(b) In appeals concerning minor disciplinary actions, see N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

(c) In all other Commissioner and Board appeals, the burden of proof shall be on the appellant.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
Added new (b) and relettered old (b) as (c).

Case Notes

Initial Decision (2011 N.J. AGEN LEXIS 450) adopted, which found that a township police officer was no longer able to perform her duties due to two incidents in which the officer demonstrated a lack of sound judgment; an expert testified that the officer possessed personality traits of immaturity, low self-control, and impulsiveness, which would present themselves in the officer's actual work performance. In re Chancey, OAL Dkt. No. CSR 02913-11, 2011 N.J. CSC LEXIS 1101, Final Decision (September 21, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 252) adopted, in which the ALJ found, on conflicting evidence, that a Senior Cottage Training Technician was properly removed for patient abuse after she left an agitated patient outside in the heat, peeled his hands from the door and refused to let him enter the building, thereby escalating the situation, and failed to check him after he fell; rather than stepping aside and letting the patient in, the technician used an "arms-up" defensive tactic that sent the patient back two steps, after which he fell. In re Narouski, OAL Dkt. No. CSV 00811-11, 2011 N.J. CSC LEXIS 1158, Final Decision (August 17, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 291) adopted, which found that a senior correction officer was improperly removed where the ALJ found, on conflicting evidence, that the officer's actions in subduing an inmate were neither excessive nor unreasonable in light of the inmate's aggressiveness, and given that there was nowhere for the officer to reasonably retreat. None of the appointing authority's witnesses testified that a different standard on use of force should have been used to subdue special-needs inmates and no personnel were present at the scene to reasonably evaluate the officer's actions. In re Dennis, OAL Dkt. No. CSR 01351-11, 2011 N.J. CSC LEXIS 832, Civil Service Comm'n Decision (July 27, 2011).

Initial Decision (2009 N.J. AGEN LEXIS 1101) adopted, which found that a clerk typist was properly removed for her part in making false allegations that her supervisor made anti-Semitic remarks about a co-worker; credible evidence supported a finding that the typist and her co-worker agreed to make the false accusations in order to have their manager removed due to their unhappiness with how the department was being managed. In re Maltby, OAL Dkt. No. CSV 11902-08, 2010 N.J. CSC LEXIS 621, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1066) adopted, which found that a police officer committed conduct unbecoming a public employee by carrying an unauthorized duplicate shield while indefinitely suspended; however, the evidence did not clearly demonstrate that the officer "flashed" his badge at the scene of an accident in which he was involved, nor did the officer make a false representation that he was on duty. His conduct warranted a 3-day suspension. In re Furlow, OAL Dkt. No. CSV 11945-08, 2010 N.J. CSC LEXIS 613, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1061) adopted, which found that a public safety telecommunicator deserved a six-day suspension after slamming furniture and cursing at his supervisor when he was not allowed to leave early as he had anticipated. The telecommunicator acted in a manner unbecoming a public employee, but that there was no evidence that he neglected his duties. In re Lemay, OAL Dkt. No. CSV 9022-09, 2010 N.J. CSC LEXIS 614, Final Decision (January 13, 2010).

Senior correction officer was properly removed after she erroneously summoned an inmate to her post and, on discovering her error, permitted the inmate to remain in the area for an extended period of time and gave him a clothing pass without authorization, permitting the inmate to move freely around the facility without proper authorization and creating a very serious security risk. Notwithstanding the officer's long employment history, the egregiousness of her conduct, along with a 45-day suspension for similar misconduct just days prior to the most recent incident, demonstrated that removal was the appropriate penalty. In re Warren, OAL Dkt. No. CSV 1862-09, 2010 N.J. CSC LEXIS 461, Final Decision (December 16, 2009).

