellant's portion as her birthday present by reimbursing appellant the entire cost of the trip. Cook booked the trip in appellant's name and used appellant's email address because it was linked to the credit card. The confirmation of the trip and itinerary was sent to appellant's email address. Although it was to be a surprise, Cook had not thought it through sufficiently to foresee that the email confirmation would be sent to appellant.

Cook testified that appellant attempted to change her flights. Cook called Vegas.com, not appellant, to determine if they could change appellant's flight, but was advised that it would cost \$200 per person to cancel the trip and rebook with other flights. Cook and Adams could not afford that. Appellant attempted to get a buddy pass from a friend, Kyle, to fly home earlier and attempted to change her flight before they left, but could not.

The three friends traveled to Las Vegas. On Saturday, February 11, 2017, the friends shopped, walked the strip, and did sightseeing. She did not know where or when the appellant attempted to call the airlines. She did not recall if appellant stated she could not get a flight back. Cook stated that appellant became sick on Sunday, February 12, 2017, after riding ATV's in the desert. Cook also felt nauseated. Cook heard appellant vomit. Cook declined to purchase over-the counter medicine for appellant because it was too expensive.

When departing Las Vegas, the three friends left the hotel for the airport together and flew home together. They were never separated. Cook denied that appellant traveled to the airport separately from Adams and her, as appellant had stated.

Tia Smith, appellant, Corrections Officer, testified that she began working for the CCDOC in 2011. She has a Bachelor's degree in Business Administration and a Master's Degree from Farleigh Dickenson University.

Appellant testified that in early 2017, she had been suffering from work stress and her friends, Cook and Adams, wanted to surprise her with a trip to Las Vegas for her birthday. She spoke with Cook on the phone and confirmed that Cook should book the trip using her mother's casino comps. However, they were unable to use the comps.

After that, she again spoke with Cook about booking the trip. She provided Cook with her credit card because Cook and Adams did not have one. Cook booked the trip. The itinerary was emailed to appellant, but she did not review it because she never checks her email.

Appellant's birthday, February 7th, is important to her. She threw herself a Karaoke party on February 7th. She requested and was approved for off on February 8, 2017 and February 9, 2017. She always celebrates her birthday as a week-long event. Appellant's regularly scheduled days off were February 10, 2017 through February 12, 2017. Appellant's next shift was Monday, February 13, 2017 at 7:00 a.m.

Appellant testified that she found out about the trip and its details a couple days before her birthday on February 7, 2017. She indicated that she found out about the itinerary on a "Sunday." It was then that she knew she would not return in time for her Monday, February 13, 2017 shift. She was not physically in work to put in a slip for off from her tour of duty on Monday. She could have physically gone into the CCCF and placed a slip in for off on that day. However, she did not.

Appellant testified she attempted to get a buddy pass to fly home earlier from a friend, Kyle, who works for the airlines. However, he did not have any buddy passes. She also had Cook call Vegas.com to change her flight. She reiterated that Vegas.com told Cook that it would be a \$200 penalty per person for cancelling the flight.

Appellant went on the trip with the intention of changing her flight and returning home sooner. Appellant conversely testified that she did try to change her flight before she left or after she got to Las Vegas. On Saturday, February 11, 2017, appellant attempted to change her flight by contacting American Airlines. However, every available flight would have returned her later than her scheduled flight. Alternatively, appellant also testified that she was not sure she had not tried to change her flight on February 11, 2017. Appellant specifically testified in response to questioning about calling the airlines as follows: "I'm not sure if it was before or after I left." Appellant specifically testified that she was unsure she called the airlines on February 11, 2017, to change her flight.

Appellant knew before she went to Las Vegas that she would not be able to return in time for her shift. Appellant testified that she knew it was a problem when she could not get another flight home in time for her Monday shift. Appellant testified that she knew before she became sick after ATV riding that she could not return before her shift.

The friends' plans for Sunday included an ATV excursion in the desert and reservations at a high-end restaurant. ATVs were an activity she had done several times before and enjoyed. In fact, she sought out such ATV excursions on her vacations.

Appellant completed the ATV excursion, after which, in the afternoon, she became nauseated and developed a headache. She vomited and spent the rest of Sunday in bed

in the hotel. She asked Cook to purchase over-the-counter medicine; however, Cook did not purchase it because it was too expensive. Appellant did not go to dinner on Sunday night because she still did not feel well.

