



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 24TH DAY OF NOVEMBER, 2020

*Deirdre L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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and  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 02721-19

AGENCY DKT. NO. CSC 2019-1803

**IN THE MATTER OF MILLARD HICKMAN,  
SOUTH WOODS STATE PRISON,  
DEPARTMENT OF CORRECTIONS.**

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**Millard Hickman, appellant, pro se**

**Dipti Vaid Dedhia, Deputy Attorney General, for respondent, South Woods State  
Prison, New Jersey Department of Corrections (Gerbir S. Grewal, Attorney  
General, State of New Jersey)**

Record closed: April 22, 2020

Decided: October 22, 2020

**BEFORE ELAINE B. FRICK, ALJ:**

**STATEMENT OF THE CASE**

Respondent, New Jersey Department of Corrections, (DOC) removed appellant, Millard Hickman, from his position as an Operator of Refrigeration Services at South Woods prison, for having been arrested three times during his seventeen months of employment, and having failed to report to his employer any of the arrests. Appellant challenges his termination and seeks to be reinstated to his position of employment.

## PROCEDURAL HISTORY

Respondent issued a Preliminary Notice of Disciplinary Action (PNDA) to appellant, served on October 17, 2018, seeking removal. Respondent issued a Final Notice of Disciplinary Action (FNDA) to appellant, removing him from employment effective December 6, 2018. Appellant requested an appeal. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 26, 2019, to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13.

The hearing was conducted on February 20, 2020. The record remained open for the submission of written summations, which were received as of April 22, 2020. Due to the COVID-19 pandemic, Executive Orders were entered by the Governor of the State of New Jersey, declaring a public health emergency as of March 9, 2020, and extending the time for the issuance of administrative decisions, after the public health emergency. The public health emergency continues as of the date of this decision, as per subsequently issued Executive Orders.

## FACTUAL DISCUSSION AND FINDINGS

**Ronald Tobolski** testified for the DOC. For the past two years he has been employed at South Woods in the Special Investigations Department (SID) as an investigator. He has been involved in approximately eighty to ninety investigations for the SID.

On the evening of September 8, 2018, Investigator Tobolski was the on-call investigator. He was contacted that evening by a lieutenant shift commander at South Woods, who had received a call from a member of the Millville Police Department. The Millville officer reported that Mr. Hickman had been arrested that evening and charged with possession of a controlled dangerous substance (CDS). The next day, the arresting Millville police officer advised that Mr. Hickman had been stopped while driving, for having an unregistered vehicle. During the stop, it was determined that there was an outstanding warrant for Mr. Hickman, due to his failure to appear in court for a prior shoplifting charge.

A search during the stop revealed a substance suspected to be methamphetamine. Mr. Hickman was charged with third degree possession of drug paraphernalia and possession of CDS, methamphetamine. While Mr. Hickman was being processed, he stated to the arresting officer that there were drugs in the South Woods facility and that is where he had obtained the drugs.

Investigator Tobolski obtained the police reports and dash cam video footage of Mr. Hickman's arrest of September 8, 2018. The reports summarized the same information relayed by the arresting officer regarding the motor vehicle stop and discovery of suspected methamphetamine; the active warrant for Mr. Hickman, for which he was arrested; and that he was charged on a summons with a violation of N.J.S.A. 2C:35-10A(a), possession of CDS and N.J.S.A. 2C:36-2, possession of drug paraphernalia.

He ran a background criminal history check for Mr. Hickman and confirmed there were two prior arrests of Mr. Hickman. On September 28, 2017, Mr. Hickman had been charged on summons number S2017-000495, for a violation of N.J.S.A. 2C:35-10A(1), possession of CDS methamphetamine, a third degree criminal offense. The matter was disposed of by Mr. Hickman paying a fine and he was admitted into the diversionary program known as Pre-Trial Intervention. (R-6.) The second prior matter occurred on May 3, 2018, when Mr. Hickman was charged on summons number S2018-000703, with a violation of N.J.S.A. 2C:20-11B(2), shoplifting, a disorderly person offense. That was the pending matter for which there was an active warrant for his arrest, when he was stopped on September 8, 2018. (R-6.)

