CHAPTER 2

APPEALS, DISCIPLINE, AND SEPARATIONS

Authority

N.J.S.A. 2C:51-2, 11A:1-2(e), 11A:2-6, 11A:2-11(h), 11A:2-13 et seq., 11A:4-15(c), 11A:7-1 et seq., 11A:8-4, 40A:14-200 et seq., and 52:14B-10(c); P.L. 2008, c. 29, P.L. 2009, c. 16, and P.L. 2011, c. 70; and 49 CFR Part 382.

Source and Effective Date

R.2015 d.186, effective November 5, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).

Chapter Expiration Date

Chapter 2, Appeals, Discipline, and Separations, expires on November 5, 2022.

Chapter Historical Note

Chapter 2, Appeals, Discipline and Separations, was adopted as R.1987 d.407, effective October 5, 1987. See: 19 N.J.R. 1013(a), 19 N.J.R. 1827(a). See, also, Title Historical Note prior to N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, Discipline and Separations, was readopted as R.1992 d.414, effective September 22, 1992. See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, Discipline and Separations, was readopted as R.1997 d.435, effective September 22, 1997. See: 29 N.J.R. 3102(a), 29 N.J.R. 4455(b).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2003 d.112, effective February 13, 2003. See: 34 N.J.R. 3570(a), 35 N.J.R. 1407(b).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2008 d.215, effective July 1, 2008. See: 40 N.J.R. 1402(a), 40 N.J.R. 4520(a).

Chapter 2, Appeals, Discipline and Separations, was renamed Appeals, Discipline, and Separations by R.2014 d.099, effective June 2, 2014. See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 2, Appeals, Discipline and Separations, was scheduled to expire on July 1, 2015. See: 43 N.J.R. 1203(a).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2015 d.186, effective November 5, 2015. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPEALS

4A:2-1.1 Filing of appeals

(a) All appeals to the Civil Service Commission shall be in writing, signed by the person appealing (appellant) or his or her representative and include the reason for the appeal and the specific relief requested. See N.J.A.C. 4A:2-1.8 for appeal processing fees.

(b) Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law, this chapter or N.J.A.C. 4A:8, or where the Civil Service Commission finds that a material and controlling dispute of fact exists that

can only be resolved by a hearing, an appeal will be reviewed on a written record. In written record appeals:

1. Each party must serve copies of all materials submitted on all other parties; and

2. A party may either review the file at the Civil Service Commission during business hours, or request copies of file materials.

(e) A party in an appeal may be represented by an attorney, authorized union representative, or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Added new (d)1.-2.
Amended by R.2011 d.173, effective June 20, 2011.
See: 43 N.J.R. 470(a), 43 N.J.R. 1419(b).
In (a) and the introductory paragraph of (d), substituted "Civil Service Commission" for "Commissioner or Board"; in (a), deleted "must" preceding "include", and inserted the last sentence; in the introductory paragraph of (d), inserted ", this chapter", and substituted "N.J.A.C. 4A:8" for "these rules"; and in (d)2, substituted "Civil Service Commission" for "Department of Personnel".
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (d)2, inserted "either" and ", or request copies of file materials".

Law Review and Journal Commentaries

Civil Service — Disability Retirement — Police Seniority. Judith Nallin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

Time in which fire fighter was required to appeal decision of township board of fire commissioners classifying fire fighters commenced when fire fighter learned of representations. Matter of Tavani, 264 N.J.Super. 154, 624 A.2d 75 (A.D.1993).

Appeals to Department of Personnel (DOP) and Merit System Board by police officer were timely. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

Removal of provisional juvenile detention officer from eligible list was improper without hearing by Merit System Board to resolve good faith factual disputes. Matter of Wiggins, 242 N.J.Super. 342, 576 A.2d 932 (A.D.1990).