Appellant called out sick on Sunday around noon, because she was ill and would not be in for her shift on Monday. At that time, she advised that she was in Las Vegas and provided the pertinent information about her location. Appellant also did not work on Tuesday, February 14, 2017, because she was still sick. She did not go to a doctor for treatment, because she only does that as a last resort.

Appellant testified that she and her friends left the hotel for the airport on Monday morning together. She testified that when she landed in Las Vegas and turned on her phone and there was a message from her Shift Commander. She was unaware of the rule that required her to call the department before leaving her place of confinement to travel home, after she called out sick. She called him when she landed in Newark at 5:26 p.m. and stating that she had returned and was in route to her house. She knew if she had lied and said she was home she would have received two to three days of discipline. Lieutenant O'Connor's statement in his Unusual Incident Report that she was home was inaccurate. (R-4.)

Relative to her IA statements, she indicated that she did not lie to Coleman. She was nervous and answered the questions he asked. She did not think she had to provide information if he did not ask for it.

Credibility

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder

“is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth.” Id. at 521–22; see D’Amato by McPherson v. D’Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as “inherently incredible” and may also reject testimony when “it is inconsistent with other testimony or with common experience” or “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, “[t]he 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.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep’t, 182 N.J. Super. 415, 421 (App. Div. 1981).

After reviewing the evidence, I make the following **FINDINGS of FACT:**

The testimony presented by Coleman and Foschini about their investigatory actions, appellant’s statements, and the facts as detailed in Coleman’s report were consistent. Collectively, their testimony of the events of the incident and the information they gathered during the investigation made sense and hung together to describe what occurred. It was undisputed that appellant departed for Las Vegas with no guarantee or certainty that she could change her flight or book a different flight to return home before her tour of duty on February 13, 2017. Appellant’s statements and conduct after her return were designed to cover for this undisputed fact.

Appellant’s rendition of the facts repeatedly changed from the first interview through her testimony. In this regard, appellant changed her story about who booked of the trip, when she became aware about the itinerary, what effort she, or others made to change her plans and return before her next scheduled tour of duty, when she reported a feigned illness to call out sick from a tour of duty that she knew she was going to miss, and what she told her Shift Commander about her whereabouts.

In sum, appellant's statements and those of her witness, could not be reconciled to make them consistent or justify her conduct. The other witnesses' renditions of the disputed facts have a greater "ring of truth," than the scenarios offered by appellant, who plainly had a greater interest in the outcome of this proceeding. The discrepancies in appellant's testimony and changing renditions of the facts made appellant's testimony unbelievable.

FINDINGS OF FACT

After carefully reviewing the exhibits and documentary evidence presented during the hearing, and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to also be relevant and credible **FACTS** in this matter:

Appellant was assigned to CCCF as a Corrections Officer. She had been employed by CCDOC in that capacity since 2011.

A few months before appellant's birthday, which was February 7, 2017, appellant's friends, Cook and Adams, decided they wanted to take appellant to Las Vegas to celebrate her birthday. At that time, Cook wanted to pay for the trip using her mother's casino comps. Cook approached appellant and asked if she would like to do this. Appellant responded by telling Cook, "Okay, book it." Subsequently, Cook became aware she could not use her mother's comps and the Las Vegas trip was shelved.

Subsequently, Cook and Adams decided again that they wanted to go to Las Vegas for appellant's birthday. Appellant's birthday celebrations were very important to her. Appellant celebrated not only her birthday each year, but also her birthday week. This was a priority for appellant. She threw herself a Karaoke party on February 7, 2017. She requested and was approved to be off on February 8, 2017 and February 9, 2017, after the party. February 10, 2017 through her February 12, 2017, were her regularly scheduled days off from work. She was scheduled to return to work for her next tour of duty on Monday, February 13, 2017, at 7:00 a.m.

On January 29, 2017, Cook and appellant booked the trip utilizing Vegas.com and paid for a vacation package for appellant, Adams, and herself using appellant's credit card. Appellant knew Cook was using her credit card to book the trip for the three and authorized Cook to use it. She provided Cook with the credit card number on that day to book the trip. Although Cook manually entered the information on the website, appellant aided her by providing her with the mechanism, the credit card, which allowed them to actually book the trip. The package included airfare and hotel accommodations.