Investigator Tobolski communicated with representatives in the South Woods Administration, the Human Resources Department, and Mr. Hickman's supervisor, Charles Harris. Mr. Hickman had not reported to those departments, nor to Supervisor Harris, that he had been arrested previously. Supervisor Harris did convey that Mr. Hickman had spoken to him a few months prior and told him that if he heard a rumor that Mr. Hickman had been arrested for shoplifting, it was a misunderstanding. (R-6.) Supervisor Harris advised Investigator Tobolski that he told Mr. Hickman if he had been arrested, even if it was a misunderstanding, Mr. Hickman needed to report the situation to SID.

The principal investigator from SID, Chris Birardi, authored a memorandum, dated September 11, 2018, regarding the investigation SID conducted of Mr. Hickman. (R-6.) Investigator Tobolski confirmed that the information contained in the memorandum was true and accurate as to the steps he took in the investigation, and true and accurate as to the findings with respect to the prior arrests and Mr. Hickman's failure to report the information to his employer. (R-6.)

**Charles Harris** testified for the DOC. He previously was employed at South Woods for approximately twelve years. He was Engineer in charge of Maintenance and Department Head prior to his departure from the facility. He was Mr. Hickman's supervisor as of 2018.

He recalled Mr. Hickman coming to his office and having a brief conversation, lasting approximately twenty seconds, about Mr. Hickman being arrested. Mr. Hickman stated to Supervisor Harris that if he heard a rumor about Mr. Hickman being arrested, it was a big misunderstanding and Mr. Harris should just ignore it. Supervisor Harris advised Mr. Hickman if he had been arrested, he needed to go to SID and report it. Mr. Hickman never followed up on that conversation again with Supervisor Harris. He did not receive anything in writing from Mr. Hickman regarding the conversation.

A few months after that conversation, Supervisor Harris was called to the facility's employee entrance on September 10, 2018, when Mr. Hickman was denied entry. They engaged in a conversation about what had occurred during the weekend, and Mr. Hickman indicated to Supervisor Harris that he had not been arrested, and that it was all going to be cleared up.

Supervisor Harris denied that Mr. Hickman ever reported to him having been arrested for any of the three incidents, except for the conversation when Mr. Hickman

indicated to him that if he heard he was arrested "it was a rumor going around and it was fake news, basically, is what he was reporting to me if I heard." (T 28:23-25.)<sup>1</sup>

**Russell Horton** testified for the DOC. He was previously employed at South Woods as Engineer in charge of Maintenance, from April 1997 through April 2018. He was a "lead supervisor." (T 31:25 to 32:1.) He considered himself as a supervisor for Mr. Hickman. He could not recall that Mr. Hickman ever reported to him that Mr. Hickman had been arrested. He was unaware of any reports that Mr. Hickman may have written to him, to report he had been arrested.

**Oliver Keller** testified for the DOC. He is currently a Major at Bayside State Prison. He was employed at South Woods as the Administrative Major from June 2015 through October 2018. He is familiar with the DOC policies regarding employees being required to report arrests.

Mr. Hickman signed the new-hire checklist on May 5, 2017, which acknowledged he received the checklist of documents, including receipt of Human Resource Bulletin 84-17 (HRB 84-17), and HRB 84-19. (R-4, DOC010; R-5; R-10.) HRB 84-17 is the DOC disciplinary policy, outlining the range of discipline an employee is subject to receive, based upon the violation and infraction. (R-10.) HRB 84-19 is the DOC policy requiring all custody staff and civilian employees to report to their supervisor if they have received a summons or have been arrested. (R-5.) Major Keller believes the purpose of the policy of HRB 84-19 is to ensure transparency by an employee about their outside activities that might encroach upon their employment by the DOC. Due to the sensitive nature of working in a correctional facility with close contact with convicted criminals, there is a necessity for an employee to be transparent regarding their on and off duty actions.

For a civilian employee such as Mr. Hickman, he was required to report his summons and arrest to his direct supervisor or to his department head. (R-5.) He was required to contact his supervisor before reporting to work or within forty-eight hours of the summons or arrest, whichever was less. (R-5, DOC012.) He was required to follow

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<sup>1</sup> The transcript from the hearing of February 20, 2020, will be referenced as "T" with the page number and line numbers.

up such verbal communication with a narrative report in writing. (Id.) There was no specific form to be filled out. The policy specifies that the incident details and information are to be put in writing by the employee. If Mr. Hickman failed to follow these steps, disciplinary action would be taken. (Id.) Such disciplinary action for a first offense violation of a rule, regulation, policy, or procedure, such as HRB 84-19, ranges from an official written reprimand to removal. (R-10, DOC057.)