Appointing authority failed to present sufficient evidence that a police officer burglarized his estranged wife's home where the administrative law judge found, on conflicting evidence, that it was reasonable for the officer to believe that the wife wanted the officer to remove certain personal items from the garage; even if the officer violated the letter of a court order preventing him from being closer than curbside to the wife's home, no discipline was warranted. Additionally, the appointing authority failed to present evidence that the officer was involved in a motor vehicle chase that involved eluding the police. In re Sanger, OAL Dkt. No. CSV 11695-08, 2010 N.J. CSC LEXIS 459, Civil Service Comm'n Decision (December 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 765) adopted, which found that a City employee was properly removed for conduct unbecoming a public employee, misuse of public property, and other sufficient cause because of his fraudulent enrollment of his ex-wife on the health insurance plan paid for by the City. The employee failed to demonstrate that his ex-wife was his "dependent" from the time of their divorce in 1999 until the time he requested her removal from the policy in 2008. In re Peterson, OAL Dkt. No. CSV 01472-09, 2009 N.J. CSC LEXIS 1494, Final Decision (December 2, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 689) adopted, which found that although a youth worker completed a conditional discharge program resulting in the dismissal of criminal drug charges, her job required her to be a role model, a mentor, a "big sister" or even a "mother-figure" to troubled teens some of whom were gang members, or were emotionally or psychiatrically challenged, or who came from families with histories of drug or alcohol abuse; therefore, the worker's admission of drug possession by her guilty plea compromised her employment, warranting her removal. In re Contant, OAL Dkt. No. CSV 10626-08, 2009 N.J. CSC LEXIS 1555, Final Decision (November 18, 2009).

Correction sergeant properly received 20 working day suspension upon a finding that the officer used excessive force when he used oleoresin capsicum (OC) spray on a handcuffed inmate, who posed no immediate threat of physical harm, particularly where the officer was serving in a supervisory position and his unjustified use of the OC spray on the inmate had the potential to cause greater damage than it was aimed at preventing, including inciting other inmates in the area (adopting in part, rejecting in part 2009 N.J. AGEN LEXIS 504). In re Feldman, OAL Dkt. No. CSV 1477-09, 2009 N.J. CSC LEXIS 287, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 524) adopted, which found that the appointing authority properly removed an employee who pinched a patient's nipple. The sort of pinching described was not a playful or lesser offensive touching, but was aggressive behavior that served to intimidate, humiliate, and hurt the patient and to coerce the patient into cooperating with staff. In re Medina, OAL Dkt. No. CSV 08812-08, 2009 N.J. CSC LEXIS 295, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 322) adopted, which found that a police officer who refused to work the front desk after he temporarily lost his right to carry a firearm following an allegation of domestic violence and, instead "mouthed off" to his superiors, was guilty of insubordination, warranting a six month suspension; however, the evidence did not support a finding that the police officer was no longer fit for duty where a psychologist found no pathology, no diagnosable medical disorder, no psychological disorders, and nothing in the officer's background from a psychiatric perspective to deem him unfit.

In re Venson, OAL Dkt. No. CSV 07545-07, 2009 N.J. AGEN LEXIS 964, Civil Service Comm'n Decision (August 5, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 449) adopted, which found that a county correction officer was properly suspended for ten days following her unexcused absence from work; the ALJ found that the officer's demeanor while testifying as to the reason for her absence evidenced a lack of confidence and, therefore, lacked credibility. In re Gregg, OAL Dkt. No. CSV 6712-08, 2009 N.J. AGEN LEXIS 1008, Final Decision (August 5, 2009).