The trio was scheduled to fly from Newark to Las Vegas on Friday, February 10, 2017, and return to Newark airport on Monday, February 13, 2017. Cook and Adams intended to reimburse appellant one-half of the cost of the trip each; thereby gifting appellant's trip to her. On January 29, 2017, the itinerary was emailed to appellant's personal email address because her credit card had been used to pay for the trip. This itinerary detailed the flights and accommodations and advised appellant that she would not return to Newark from her trip until Monday, February 13, 2017 at 4:35 p.m. Appellant admittedly knew about the plans on a "Sunday" before her trip. January 29, 2017 was a Sunday.

Appellant learned the particulars about the vacation from the itinerary. Therefore, on January 29, 2017, appellant knew that she would not be returning in time for her shift on Monday, February 13, 2017 at 7:00 a.m. Appellant had Cook call Vegas.com to attempt to change the flights. Vegas.com advised that there would be a \$200 per person penalty for cancelling the flights and package. Appellant decided not to cancel because her friends could not afford the penalty and she wanted to go to Las Vegas.

Appellant never changed her return flight with the airline. Appellant did not purchase a different ticket to return from Las Vegas earlier. Appellant did not put in a slip requesting off from her shift on Monday, February 13, 2017, before she left for Las Vegas on Friday, February 10, 2017.

Appellant departed with her friends for Las Vegas on Friday, February 10, 2017, knowing she had no guarantee or certainty of returning before her tour of duty. On

Saturday, February 11, 2017, she shopped, walked the Strip, and did sightseeing. She did not change her flight or purchase another flight home. She did not contact any airlines, despite alleging that she did. Cook never heard or knew about appellant contacting any airlines.

On Sunday, appellant engaged in an ATV excursion in the desert. This was an activity she had done several times before and enjoyed. In fact, she sought out ATV excursions on her vacations. Appellant also had a reservation at a high-end restaurant for Sunday night.

On Sunday, February 12, 2017, knowing she had no possibility of returning home by the time of her shift, she said "forget it." Appellant decided to falsely call out sick for her Monday, February 13, 2017, 7:00 a.m. shift, alleging she became ill as a result of her ATV excursion to cover her actions. Appellant identified her place of confinement as Las Vegas and provided her address.

On Monday, February 13, 2017, appellant, accompanied by Cook and Adams, left the hotel together for the airport for their flight home. They arrived in Newark at approximately 4:35 p.m. At that time, appellant turned on her phone and discovered she had received a voicemail from Lieutenant O'Connor, the Shift Commander, relative to when she left her place of confinement and relative to her whereabouts. Appellant called Lieutenant O'Connor at 5:26 p.m. and advised that she was home. Lieutenant O'Connor recorded this in the Unusual Incident Report memorializing the officer's which were absent on February 13, 2017. Appellant was not home when she made that representation, because she had just landed.

Appellant's conduct resulted in an IA investigation. On February 17, 2017, appellant was interviewed by IA Investigator Coleman about the events and circumstances surrounding her Las Vegas vacation. Appellant lied or materially misstated facts when she stated the following. She did not book or pay for the trip and she had no advance notice of the trip because it was a gift from her friends. She found out that her friends had booked this trip for her a couple days before she left, right around her birthday, and that this was the first she knew about the dates for departure and return.

She attempted to change her trip by calling Vegas.com, at which time she discovered that there was a \$200 per person cancellation fee. She left for the trip on Thursday, which was February 9, 2017. She knew she had a shift on Monday morning and intended to catch an earlier return flight. Further, she went on an ATV excursion on Sunday, February 12, 2017, after which in the afternoon she became ill. As a result, she called out of work sick for her Monday, February 13, 2017, morning shift, from Las Vegas on Sunday around noon because she was not feeling well. She said she left at 4:00 a.m. for the airport in Las Vegas by herself. Her friends left at 6:00 a.m. for the airport.

After the interview, appellant provided the Vegas.com itinerary to Coleman in response to his requests for documents substantiating her statements. The itinerary had been emailed to appellant on January 29, 2017. Appellant's credit card had been used to book and pay for the vacation package. The itinerary showed that appellant departed Newark for Las Vegas on Friday, February 10, 2013 at 7:00 a.m. The return flight was scheduled to arrive in Newark on Monday, February 13, 2017 at 4:35 p.m. This was nine and one-half hours after her shift was to begin on that day.