Civil Service Comm'n acted within its discretionary powers to deny hearing and only allow petitioner to submit additional facts for review (citing former N.J.A.C. 4:1-5.1). Honachefsky v. New Jersey Civil Service Comm'n, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

Employee's appeal of the determination of her layoff rights was untimely pursuant to N.J.A.C. 4A:2-1.1(b). She was aware of the determination when she received notification of her separation from employment, but she did not file an appeal requesting to be placed on the Special Reemployment List (SRL) until over a year after the layoff. Even if the merits of the matter were considered, she failed to show that the Division of State and Local Operations did not properly apply the uniform regulatory criteria found in N.J.A.C. 4A:8-2.1 et seq. She was not permanent in the title Social Worker 2 at the time of her displacement and, therefore, could not be placed on an SRL for that title. In re Tysen Graham, Dep't. of Human Serv., CSC DKT. No. 2014-658, 2013 N.J. CSC LEXIS 1089, Final Decision (December 6, 2013).

Employee's appeal of his placement on temporary unpaid leave was dismissed because it was untimely pursuant to N.J.A.C. 4A:2-1.1(b). It was clear that the employee was aware of his situation but there was no documentation that he ever pursued the matter with either the Township or filed an appeal with the Civil Service Commission until three years and seven months later. Because the Township completely and egregiously failed to comply with the established layoff procedures, the Civil Service Commission imposed a fine of $5000 on the Township for its acts and omissions pursuant to N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-2.1(a)2. In re James Anderson, Twp. of Berkeley, CSC Dkt. No. 2013-1033, 2013 N.J. CSC LEXIS 814, Final Decision (September 20, 2013).

Civil Service Commission denied the appeal of a decision of the Division of Classification and Personnel Management that upheld the bypass of an applicant's name on the eligible list for fire fighter. His appeal of the bypass on two certifications was untimely under N.J.A.C. 4A:2-1.1(b), and he provided no reason why he did not file the appeal. In re Phillip cherry, Fire Fighter (M2320H), Asbury Park, CSC Dkt. No. 2013-530, 2013 N.J. CSC LEXIS 634, Final Decision (May 21, 2013).

Given that a candidate's position would be properly classified as Management Assistant and the eligibility list for that position was incomplete, good cause was established to consider her eligibility appeal that was untimely filed under N.J.A.C. 4A:2-1.1(b). In re Lynn Brzozowski and Kimberly Sampson, Jersey City Sch. Dist. CSC Dkt. Nos. 2012-3182, 2012-3193, 2013 N.J. CSC LEXIS 535, Final Decision (May 15, 2013).

Failure by an employee to appeal what he claimed to be an improper reduction of his salary in the position of Program Support Specialist 3 within 20 days of the date on which he had notice that the salary as originally determined was incorrect and a lower salary would apply foreclosed any review of that decision. The purpose of the 20-day appeal deadline imposed by N.J.A.C. 4A:2-1.1(b) was to establish a threshold of finality, and that rule was properly enforced where, as here, the employee not only waited nine months to file the appeal but provided no explanation for the unreasonable delay. In re Jack Laurie, Department of Community Affairs, CSC Docket No. 2013-559, 2013 N.J. CSC LEXIS 202, Final Decision (March 8, 2013).

Employee's failure to appear at scheduled hearings on a removal action supported employer's motion to dismiss appeal, especially where the employee lied about the reason he failed to appear; however, because the removal became final for failure to appear, the employer did not have the authority to order a subsequent removal based on the employee's action in lying during the administrative process (adopting result in 2005 N.J. AGEN LEXIS 519 on other grounds). In re Drayton, OAL Dkt. No. CSV 2151-05, 2005 N.J. AGEN LEXIS 1250, Final Decision (November 3, 2005).

Employee's failure to appear at scheduled hearings on removal action supports employer's motion to dismiss appeal. Maycheck v. Atlantic City Housing Authority, 97 N.J.A.R.2d (CSV) 182.