If an employee has been found in violation of "Conduct unbecoming an employee" they are subject to discipline ranging from a three-day suspension to removal, for a first infraction. (R-10, DOC049.) The level of discipline imposed depends upon the aggravating and mitigating factors and the nature of the offense.

Mr. Hickman was issued a PNDA for: 1.) failure to report that he was arrested by the Millville Police Department and charged on September 8, 2018, with third degree possession of CDS, in violation of N.J.S.A. 2C:35-10A(1) and possession of drug paraphernalia, in violation of N.J.S.A. 2C:36-2, a disorderly person offense; 2.) failure to report that on May 4, 2018, he was arrested by the Millville Police Department and charged with shoplifting, a disorderly persons offense, N.J.S.A. 2C:20-11B(2); and 3.) failure to report he was arrested in Buena Boro on September 27, 2017, and charged with possession of CDS, third degree, in violation of N.J.S.A. 2C:35-10A(1). (R-3.) His failure to report the three arrests and summons violated HRB 84-19 and was deemed conduct unbecoming an employee.

The PNDA recommended the disciplinary action of removal. (R-3.) Mr. Hickman did not request a departmental hearing. An FNDA issued thereafter, removing Mr. Hickman from his position, effective December 6, 2018. (R-1.) The sustained charges were conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)6; other sufficient causes, N.J.A.C. 4A:2-2.3(a)12; violation of HRB 84-17, as amended, C.11. conduct unbecoming an employee; and HRB 84-17, as amended, E.1., violation of a rule, regulation, policy or procedure, that policy being HRB 84-19, failure to report his summons and arrests. (R-1.) Major Keller indicated that removal is appropriate discipline where an employee has been charged with a third degree, drug related offense.



During Major Oliver's tenure at South Woods, Mr. Hickman never reported to him that he had been arrested. Major Oliver never received any report or document from Mr. Hickman that he had been arrested.

**Millard Hickman** testified on his own behalf. He was hired for the position at South Woods in approximately the end of April, beginning of May, 2017. He attended orientation and signed the new-hire orientation checklist on May 5, 2017. (R-4.) He received the documents listed in the checklist and was advised by the woman who reviewed the checklist that he needed to read the documents. He did not know that he would be bound by the policies in the documents. He was excited to get the job and took the documents home with him. He did not read the documents. It was not until after the last arrest occurred in September of 2018, that he started to go through the documents and read them. He received HRB 84-19, but did not have HRB 84-17. He may have dropped it out of his folder from orientation.

He did not know "exactly" that HRB 84-19 required him to report his arrests to his employer. (T 68:18.) He did not think personal matters should be reported, because it was his personal business and it did not have anything to do with his job. He recognized that the policy does state that he was required to report any arrests.

He had never read any of the HR Bulletins from orientation, and was not aware he was doing things wrong. For example, he was not permitted to come into work on some occasions, because he had his cell phone or a screwdriver in his pocket. He had to go back outside and put the items in his truck before he could enter the facility to work. He acknowledged that his job required him to have contact with inmates, such as when passing by them in the facility, or having an inmate or two assist him with some of his work duties.

Mr. Hickman confirmed he was arrested on September 27, 2017, and charged with possession of CDS. He reported the arrest to his acting supervisor at the time, Russell Horton. He told him that he was arrested over the weekend. Mr. Horton told him that he would be given a paper to write out what happened, and it would be taken to the administrators. There were some emergency repairs that required Mr. Hickman's

immediate response, so when he returned to the office, Mr. Horton was not around. He was not going to report to his next supervisor, until he had the opportunity to talk to Mr. Horton first. He waited to talk to Mr. Horton the next day, but never did so. He never asked Mr. Horton what he was supposed to do, figuring that Mr. Horton would handle it. He did not follow up in writing with Mr. Horton.