As a result of this itinerary information which contradicted her statements, a second IA interview of appellant occurred on February 28, 2017. During that interview, appellant's version of the facts changed. Appellant stated that her credit card was used to book the vacation by her friends who were paying for the trip as a surprise for her birthday. She stated she was on the phone with Cook when she booked it and provided Cook with her credit card number. She did not read the emailed itinerary even though it was sent to her email. Appellant called Vegas.com to change the flight to return before Monday. She intended to change her flight before she left, but was unable to do so. She stated, "I could have just paid, I guess not to go...I just know that before I left, I should have just tried to switch the day like you said last time or I could have tried to put in for that day."

Also, appellant alleged she called Spirit Airlines on Saturday, February 11, 2017, while in Las Vegas, to change her flight and that all of the flights returned later than the one she had scheduled. However, appellant failed to produce any evidence to demonstrate she actually did these actions or that she had become ill.

Appellant returned to New Jersey at approximately 4:35 p.m. on Monday. This ended her seven-day birthday week celebration.

While testifying, appellant changed her version of the events again. She stated that she attempted to get a buddy pass to fly home on an earlier flight from her friend Kyle before she left. However, he did not have any passes to share. She stated that she had contacted American Airlines to change her flight. Appellant knew before leaving she could not return before her shift on Monday. She shopped and did sightseeing on Saturday. She made ATV plans and dinner reservations for Sunday. Appellant knew when she engaged in the ATV excursion that she would be unable to return for her Monday morning shift. Appellant knew on Sunday before she called out sick that she would not be able to return for her Monday morning shift.

With no other alternative to cover her conduct, appellant falsely called out sick for Monday, falsely reporting she was ill. Appellant also called out of work sick on Tuesday, February 14, 2017. This separate event was addressed in a written reprimand.

The PNDA issued on March 28, 2017, alleging violations of N.J.A.C.4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically violations of C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of duty; 1.4 Insubordination; 2.1 Abuse of Sick Leave; 2.4 Reporting Off Sick; 2.12 Fictitious Illness or Injury Reports; Internal Affairs Order #001; General Order #28, General Order #73; General Order #74. For these charges a FNDA was issued on October sustaining the charges and removing appellant from her employment as a corrections officer.

LEGAL ANALYSIS AND CONCLUSIONS

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act

related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The appointing authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant's status as a correction's officer subjects her to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become "tinderboxes."

Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). It is well recognized that correctional facilities operate

through a rigidly hierarchical, almost "paramilitary," structure. Lockley v. Dep't of Corr., 177 N.J. 413, 425 (2003).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee

Appellant was charged with "conduct unbecoming a public employee." N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of 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, 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)).

The basis for the charge of conduct unbecoming a public employee was that appellant lied during her IA interviews by changing her rendition of the facts, lied to her

Shift Commander, and falsely called out sick to cover for her voluntary inability to return from vacation in Las Vegas for her tour of duty.

Appellant repeatedly lied by making false and contradictory statements to investigators, during the course of her two IA interviews. Appellant's rendition of the facts surrounding the Las Vegas trip and her illness developed as follows: from a denial about booking the trip; to an admission that although Cook manually entered the information on the website, appellant aided her by providing her with the mechanism, the credit card, which allowed them to book the trip; to an acknowledgement that the booking confirmation and detailed itinerary was emailed to her personal email address on Sunday, January 29, 2017, to an inability to recall when she learned about the trip; to an admission she learned about it a couple days before her birthday on February 7, 2017, and that she learned about the trip on a Sunday before her birthday at which time she knew that she would miss her shift on Monday February 13, 2017, because of the time of the return flight; to an allegation that she called Vegas.com to attempt to change her flight and discovered there would be a penalty for cancellation, to an admission that she did not call and Cook did; to stating that she left on Thursday, February 9, 2017 to stating that she left on Friday, February 10, 2017; to an alleged intent to change her flight to return and contacting Spirit Airlines, despite subsequently stating that she called American Airlines and attempted to get a buddy pass in her testimony at this hearing.

Appellant alleged she was ill, when she was not. This was to cover up for her inability to return for her shift.