No timely appeal to the Merit Systems Board. N.J.S.A. 11A:1-1 et seq. Pryor v. Township of Morristown, 92 N.J.A.R.2d (CSV) 18.

Time limits for appeal construed to have been met when petitioner was advised a letter sent prior to final notice of disciplinary action would act to reinstate her appeal (citing former N.J.A.C. 4:1-5.3). Clark v. New Jersey Dep't of Agriculture, 1 N.J.A.R. 315 (1980).

4A:2-1.2 Stay and interim relief requests

(a) Upon the filing of an appeal, a party to the appeal may petition the Civil Service Commission for a stay or other relief pending final decision of the matter.

(b) A request for a stay or interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) The following factors will be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioner;

2. Danger of immediate or irreparable harm if the request is not granted;

3. Absence of substantial injury to other parties if the request is granted; and

4. The public interest.

(d) The filing of a petition for interim relief will not stay administrative proceedings or processes.

(e) Each party must serve copies of all materials submitted on all other parties.

(f) Following a final administrative decision by the Civil Service Commission, and upon the filing of an appeal from that decision to the Appellate Division of Superior Court, a party to the appeal may petition the Commission for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above. See N.J. Court Rules 2:9-7.

(g) See N.J.A.C. 1:1-12.6 for interim relief rules on matters pending before the Office of Administrative Law.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
Changed title from "Interim relief."
Added new (f) and relettered old (f) as (g) with stylistic revisions.
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), substituted "Civil Service Commission" for "Commissioner"; and in (f), substituted "Civil Service Commission" for "Commissioner or the board" and "Commission" for "Commissioner".

Case Notes

Police officer failed to establish that he was entitled to interim relief from the action of the appointing authority suspending him as unfit for duty within the meaning of N.J.A.C. 4A:2-2.5(a)1, which suspension was based on the department's charges that the office falsified a police report relating to a burglary of the officer's vehicle in which a semi-automatic handgun was stolen. Specifically, claiming that the officer had falsely stated in that report that he did not know who had stolen the gun when in fact the officer knew that it had been taken by a drug dealer, the department had charged the officer with neglect of duty, incompetence, conduct unbecoming a public employee, and inability to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a). The nature and seriousness of the charges supported the necessity for an immediate suspension. Moreover, the officer did not establish that he had satisfied the criteria for interim relief in N.J.A.C. 4A:2-1.2. In re Johnson, City of Long Branch, CSC Docket No. 2013-1912, 2013 N.J. CSC LEXIS 1155, Decision on Request for Interim Relief (November 26, 2013).

Pursuant to N.J.A.C. 4A:2-1.2(c), a police officer was not entitled to a stay and interim relief of her removal on charges of chronic or excessive absenteeism, neglect of duty, conduct unbecoming a public employee, incompetency, inefficiency or failure to perform duties; insubordination, and other sufficient cause. Because there were a number of disputes regarding material facts, the Civil Service Commission would not attempt to determine the sufficiency and credibility of the evidence based on an incomplete written record. The record was not clear as to when an investigation was started, or when sufficient information was obtained to bring such charges. Thus, there was not a sufficient basis to dismiss any administrative charges as a violation of the 45-day rule. The Commission would not determine if the penalty was appropriate. While the Commission sympathized with the officer's financial situation, the harm that she was suffering while awaiting her hearing was purely financial and could be remedied by the granting of back pay should she prevail in the appeal. If the matter was not concluded within the time period prescribed in N.J.A.C. 4A:2-2.13(g), the officer would be entitled to begin receiving her regular pay pursuant to N.J.A.C. 4A:2-2.13(h). In re Tamieka Dwyer, City of East Orange, CSC Dkt. No. 2014-488, 2013 N.J. CSC LEXIS 1029, Decision of Civil Service Commission (November 8, 2013).