Mr. Hickman confirmed he was arrested in Millville on May 4, 2018, for shoplifting. He reported it to Mr. Harris, who was his supervisor at that time. He told him about the arrest, then told him it was a misunderstanding. He described to Supervisor Harris that he had been sitting in his truck in the parking lot of a store and the police approached him. They wanted to question him about shoplifting and Mr. Hickman explained that he had been in the store two times. First, he went in with other individuals. He went outside to his truck and then returned a second time to pay for items the others had, and he had the receipt for the purchase. The officers wanted to question him about stealing and switching tags and that he was involved in it. He denied being involved but was charged with shoplifting. He did not follow up this conversation with Supervisor Harris with anything in writing. He asserted the policy did not require him to follow up, rather, it required his supervisor to follow up.

Mr. Hickman confirmed he was arrested on September 8, 2018, for possession of CDS. On September 10, 2018, he arrived at work. As he walked from the parking lot to the employee entrance, other employees who were exiting during the shift change made comments to him that his picture was posted; that he must have done something really wrong; and that he had to report to SID. He was flabbergasted that other employees knew he had been arrested on Saturday before he told his boss about it. He thought he would be able to go inside and talk to his boss. Instead, he was told to have a seat and then someone from SID came to him and accompanied him to the SID office where he gave a statement about what he stated to the Millville police officer.

He was never given the opportunity on September 10, 2018, to make a report or write anything down about his arrest that occurred on September 8, 2018. He did speak to Supervisor Harris, after being interviewed by SID. They met in the common area of the employee entrance. Supervisor Harris told him that he would be suspended for two

days with pay, but by Friday he no longer would be paid. He was told to keep his eyes open for a letter in the mail notifying him when to attend a hearing. Mr. Harris told him that he was considered a trespasser at that point, so Mr. Hickman had to leave the prison. As he left, he was confused about who he was supposed to report to about the arrest.

Mr. Hickman contends he did not have the opportunity to request a departmental hearing. Shortly after the September 8, 2018 incident, he went to Florida for seventy days, for a behavioral modification program at a facility recommended by his union representative, because his union representative told him that would help with his job. "It was like a rehab. And so, I went under his advice [sic] just – you know, just to keep the job." (T 71:20-22.)

His employer was aware he was in Florida. They sent paperwork to him there because his psychiatrist was trying to get him on Family Medical Leave. His employer did not send the PNDA to Florida. It was sent to his PO Box for three days, waiting for his signature. He did not check the PO Box during the seventy days he was in Florida and did not have anyone check his mail for him. When he returned from Florida, he got the mail from his PO Box, but there was no PNDA there. A few weeks thereafter, he got the FNDA by certified mail.

The charges from the three incidents made against him "were not really sustained." (T 77:2-4.) His arrest from September 27, 2017, for possession of CDS, was "not his material." He was with a girl who had drug issues. The shoplifting charge was later dismissed. The last incident and arrest on September 8, 2018, was "kicked down" to trespassing, and he pled guilty to N.J.S.A 2C:33-2.1(b), loitering, wandering, or prowling in an area to obtain CDS.

Mr. Hickman denied stating to the Millville police officer that he got his drugs from South Woods prison. He told the Millville officer about a woman he knew who spent three years in jail and when she got out, she went right back to using drugs. He relayed to the officer that the woman told him she got better drugs in the jail than she got outside of it.

He believes the officer turned the conversation around to make it seem that he said he buys all his drugs at South Woods.

Mr. Hickman knows the charges against him "look bad." He made it through life for forty-six years without anything but speeding tickets. He met up with a group of people whom he starting to hang around with, and got "sucked in" and never thought anything else about it. It was his fault for doing such things, and he should have known better. (T 78:6-7; 78:16-23.)

### Credibility

A fact finder is obligated to weigh the credibility of witnesses. The fact finder must choose to accept or reject whether a witnesses' testimony is credible. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to a witness' testimony. It is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950), (citations omitted).

A credibility determination requires an overall assessment of the witness' story "in light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder should also consider the witness' interest in the outcome, or any motive or bias. The fact finder may reject testimony because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The witnesses for the DOC all testified in a professional and business-like manner. There was no evidence of bias or prejudice towards Mr. Hickman by the witnesses. Each testified independently, and their information was consistent across their testimony and supported by the evidential documentation. Although documentation was inherently

hearsay, such as the memorandum authored by the lead investigator, who did not personally testify, the investigator who did testify provided consistent first-hand testimony of his knowledge and information, which was supported by the documentation, and testimony of the other witnesses. I thus deem the testimony of the respondent's witnesses credible and supported by a residuum of the evidence presented as a whole.