University failed to satisfy its burden of proof that a security guard neglected his duty by failing to report to his post in accordance with his shift or that leaving the post for some period of time without authorization; the guard was exercising his discretion to patrol the hall grounds, gardens and buildings. Additionally, the university failed to prove that the security guard misused public property where the sole basis of this charge was that the mileage reported from his tour of duty that evening was five miles when the university believed it should have been closer to three or three-and-one half miles (adopting 2009 N.J. AGEN LEXIS 155). In re Cassidy, OAL Dkt. No. CSV 2852-08, 2009 N.J. AGEN LEXIS 906, Civil Service Comm'n Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 441) adopted, which found that a senior medical security officer was properly removed after physically abusing a patient when the officer removed a towel from the patient's head without there being an order or authorization to do so; the patient was not a danger to himself or others and often wore a towel around his head when on the unit and was not prohibited from doing so. In re Corker, OAL Dkt. No. CSV 236-09, 2009 N.J. AGEN LEXIS 976, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 444) adopted, which found that a human services technician was improperly disciplined for neglect of duty and falsification of documents where the evidence clearly demonstrated that the technician was doing the job of three people and had no choice but to complete the forms; her actions were not voluntary and she did not attempt to intentionally make any misrepresentations. In re Cruz, OAL Dkt. No. CSV 4146-07, 2009 N.J. AGEN LEXIS 981, Civil Service Comm'n Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 67) adopted, which found that several police officers appropriately submitted an "open door" incident report regarding a possible burglarized apartment where the owner was not present, even after being advised by another victim that three men entered his apartment and pointed a gun in his face; the other victims were not cooperative and did not want to become involved and the officers specifically received authorization from their lieutenant to file such a report. In re Clarkin, OAL Dkt. No. CSV 01980-08; 01982-08; 01983-08; 01984-08 (Consolidated), 2009 N.J. AGEN LEXIS 959, Civil Service Comm'n Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 247) adopted, which found that the appointing authority failed to satisfy its burden of proof that a bus driver's positive drug screen warranted the extreme discipline of termination where the evidence showed that the isolated incident of personal marijuana use occurred off-duty and the driver had an exemplary employment history, took responsibility for the incident, and participated in a voluntary drug program; the appointing authority's own policy set forth that the ingestion of drugs or alcohol prior to an employee reporting to the worksite "shall result in disciplinary action," which, by its own terms, was not cause for automatic termination, but instead required that the type of disciplinary action should be informed by contextual and background factors. In re Deans, OAL Dkt. No. CSV 01134-09, 2009 N.J. AGEN LEXIS 957, Civil Service Comm'n Decision (June 10, 2009).

Appointing authority sustained its burden of proof regarding a court security guard's inability to perform his duties because the issue was not whether the appointing authority proved that the guard was a paranoid schizophrenic, but whether he was unable to perform his duties; the guard was quarrelsome, insubordinate, rude, obsessive, untruthful, chronically agitated, had difficulty controlling his impulses, and appeared to suffer from paranoid delusions about being monitored by the government. In re Patel, OAL Dkt. No. CSV 11119-07, 2009 N.J. AGEN LEXIS 793, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 232) adopted, which found that the City failed to prove that a public works employee was fit to return to work after an on-the-job injury, surgery, and therapy; the worker was under no obligation to sua sponte offer to return to work without documented medical clearance, nor did the conflicting evidence establish that he was, in fact, fit to return to work at the time alleged by the City. In re Pappas, OAL Dkt. No. CSV 09761-05, 2009 N.J. AGEN LEXIS 899, Civil Service Comm'n Decision (May 27, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 160) adopted, which found that a police lieutenant was properly suspended for 30 days when he failed to respond in a timely manner after being dispatched to a domestic violence event; the lieutenant could have and should have advised dispatch if he was delayed, not waited until his number was called again. That the matter resolved without further incident was of little comfort and of no moment to the expectation that a dispatched officer would respond when called; the reasons for following procedures were for the purpose of preventing what could have happened, and the failure to follow them was not mitigated by what did not. In re Slack, OAL Dkt. No. CSV 8826-08, 2009 N.J. AGEN LEXIS 967, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 71) adopted, which found that an engineering aide was properly suspended for 60 days after he shoved a coworker from behind while involved in an argument; however, because the aide was acting on the advice of counsel when he recorded a subsequent meeting with his supervisor, failure to turn off the tape recorder was not a deliberate disregard of a supervisor's direction. In re Dowd, OAL Dkt. No. CSV 05028-08, 2009 N.J. AGEN LEXIS 961, Final Decision (April 15, 2009).