In sum, it was an ever-morphing version of what occurred from her first interview through her testimony in this proceeding. Simply put, appellant lied about the facts and circumstances surrounding her Las Vegas vacation.

Moreover, appellant's conduct in voluntarily choosing to leave for Las Vegas without any guarantee or certainty of her ability to return was unbecoming conduct and irresponsible. The responsible corrections officer would have purchased a different ticket for an earlier return flight, if any, or foregone the vacation to report to work and serve the public and the department. Her unbecoming conduct was further exacerbated when she

lied about being sick to conceal her actions and inappropriately avoid her shift, for which she already knew she had no excuse to miss.

Finally, appellant lied to her shift commander when she stated she was home at 5:26 p.m., when in fact she had just landed in Newark.

As a corrections officer, appellant was held to a higher standard of conduct. The public respects officers for discovering, reporting, and championing the truth in circumstances of wrongdoing and while they are satisfying their duties. Appellant's conduct, her lies to investigators, and her voluntary choice to prioritize her week-long birthday celebration by vacationing, adversely affected the morale or efficiency of a governmental unit and would tend to destroy public respect in the delivery of governmental services. Appellant's actions were violative of his obligations in a position of public trust. It offended publicly accepted standards of respect and decency.

No circumstances existed to warrant or justify appellant's deceitful conduct.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). I **CONCLUDE** that respondent has met its burden of proof on this issue.

N.J.A.C.4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties

Appellant failed to perform her duties when she chose to voluntarily travel to Las Vegas without any guarantee or certainty of her ability to return. This conduct was unreasonable and irresponsible. The responsible corrections officer would have purchased a different ticket for an earlier return flight, if any, or foregone the vacation to report to work and serve the public and the department. Her conduct was further exacerbated when she lied about being sick to inappropriately avoid her shift, for which she already knew she had no excuse to miss.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of incompetency, inefficiency, and failure to perform duties, in violation of N.J.A.C.4A:2-2.3(a)(1). I **CONCLUDE** that respondent has met its burden of proof on this issue.

N.J.A.C. 4A:2-2.3(a)(2) Insubordination

Appellant was insubordinate when she lied during her IA interviews. Additionally, she was insubordinate when she failed to advise the department that she had left her place of confinement in Las Vegas and when she told Shift Commander Lieutenant O'Connor that she was home, while she was in route to her home after just having landed at Newark airport. Appellant had a duty not to lie to her superiors. That act was insubordinate,

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of insubordination, in violation of N.J.A.C. 4A:2-2.3(a)(2). I **CONCLUDE** that respondent has met its burden of proof on this issue.

N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty

Neglect of Duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R. 2d (CSV) 214.

Appellant neglected her duty when she traveled to Las Vegas knowing she would not be able to return for her morning shift on Monday, February 13, 2017. Appellant could have put a slip in and requested off from her shift on Monday, February 13, 2017. She chose not to do so. Appellant neglected her duty when she falsely reported an illness and called out on February 13, 2017, to cover her actions. Appellant neglected her duty when she lied to investigators and her Shift Commander and did not follow departmental rules, regulations, and orders.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7). I **CONCLUDE** that respondent has met its burden of proof on this issue.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause by violating C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Unbecoming Conduct; 1.3 Neglect of duty; 1.4 Insubordination; 2.1 Abuse of Sick Leave; 2.4 Reporting Off Sick; 2.12 Fictitious Illness or Injury Reports; Internal Affairs Order #001; General Order #028, General Order #073; General Order #074.

CCCF Rules of Conduct 1.1 Violations in General

CCCF Rules of Conduct 1.1 provides in pertinent part as follows:

Any employee who violates any rule, regulation, procedure, order or directive, either by an act of commission or omission, whether stated in this manual or elsewhere, or who violates the standard operating procedure as dictated by department practice, is subject to disciplinary action in accordance with the New Jersey Department of Personnel (Civil Service) rules and regulations. Disciplinary actions shall be based on the nature of the rule, regulation, procedure, order, or directive violated, the severity and circumstances of the infraction and the individual's record of conduct

1.2 Unbecoming Conduct

Rule 1.2 provides as follows:

All personnel are required to conduct themselves, both on and off duty, in such a manner as to reflect favorably on the department. Conduct unbecoming an employee shall include 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 employee.