Mr. Hickman appeared genuine and thoughtful when expressing he was happy to have gotten the job and enjoyed learning every day about large HVAC systems in the prison. His testimony otherwise was rambling, unfocused, and jumped from topics to provide excuses for his behavior resulting in the arrests, and excuses for not having reported his arrests and summons according to the policy procedures. His own testimony was evasive and contradictory, such as claiming he did not know he had to report arrests, yet then claiming that he did report his arrests to his supervisors, and implying it was his supervisors who failed to take further action. He further discredited his own claim that he did not know he had to report his arrests when indicating that he planned to report his arrest to his supervisor on September 10, 2018, and was flabbergasted that other employees ending their shifts knew about his arrest before he got in the building, intending to immediately report it to his supervisor. Further, as he left the facility on September 10, 2018, after having spoken to his supervisor, he was confused as to whom he was supposed to report his arrest. I deem such testimony that he reported his arrests, or that others prevented him from reporting his arrests, as incredible, given the inconsistencies in his excuses, lack of candor, and that such testimony was simply self-serving on the issue as to whether he reported his arrests. The assertion that he did report his arrests, was overborn by the testimony of the other witnesses and supporting documentary evidence presented by the DOC.

Based upon a review of the documentary evidence, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following as **FACTS** in this matter:

Millard Hickman attended orientation on May 5, 2017, at the start of his employment at South Woods prison as an Operator of Refrigeration Services. He received a copy of HRB 84-19 and HRB 84-17 during his employment orientation.

Mr. Hickman was arrested in Buena Boro on September 27, 2017, and charged with third degree possession of CDS, methamphetamine, in violation of N.J.S.A.35:10a(1). He did not report his arrest to his superior, nor did he provide anything in writing to his supervisor or employer about his arrest.

On May 4, 2018, Mr. Hickman was arrested for shoplifting in Millville, and charged with a violation of N.J.S.A. 2C:20-11b(2), a disorderly person's offense. Mr. Hickman advised his supervisor, Mr. Harris, that there was a rumor about him being arrested for shoplifting and that it was not true, it was a misunderstanding. Supervisor Harris advised Mr. Hickman that if he was arrested, he needed to report it to SID. Mr. Hickman did not report to his supervisor that he had been arrested. He did not provide anything in writing to his supervisor or his employer about this arrest.

On September 8, 2018, Mr. Hickman was arrested in Millville for an outstanding warrant for his failure to appear regarding the shoplifting charge of May 4, 2018. He also received a summons on September 8, 2018, for third degree possession of CDS, methamphetamine, in violation of N.J.S.A. 2C:35-10a(1), and possession of drug paraphernalia with intent to use, a disorderly person's offense, in violation of N.J.S.A. 2C:36-2.

Mr. Hickman went to South Woods on September 10, 2018, and was denied entry to report to work. He was escorted to the SID office, participated in an interview with the SID investigator, and thereafter spoke to Supervisor Harris. Mr. Hickman did not report that he had been arrested to Supervisor Harris, and did not provide information regarding the arrest in writing to Supervisor Harris or any other representative of his employer.

Mr. Hickman was issued a PNDA recommending removal. He did not request a departmental hearing. He received the FNDA, removing him from his employment, effective December 6, 2018, for sustained charges of:

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.11., conduct unbecoming an employee; and

HRB 84-17, as amended E.1., violation of a rule, regulation, policy, procedure, order or administrative decision, for having failed to report the three arrests.

### LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions, and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; 11A:2-20; N.J.A.C. 4A:2-2.

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); and see, Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) citation omitted. The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro Bottling Company, 26 N.J. 263, 275 (1958).

Here, Mr. Hickman is alleged to have violated "conduct unbecoming a public employee" as codified at N.J.A.C. 4A:2-2.3(a)(6), and "conduct unbecoming an employee" as established in HRB 84-17C.11. The term "unbecoming conduct" has been

broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit, or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of government services. Karins v City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v Civil Service Commission, 115 N.J. Super. 64, 72 (App. Div.), cert denied, 59 N.J. 269 (1971); Newark v Massey, 93 N.J. Super. 317 (App. Div. 1967). It is also recognized that a public employee is subject to discipline regarding their actions, whether on duty or off duty. See, State v Bullock, 136 N.J. 149, 153-154 (1994).