Appointing authority failed to sustain its burden of proof regarding "double dipping" charges against a police officer who allegedly received payment for off-duty traffic and construction jobs while on duty and submitted overtime reports while working off-duty; similar situations existed when police officers worked part-time jobs as security officers or traffic control guards and covered for each other on the part-time job if an officer was called to testify in municipal court during part-time employment hours and the testimony from all witnesses was consistent regarding the accepted part-time-job routine and reporting requirements (adopting 2009 N.J. AGEN LEXIS 117). In re Bell, OAL Dkt. No. CSV 9013-07, 2009 N.J. AGEN LEXIS 810, Civil Service Comm'n Decision (April 15, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 986) adopted which found that a county correction officer was properly removed after submitting a falsified document as evidence to support her claim that the absence for which she had been docked and subsequently charged was FMLA related; the officer intentionally misstated a material fact in connection with her work and her conduct constituted conduct unbecoming a public employee. In re Moss, OAL Dkt. No. CSV 10398-07, 2009 N.J. AGEN LEXIS 787, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 120) adopted, which found that a driver of handicapped and elderly could no longer fulfill his duties after an expert evaluation of his medical condition revealed that he did not have the requisite back strength to help people who were unsteady or in wheelchairs; the County acted in good faith and properly removed the driver from his employment, however, where employees were found to be medically unfit and were not guilty of any kind of wrongdoing, there was precedent for changing their termination status to a resignation in good standing in order to avoid the harsh consequences of removal. In re LaCava, OAL Dkt. No. CSV 10401-07, 2009 N.J. AGEN LEXIS 788, Final Decision (March 25, 2009).

Where a county correction officer was actually injured, was authorized off-duty by a doctor, and prescribed Percocet, causing her to fall deeply asleep, resulting in a failure to answer the phone while sick, she should not have been disciplined for the first incident, but the officer was properly disciplined for a subsequent similar incident where she was

well aware that she had to answer the phone, and was also aware that the Percocet strongly affected her; however, the officer's failure to be available for the phone call on the latter occasion was not so egregious as to warrant a 60 working day suspension and the infraction warranted a reduction in the penalty, regardless of the officer's disciplinary history, to a 10 working day suspension (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 39). In re Echevarria, OAL Dkt. No. CSV 6730-08, 2009 N.J. AGEN LEXIS 824, Civil Service Comm'n Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 74) adopted, which found that a five-day, rather than 11-day, suspension was warranted when a police officer was insubordinate by continuing to argue with a uniformed superior officer about the officer's transportation to his post; the officer did not act belligerently against his superior and his last infraction was 13 years ago had nothing to do with insubordination. In re Cirasella, OAL Dkt. No. CSV 09100-06, 2009 N.J. AGEN LEXIS 898, Final Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 23) adopted, which found that, although the complaining patient was not capable of presenting clear testimony at a hearing regarding a cottage training technician's alleged abuse, the appointing authority presented credible evidence to

6. Conduct unbecoming a public employee;

7. Neglect of duty;

8. Misuse of public property, including motor vehicles;

9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;

10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder;

11. Violation of New Jersey residency requirements as set forth in P.L. 2011, c. 70; and

12. Other sufficient cause.

Amended by R.1990 d.308, effective June 18, 1990.
See: 22 N.J.R. 1015(b), 22 N.J.R. 1915(a).
Added misuse of public property, including motor vehicles.
Amended by R.1994 d.618, effective December 19, 1994.
See: 26 N.J.R. 3507(a), 26 N.J.R. 5000(a).
Amended by R.1995 d.415, effective August 7, 1995.
See: 27 N.J.R. 1837(a), 27 N.J.R. 2884(a).
Added (a)10, and recodified former (a)10 as (a)11.
Amended by R.2012 d.056, effective March 5, 2012.
See: 43 N.J.R. 2691(a), 44 N.J.R. 576(a).
In (a)10, deleted "and" from the end; added new (a)11; and recodified former (a)11 as (a)12.