Appellant was required to make truthful statements to the IA investigator during her interviews and make truthful statements to her Shift Commander about her whereabouts. Despite this knowledge and duty, appellant lied and otherwise intentionally misstated facts related to her Las Vegas trip repeatedly during her IA interview. She further lied to Lieutenant O'Connor about her location upon her return.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Rule 1.2 by falsifying and intentionally misstating facts in connection with her vacation during her internal affairs investigation and to her superiors.

1.4 Insubordination or Serious Breach of Security

Rule 1.4 provides in pertinent part as follows:

- (a) Personnel shall promptly obey all lawful orders of any supervisor. Failure or deliberate refusal of any employee to obey a lawful order of a supervisor, ridiculing a supervisor or his/her order, in or out of the supervisor's presence, or disrespectful, mutinous, insolent or abusive language directed toward the supervisor, shall constitute insubordination or serious breach of discipline.

Regarding the charge of Insubordination, to the extent that appellant is charged with violation of Rule of Conduct 1.4, which addresses Insubordination and Serious Breach of

Security, consideration of such violation will be addressed in concert with the current analysis. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation:

'Insubordination' is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

When appellant chose to lie to IA investigators about the facts and circumstances related to her Las Vegas vacation and when she chose to leave for Las Vegas knowing she had no certainty of changing her flight and returning before her shift, appellant failed to obey her orders and committed a serious breach of discipline. When appellant falsely reported an illness to avoid her shift and cover her choice to go to Las Vegas, she did not obey her orders. When appellant chose to lie about her whereabouts to the Shift Commander she also did not obey orders and committed a serious breach of discipline. I **CONCLUDE** that appellant's behavior was uncooperative, disrespectful to her supervisors, and adversely affected the efficiency of the department.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Rule 1.4 by failing to obey orders and lying to her shift commander and during an IA investigation.

2.1 Abuse of Sick Leave

Rule 2.1 provides that employees must follow General Order #28, Section 2, which provides in subparagraph C as follows:

If reporting sick from a location other than the member's own residence, the name of the person from whose residence they are reporting sick, address, city and telephone number

The reporting requirements continue in subparagraph F which provides as follows:

Personnel may not leave their place of confinement during their scheduled tour of duty except for the purpose of seeking medical attention, securing a prescription or for emergencies including family emergencies, provided however, such information is relayed to the shift commander or the designee before had and such outings are for and limited to the intended purpose. The shift commander or the designee will include the following information in the log. The reason the employee is leaving their residence, the date, their name, the time, the purpose and the estimated time of return.

To begin, appellant failed to present any evidence that she was in fact ill. Notwithstanding same, although she did report her confinement in Las Vegas, she failed to report to the Shift Commander that she was leaving her place of confinement in Las Vegas on the morning of February 13, 2017, to fly home.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Rule 2.1 and General Order #028.

2.4 Reporting Off Sick

Rule 2.4 provides as follows:

Personnel who report off sick are required to remain at home during the hours they would normally be on duty. Visits to a physician, dentist, or pharmacy are exempted, provided such information is relayed to the proper authority prior to such outings are for and limited to the intended purpose.

This rule must be read with Rule 2.1 and General Order #028 detailed above. Appellant reported her confinement in Las Vegas. However, appellant failed to report to the Shift Commander that she was leaving her place of confinement in Las Vegas on the morning of February 13, 2017, to fly home.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Rule 2.4.

2.12 Fictitious Illness or Injury Reports

Rule 2.12 provides that, "[p]ersonnel shall not feign illness or injury, falsely report themselves ill or deceive or attempt to deceive any supervisor as to the condition of their health."

Appellant knew when she departed for Las Vegas that her next tour of duty was scheduled for Monday, February 13, 2017 at 7:00 a.m. Appellant knew on January 29, 2017, when she received the vacation itinerary, that she had to change her flight to return earlier in order to work that shift. Appellant failed to put a slip in to request off on Monday February 13, 2017, because it may or may not have been granted. Instead, appellant departed knowing she had not obtained an earlier return flight.

Appellant took no effort in Las Vegas to purchase a different flight with an earlier return date or to modify her existing reservation to return before February 13, 2017.