The DOC asserts that Mr. Hickman also violated HRB 84-19, which is entitled "The Reporting of Summons, Arrest, Incarcerations, the Confiscation of Weapons and/or Suspension of Weapons Privileges and Final Dispositions of Such Actions." The DOC policy specifies: "Employees who are summoned, arrested or incarcerated as a result of a crime or an offense as defined by N.J.S.A. 2C, *Criminal Justice Code of New Jersey*, must advise their superior as soon as possible, but not more than 48 hours from the date of the summons, arrest or incarceration." (HRB 84-19, underline and italics original.) The policy requires an employee who has been summoned or arrested to contact their supervisor before reporting to duty, or within forty-eight hours of the summons or arrest, whichever is less, and provide details regarding the incident. The employee is required to follow up the verbal communication "in writing" with the particulars of the incident, including identification of the law enforcement agency involved, the court appearance date, and the court's decision. The employee must provide in writing the final disposition of the matter, within forty-eight hours of same. The DOC asserts that by violating this policy, Mr. Hickman is guilty of HRB 84-17, entitled "violation of a rule, regulation, policy, procedure, order or administrative decision." HRB 84-17E.1.

Mr. Hickman admittedly was arrested on September 27, 2017, for a 2C third degree possession of CDS. He claims to have spoken to Russell Horton about the arrest. Supervisor Horton had no recollection of any such conversation. Mr. Hickman asserted various excuses for being distracted from putting the arrest circumstances in writing and admittedly did nothing further to speak to a supervisor, nor put anything in writing about



the arrest. I **CONCLUDE** Mr. Hickman did not report his arrest of September 27, 2017, and failed to follow proper reporting procedures as required by HRB 84-19.

Mr. Hickman admittedly was arrested on May 8, 2018, for shoplifting, a 2C disorderly person's offense. Although he did have a conversation with Supervisor Harris sometime in May 2018, asserting that Mr. Harris might hear a rumor that he was arrested and to ignore it, Mr. Hickman never reported that he was arrested. He never provided anything in writing. Even if Mr. Harris incorrectly advised Mr. Hickman to go to SID, and did not tell him to put the circumstances of the arrest in writing, it does not absolve Mr. Hickman from following the policy requiring him to report an arrest and the procedures to do so. I **CONCLUDE** Mr. Hickman did not report his arrest of May 8, 2018, as required by HRB 84-19, and failed to follow the proper procedures to report an arrest or summons, in violation of HRB 84-19.

Mr. Hickman admittedly was arrested on September 8, 2018, for a 2C third degree possession of CDS charge and a 2C disorderly person's offense of possession of drug paraphernalia. He was also arrested for having an active warrant for failure to appear for the prior shoplifting charge. Mr. Hickman had a conversation with Supervisor Harris after having been interviewed by SID on September 10, 2018. The topic of conversation with Mr. Harris involved what was going to occur to Mr. Hickman regarding his pay. Although one could contend Mr. Hickman was in essence "reporting" his arrest to Supervisor Harris, who presumably was aware of the arrest, the information he allegedly conveyed to Supervisor Harris was simply that the incident was another misunderstanding. He also failed to follow up in writing about the arrest. I **CONCLUDE** that Mr. Hickman did not properly report his arrest of September 8, 2018, and did not comply with the procedures required by HRB 84-19. Thus, I **CONCLUDE** that the DOC has demonstrated by a preponderance of the evidence that Mr. Hickman failed to comply with the policy of the DOC as embodied in HRB 84-19, requiring him to report an arrest, which is a violation of HRB 84-17E.1.

Mr. Hickman repetitively failed to report his arrests, was otherwise evasive in the way he conducted himself, and failed to follow the procedures for reporting arrests. The nature of the arrests and charges were for serious offenses of third degree CDS

possession, and disorderly person's offenses of possession of drug paraphernalia and shoplifting. Regardless of the disposition of the matters, Mr. Hickman failed to report the arrests and was in a job requiring him to have contact with inmates. Such behavior would adversely affect the efficient operation of a correctional facility, by an employee of a correctional facility not complying with the rules and regulations of the facility, while having close contact and interaction with inmates. Moreover, if the facility permitted the employee to repetitively fail to be transparent about their behavior and conduct, the public trust would be eroded regarding the ability of the DOC to operate a safe environment for all staff, employees, and the inmates of a correctional facility. I **CONCLUDE** Mr. Hickman's repetitive failure to follow the policy and procedures for reporting his arrests, is conduct unbecoming a public employee, sustaining the charges of N.J.A.C. 4A:2-2.3(a)(6) and HRB 84-17C.11., conduct unbecoming an employee.