Case Notes

Appellate court's reversal of the Merit System Board's (MSB's) decision to remove a public employee from her job was in error as the appellate court impermissibly imposed its own judgment as to the proper penalty when the MSB's penalty was not illegal, unreasonable, nor shocking to any sense of fairness; the MSB's decision to remove the employee for waving a cigarette lighter retrieved from her purse in the face of a five-year-old child in a room containing oxygen tanks recognized legitimate public policy reasons for not retaining the employee since she lost the trust of her employer. In re Herrmann, 192 N.J. 19, 926 A.2d 350, 2007 N.J. LEXIS 721 (2007).

Appellate court erred by treating the principle of progressive discipline as a mandate of law and rejecting a Merit System Board's opinion terminating a police officer for sleeping on the job. In re Carter, 191 N.J. 474, 924 A.2d 525, 2007 N.J. LEXIS 702 (2007).

As a county employee, an accountant, had been proven incompetent, the Merit System Board erred in reversing his termination and in imposing a six-month suspension; an accountant who could not prepare a bank reconciliation was of no value to a county treasurer's office, and a suspension would not make him competent, since he always maintained that he performed his work properly. Klusaritz v. Cape May County, 387 N.J. Super. 305, 903 A.2d 1095, 2006 N.J. Super. LEXIS 231 (App.Div. 2006).

In circumstances where an employee cannot competently perform the work required of his position, termination rather than progressive discipline is the appropriate action. Klusaritz v. Cape May County, 387 N.J. Super. 305, 903 A.2d 1095, 2006 N.J. Super. LEXIS 231 (App.Div. 2006).

A public employee cannot be dismissed for failure to submit to a procedure violative of his state and federal constitutional rights. Reames v. Department of Public Works, City of Paterson, 310 N.J.Super. 71, 707 A.2d 1377 (A.D. 1998).

Off-duty firefighter's utterance of racial epithet at on-duty police officer during traffic stop constituted conduct unbecoming both firefighter and public employee. Karins v. City of Atlantic City, 706 A.2d 706, 152 N.J. 532 (N.J. 1998).

Merit System Board of State Department of Personnel did not have exclusive jurisdiction for prosecution of forfeiture action against senior corrections officer. State v. Lee, 258 N.J.Super. 313, 609 A.2d 513 (A.D.1992).

Issue of forfeiture of public employment by turnpike utility worker did not have to be first addressed by administrative agency to determine whether there was any relationship between crimes committed and employment duties. State v. Baber, 256 N.J.Super. 240, 606 A.2d 891 (L.1992).

Turnpike utility worker's convictions for failure to deliver drugs to police and for simple assault upon two police officers were offenses "involving or touching" his job so as to justify forfeiture of employment. State v. Baber, 256 N.J.Super. 240, 606 A.2d 891 (L.1992).

Order directing forfeiture of public employment may be incorporated in sentence of criminal convictions. State v. Baber, 256 N.J.Super. 240, 606 A.2d 891 (L.1992).

Forfeiture of public employment, for conviction of failure to file gross income tax return was not a bill of attainder. Ayars v. New Jersey Dept. of Corrections, 251 N.J.Super. 223, 597 A.2d 1084 (A.D.1991).

Forfeiture of public employment for conviction for failure to file gross income tax return did not violate double jeopardy. Ayars v. New Jersey Dept. of Corrections, 251 N.J.Super. 223, 597 A.2d 1084 (A.D.1991).

Dismissal was appropriate sanction for refusal by correction officers to submit to mandatory drug testing. Caldwell v. New Jersey Dept. of Corrections, 250 N.J.Super. 592, 595 A.2d 1118 (A.D.1991), certification denied 127 N.J. 555, 606 A.2d 367.