Appellant was an experienced ATV excursion participant. At the time appellant returned from this activity on Sunday, appellant knew she was not going to report for work on Monday morning. She said, "forget it." To cover the consequences of her choosing to go to Las Vegas without a guarantee she could return for her shift, appellant alleged and falsely reported she was ill. Appellant took no over-the-counter or prescription medication and did not go to the doctor's. Appellant failed to provide any evidence to substantiate her alleged illness. I **CONCLUDE** appellant feigned her illness in an attempt to cover up her inability to return home and be present for her tour of duty. This was done with design to deceive her supervisor as to the condition of her health.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Rule 2.12.

Internal Affairs Order #001

Internal Affairs Order #001 provides in Section 9 Interviewing the Subject Officer, subparagraph h, that, "[e]mployees being questioned are obligated to answer all questions truthfully or he/she will be subject to disciplinary action, up to and may include (sic) termination."

Appellant was required to make truthful statements to the IA investigator during her interviews. Despite this knowledge and duty, appellant lied and otherwise intentionally misstated facts repeatedly during her IA interview relative to facts and circumstances related to her Las Vegas trip.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated Internal Affairs Order #001, Section 9, subparagraph h.

General Order #73

The purpose of the policy provided for in General Order #73 is to provide employees with a standard of conduct. It provides in pertinent part as follows:

All department employees, when on and off duty, will conduct themselves in a manner that will not bring discredit or criticism to the department. Common sense, good judgment, consistency and the department's mission will be the guiding principles for the expected employee standard of conduct.

...

4. Employees will comply with all department rules and regulations and all laws of the United States and the State of New Jersey.

...

6. Employees will cooperate and provide full disclosure in any department investigations involving employee or offender misconduct.

...

12. Employees are responsible to know all department policies as well as county policies and act in accordance with them.

Appellant acted in an unbecoming manner which brought disrepute among other things to the department. She neglected her duties and failed to perform them. She was insubordinate. She abused her sick leave. She reported a feigned illness to cover up the consequences of her actions. She lied during an IA investigation and otherwise did not cooperate during the investigation. Her conduct violated department rules and regulations, state law. Her actions discredited the department.

Additionally, appellant did not report to Lieutenant O'Connor that she was leaving her place of confinement in Las Vegas when she departed for New Jersey. Appellant stated that she did not know that she had to call the Shift Commander and report when

she left her place of confinement. Therefore, appellant did not know department policies which she was obligated to follow.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated General Order #073, Sections 4, 6, and 12.

General Order #074.

General Order #074 provides as follows:

All sworn personnel in the department will conduct themselves in a professional and ethical manner at all times. Conduct which detracts from a professional and ethical manner is prohibited in circumstances suggesting an officer has engaged in unbecoming conduct will be investigated and disciplinary action will be taken where appropriate.

...

1. Sworn personnel will conduct themselves in accordance with the Constitution of the United States, the New Jersey Constitution and all applicable laws and rules enacted or established pursuant to legal authority. Sworn personnel are also obligated to follow all other departmental and county policies.

Appellant acted in an unbecoming manner which brought disrepute, among other things, to the department. She neglected her duty and failed to perform them. She was insubordinate. She abused her sick leave. She reported a feigned illness to cover up the consequences of her actions. She lied during an IA investigation and otherwise did not cooperate during the investigation. Her conduct violated department rules and regulations, state law. Her actions discredited the department.

Therefore, I **CONCLUDE** respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's conduct violated General Order #074, Section 1.

N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause

Finally, appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. As detailed above, appellant's conduct was such that she violated this standard of good behavior. As such, I **CONCLUDE** that the respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's actions violated N.J.A.C. 4A:2-2.3(a)(12).

I further **CONCLUDE** that all charges brought herein against appellant are **SUSTAINED**.

Double Jeopardy Argument

Finally, the appellant argued that because she received a written reprimand, dated March 22, 2018, for failing to provide a doctor's note after she called out on February 14, 2017, for calling out sick the day after a vacation, the respondent was precluded from bringing more serious disciplinary charges against her seeking her termination. This argument is misplaced.

Appellant was charged with numerous separate and distinct offenses which resulted from appellant's deceitful and unbecoming conduct. Those charges are unrelated to the written reprimand for failing to provide a doctor's note for her absence on February 14, 2017. Appellant is not being punished twice for the same offense.

PENALTY

The next question is the appropriate level of that discipline. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty.

The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See, In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker who snapped lighter in front of five-year-old), in which the Court stated:

“. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty 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.”