The FNDA notes that another sustained charge against Mr. Hickman was for N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. The charge was never argued by the DOC during the hearing, nor in its summation brief, as a charge having been sustained to warrant the removal. I **CONCLUDE** the DOC has not pursued a finding of a violation of the charge of other sufficient causes and dismiss that charge.

### **Penalty**

Progressive discipline is to be considered, once a determination has been made that an employee has violated a statute, regulation, or rule regarding their employment. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding what disciplinary action is appropriate, the fact finder shall consider the nature of the charges sustained and the appellant's past record. West New York, 38 N.J. at 523-524.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007.) "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Id.

Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

Here, no prior disciplinary action has been asserted by the DOC regarding Mr. Hickman. This would be the first disciplinary action against Mr. Hickman. The discipline that may be imposed upon him for failing to follow policy and procedures ranges from an official written reprimand to removal. The discipline to be imposed for conduct unbecoming a public employee ranges from a three day suspension to removal. The DOC seeks removal of Mr. Hickman.

I **CONCLUDE** that removal is a permissible disciplinary action for the charges sustained against Mr. Hickman, and was appropriately applied to him. This was not a one-time event. Mr. Hickman repetitively failed to report his arrests and failed to follow proper reporting procedures. He engaged in consciously evasive behavior, with two of the three incidents involving third degree, 2C drug offenses. The three incidents occurred during the first seventeen months of his employment. It is laudable that Mr. Hickman sought "behavioral modification" treatment after the third incident when he was charged with possession of methamphetamine. That is not enough to mitigate the aggravating factors when viewed in total.

Although Mr. Hickman was a civilian employee, he did have direct contact and interaction with inmates in his position of employment. He was keenly aware of strict procedures he was required to follow as an employee of the prison, particularly due to being in an environment with inmates. I **CONCLUDE** that the totality of such circumstances renders Mr. Hickman's consciously evasive behavior in failing to properly report his three incident arrests, as egregious behavior. Hence, I **CONCLUDE** that the DOC's disciplinary action of removal of Mr. Hickman from his employment, does not shock the conscious, and shall be **AFFIRMED**.

Mr. Hickman has argued that he was not served with the PNDA. He admittedly did not have anyone checking his mail at his P.O. Box, during the seventy days he was in the State of Florida. Even if he did not receive the PNDA and therefore did not have

the opportunity to request a departmental hearing, there has been nothing demonstrated why or how that prejudiced him during the hearing conducted at the OAL. I thus **CONCLUDE** that the alleged issue of his failure to receive the PNDA, did not bear upon his ability to contest the removal through this OAL proceeding.

**ORDER**

It is **ORDERED** that the removal of Mr. Hickman from his employment as an Operator of Refrigeration Services, for conduct unbecoming and failure to follow policy and procedures, was appropriate. The removal shall be **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. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



October 22, 2020

DATE

\_\_\_\_\_  
ELAINE B. FRICK, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

/dm

**APPENDIX**

**LIST OF WITNESSES**

**For appellant**

Millard Hickman

**For respondent**

Ronald Tabloski

Charles Harris

Russell Horton

Oliver Keller

**LIST OF EXHIBITS**

**For appellant**

None

**For respondent**

- R-1 Final Notice of Disciplinary Action, December 6, 2018
- R-2 PRE-MARKED, NOT UTILIZED
- R-3 Preliminary Notice of Disciplinary Action, October 15, 2018
- R-4 DOC Office of Human Resources, New-Hire Orientation Checklist, May 5, 2017
- R-5 DOC Human Resources Bulletin 84-19, Amended Date April 3, 2000
- R-6 Investigator Chris Birardi Memorandum Report, September 11, 2018
- R-7 PRE-MARKED, NOT UTILIZED

R-8 PRE-MARKED, NOT UTILIZED

R-9 PRE-MARKED, NOT UTILIZED

R-10 DOC Human Resources Bulletin 84-17 As Amended, DOC Disciplinary  
Action Policy (Bates stamp DOC 42- DOC 91)