When public employee is convicted of petty disorderly persons offense, analysis of nexus between crime and employment is required to determine if there is sufficient relationship between the two to warrant harsh penalty of forfeiture. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

When public employee is convicted of petty disorderly persons offense, connection between conviction and employment will have to be examined initially by governmental department in which employee works, then by appropriate administrative agencies, and employee will retain right to appeal to appellate division. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Employees who are convicted of petty disorderly persons offense and recognize that their offense does touch and involve their employment can for good cause request county prosecutor or Attorney General to petition sentencing court for waiver of resultant forfeiture of public employment. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Even in cases in which public employee does not obtain formal waiver of forfeiture of public employment resulting from conviction of petty disorderly persons offense, department should consider whether punishment of forfeiture fits crime. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Inquiry into whether offense by public employee involves and touches on public employment to extent of meriting forfeiture of employment requires careful examination of facts and evaluation of various factors. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Offense committed by public employee would not be considered not to involve or touch employment, so as to support forfeiture of public employment, based on fact that offense does not take place during

employment hours or on employment grounds. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Evidence supported determination that criminal conviction for harassing immediate superior warranted forfeiture of public employment. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Whether public employee's conviction involves or touches employment does not depend upon whether criminally proscribed acts took place within immediate confines of employment's daily routine. Moore v. Youth Correctional Institute at Annandale, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Senior corrections officer's criminal conviction for harassing his immediate superior was one "involving or touching" his employment as a senior corrections officer. Moore v. Youth Correctional Institute at Annandale, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Department of Energy was not equitably estopped from returning employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-1.1). O'Malley v. Department of Energy, 109 N.J. 309, 537 A.2d 647 (1987).

Tenure of public officer governed by Civil Service Commission; broad discretion conferred upon appointing authority regarding grounds for removal (citing former N.J.A.C. 4:1-6.9). State v. DeMarco, 107 N.J. 562, 527 A.2d 417 (1987).

Off-duty police officer, involved in fatal accident which was basis for his conviction of death by auto, disqualified from unemployment compensation effective the date of his suspension pending discharge (citing former N.J.A.C. 4:1-16.9). Connell v. Board of Review, 216 N.J.Super. 403, 523 A.2d 1099 (App.Div.1987).

Camden County Department of Corrections properly suspended a corrections officer on charges of insubordination, N.J.A.C. 4A:2-2.3(a)2; conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)6; neglect of duty, N.J.A.C. 4A:2-2.3(a)7; other sufficient cause, N.J.A.C. 4A:2-2.3(a)12; and violation of Camden County Correctional Facility rules. He violated an unequivocal and unambiguous direct written order putting him on a "no inmate contact status until further notice" by being in the area of Admissions and in immediate direct contact with various inmates who were in the process of transitioning in or out of the jail at that location. In re Christopher Burlap, OAL Dkt. No. CSV 10834-12, 2013 N.J. AGEN LEXIS 64, Initial Decision (March 22, 2013).

Senior corrections officer was guilty of insubordination, conduct unbecoming a public employee, and other sufficient cause under N.J.A.C. 4A:2-2.3(a)2, 6, and 11 when she willfully refused to sign a Failure to Clear report after failing to clear a security scan and attempted to enter the prison without clearance contrary to the Department of Corrections policy. She willfully refused to follow the departmental policy as her supervisor ordered her to do and used disrespecting and abusive language to him as her supervisor. In re Keisha McGee, OAL Dkt. No. CSV 06149-12, 2013 N.J. AGEN LEXIS 60, Initial Decision (March 21, 2013).

Conduct of an employee, a senior correction officer at a state prison, in leaving his assigned post for about fifteen minutes without permission of a supervisor and without being properly relieved so that he could accompany another officer to the infirmary where the second officer was to question an inmate, constituted incompetency or failure to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a)1. However, the companion charge that the employee had left his assigned work area without permission and had created a danger to person or property was redundant of the charge that was sustained so the redundant charge was properly dismissed. Moreover, given the nature of the deviation, the employee's record and the surrounding facts and circumstances, a 120-day suspension was unjustified, and the ALJ modified the penalty, reducing it to a 30-day suspension. In re Schmidt, OAL Dkt. No. CSV 14759-11, 2013 N.J. AGEN LEXIS 53, Initial Decision (March 18, 2013).