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Respondent argued that appellant lied about the facts and circumstances which related to her Las Vegas vacation during her IA investigation, that she also failed to report

she was leaving her place of confinement in Las Vegas to return home and that she then lied to the Shift Commander when she reported she was home when she had just landed in Newark. Respondent submitted that appellant's conduct brought disrepute to the department and placed appellant, inmates, the public and the CCCF at risk.

Appellant denied the allegations that she lied during an IA investigation, that she was insubordinate and that she violated rules, regulations, orders, and policies when she called out sick for work from Las Vegas for her February 13, 2017, tour of duty. Appellant argued that the statements to IA were confusions when answering inarticulately asked or compound questions. Appellant argued to terminate her would be harsh, excessive, and flies in the face of progressive discipline.

Appellant received three significant disciplines in the past. In 2015, appellant was suspended for 180 days for conduct unbecoming and neglect of duty. In 2016, appellant was suspended for three days for failure to perform duties, conduct unbecoming and neglect of duty.

A review of the discipline revealed that appellant lied to investigators in relation during an investigation in 2015. This was, in part, the reason for the 180-day suspension. As a result, during the instant IA investigation, appellant knew she had to be truthful and fully disclose all relevant information to the investigators. She chose to act in a contrary and deceitful manner. Appellant's behavior violated the public trust and put the safety of the inmates, the facility, DOC, and the public at risk, when she did not ensure she could return home for her shift and when she then called out for her shift to cover this fact.

Appellant exhibit poor judgment and a cavalier attitude for her position and the department, when she chose to depart for Las Vegas knowing she had no guarantee or certainty of returning before her next tour of duty. Appellant's actions consistently showed that she was more concerned about her birthday week and her vacation time, than she was in following department policies, orders, rules and regulations and protecting the public by working as scheduled. Such conduct placed not only the public, but the CCDOC at risk.

Accordingly, I **CONCLUDE** that removal is the appropriate discipline for the violations of N.J.A.C.4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), Specifically violations of C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Unbecoming Conduct; 1.3 Neglect of duty; 1.4 Insubordination; 2.1 Abuse of Sick Leave; 2.4 Reporting Off Sick; 2.12 Fictitious Illness or Injury Reports; Internal Affairs Order #001; General Order #028, General Order #073; General Order #074 be **AFFIRMED**.

ORDER

Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action, dated October 3, 2017, of the Camden County Department of Corrections, against appellant, Tia Smith, is hereby **AFFIRMED**.

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.

April 23, 2018 _____
DATE



DOROTHY INCARVITO-GARRABRANT, ALJ

Date Received at Agency:

April 23, 2018

Date Mailed to Parties:

April 23, 2018

/lam

APPENDIX
LIST OF WITNESSES

For Appellant:

Cachet Cook
Tia Smith, Appellant

For Respondent:

Edward Coleman, Sergeant, Internal Affairs Investigator
Christopher Forschini, Deputy Warden CCCF

LIST OF EXHIBITS

For Respondent:

- R-1 Internal Affair Report by Investigator Joseph Coleman
- R-2 CCDOC Absentee Log, dated 2/12/17
- R-3 CCDOC Sick Visitation Report, dated 2/13/17
- R-4 Unusual Incident Report authored by Lieutenant Earl O'Connor, dated 2/14/17
- R-5a Internal Affairs Interview, dated 2/17/17
- R-5b Documents requested by Coleman
- R-6 Vegas.com Itinerary
- R-7 Internal Affairs Interview of Appellant, dated 2/28/17
- R-8 Supervisor's Staff Compliant, dated 3/8/17
- R-9 PNDA dated 3/28/17, FNDA (31B), dated 10/3/17, and FNDA (31C) dated 10/3/17
- R-10 CCDOC Internal Affairs General Order #001
- R-11 CCDOC Rules of Conduct
- R-12 CCDOC General Order #28 Sick Leave
- R-13 CCDOC General Order #73 Personal Conduct of Employees

R-14 CCDOC General Oder #74 Professional Code of Conduct

R-15 Appellant's Chronology of Discipline

R-16 Digital Recording Appellant's 2/17/17 IA interview

R-17 Digital Recording Appellant's 2/28/17 IA interview

For Appellant:

A-1 Written Reprimand of Appellant, dated 3/22/17