Refusal on the part of an employee who, while employed as a human services technician in a medical setting, to comply with a direct order from a charge nurse to re-weigh a patient who was deemed by the supervising clinical nutritionist to be at a high health risk constituted insubordination within the meaning of N.J.A.C. 4A:2-2.3(a)2. Given the fact that the employee had been cited for insubordination on four prior occasions and given the seriousness of the current infraction, based as it was on the employee's direct refusal of a supervisor's directive, removal was an appropriate sanction. In re Spencer-Wideman, OAL Dkt. No. CSV 07057-12, 2013 N.J. AGEN LEXIS 45, Initial Decision (March 7, 2013).

On findings that the corrections officer's testimony, as supported by other officers, as to the details of her confrontation with an inmate was more credible than the testimony of the inmate and the inmate's witnesses, the ALJ concluded that insufficient evidence had been adduced by the appointing authority to support its finding that the officer had had inappropriate physical contact with the inmate or had mistreated the inmate contrary to N.J.A.C. 4A:2-2.2. Nor was there sufficient evidence on which it could be said that the officer had engaged in unbecoming conduct within the meaning of N.J.A.C. 4A:2-2.3. Both findings justified a reversal of the thirty-day suspension that had been imposed by the appointing authority. In re Grant, OAL Dkt. No. CSV 3179-12, 2013 N.J. AGEN LEXIS 30, Initial Decision (February 14, 2013).

Employee of a county department of corrections whose lack of punctuality, absenteeism, and neglect of duty had already resulted in suspensions including four 2-day suspensions, two 3-day suspensions, one 10-day suspension, one 30-day suspension, one 45-day suspension and one six-month suspension and who had recently executed a formal agreement with the county acknowledging that any further infractions could result in "major discipline, including discharge" was properly removed from his position. The employee's extensive disciplinary record, the accuracy of which was not questioned, contained numerous occurrences over a reasonably short period of time, was properly characterized as "chronic" within the meaning of N.J.A.C. 4A:2-2.3(a)4, and warranted removal. In re Brewer, OAL Dkt. No. CSV 08851-12, 2013 N.J. AGEN LEXIS 33, Initial Decision (February 13, 2013).

Police officer was properly removed from office on findings that while he had informed his supervisor at about 10:00 pm that he was unable to work his scheduled midnight to 8:00 am shift due to a migraine, the officer was seen a short time later consuming alcoholic beverages at a bar. The officer's conduct at the bar established that he was well enough to report to duty at midnight, and his statements to the effect that he was too ill to report were untruthful. Given that the department had proven, by a preponderance of competent evidence, that the officer had violated department rules prohibiting malingering and unauthorized absences, N.J.A.C. 4A:2-2.3(a)11 authorized the imposition of major discipline in the form of an order removing the officer from his position. In re Barbosa, OAL Dkt. No. 04974-12, 2013 N.J. AGEN LEXIS 32, Initial Decision (February 11, 2013).

Policeman's claim that he was unaware that N.J.A.C. 4A:2-6.1 required him to provide no less than 14 days notice of resignation from his position despite the fact that the notice requirement was expressly set out in correspondence between his attorney and the city was not only rejected as lacking in credibility but the ALJ specifically found that the policeman had actual notice of the requirement and that his knowing failure to report for duty for the 14 day period following the date on which his resignation was tendered constituted, inter alia, a failure to perform duties and insubordination and supplied sufficient cause for his removal for violations of N.J.A.C. 4A:2-2.3(a). In re Bayard, OAL Dkt. No. CSR 3546-12, 2013 N.J. AGEN LEXIS 11, Initial Decision (January 17, 2013).

Charges that a senior corrections officer was properly suspended from her position at a state prison for violating N.J.A.C. 4A:2-2.3(a)12 by allegedly failing to man her post, by failing to write a sufficient report of the incident as requested and by acting in an insubordinate manner when