Employee was not entitled to interim relief of his 30-day suspension pursuant to N.J.A.C. 4A:2-1.2(c). He did not contest that he was absent for an unapproved amount of time, and the Civil Service Commission declined to attempt to determine the merits or the proper disciplinary penalty based on an incomplete record. Even if there were procedural violations at the department level, there were deemed cured by the granting of a de novo hearing at the Office of Administrative Law. Moreover, he failed to show the danger of immediate or irreparable harm or how the public interest would be served by granting his request when he had already served his suspension. In re Philip Rodriguez, City of East Orange, CSC Dkt. No. 2013-2143, 2013 N.J. CSC LEXIS 1007, Final Decision (November 7, 2013).

Appointing authority was not entitled to a stay of the Civil Service Commission's decision, pursuant to N.J.A.C. 4A:2-1.2(c), reversing an employee's removal contingent upon his successful completion of a psychological fitness for duty examination pending the outcome of its appeal to the Superior Court, Appellate Division. The fact that the appointing authority simply disagreed with the Commission's determination did not demonstrate that it had a clear likelihood of success on the merits or that it, or the township citizens, were in danger of immediate or irreparable harm. Had the appointing authority complied with the Commission's order and worked with the employee in the selection of the psychiatrist or psychologist by agreement of both parties and if it were then determined that he was not fit for duty, it could have taken steps to remove the employee from his position. In re Kevin Kingston, Twp. of Verona, CSC Dkt. No. 2013-2872, 2013 N.J. CSC LEXIS 478 (June 27, 2013).

Police officer who was immediately suspended from employment as permitted by N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1 after being charged with offenses including violating sick leave polices, failing to timely notify of a change in residence, falsifying official records and failing to update recall information despite the fact that he was on sick leave at the time did not establish that there were grounds for relief under N.J.A.C. 4A:2-1.2(c). The nature and seriousness of the charges supported the imposition of an immediate suspension from employment because the officer, as a police officer, held a highly visible and sensitive position in the community so that such an officer's failure to follow all applicable rules clearly impacted the proper function of the police department. Nor was the fact that the officer was out on sick leave on the date of his suspension provide any basis for relief from the immediate suspension. In re Glen Green, CSC Dkt. No. 2013-1446, 2013 N.J. CSC LEXIS 585, Final Order (June 26, 2013).

Police officer was not entitled to interim relief of his immediate suspension under N.J.A.C. 4A:2-1.2(c). Although he alleged that his absences were authorized by a doctor's note, he failed to submit that note, and the Civil Service Commission declined to determine the merits or the proper disciplinary penalty based on an incomplete record. Any procedural violations by the appointing authority were deemed cured by the granting of a de novo hearing at the Office of Administrative Law. The officer also failed to show the danger of immediate or irreparable harm. If his termination was not sustained, there were available mechanisms for relief, such as back pay. In re John Batiuk, CSC Dkt. No. 2013-1490, 2013 N.J. LEXIS 561 (June 26, 2013).

County correction officer was not entitled to interim relief of his immediate suspension pursuant to N.J.A.C. 4A:2-1.2(c) because the nature and seriousness of the charges of violating departmental rules regarding the possession of cellular phones supported the necessity for an immediate suspension under N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1. If the charges were ultimately sustained on appeal, the officer subjected the correctional facility and the public to possible harm by bringing a cellular phone into a secured facility. In re Christopher Chin,

Cnty. of Cape May, CSC Dkt. No. 2013-1264, 2013 N.J. CSC LEXIS 348, Request For Interim Relief (April 4, 2013).

Police officer was not entitled to interim relief of his immediate suspension without pay under N.J.A.C. 4A:2-1.2(c). There was no dispute that the appointing authority possessed a valid basis to impose an immediate suspension pursuant to N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1. The harm he was suffering was monetary in nature and could be remedied, and it was clearly potentially harmful to the appointing authority and the public if an employee who was alleged to be unfit was allowed to remain on the job. In re Michael Watts, West Orange, CSC Dkt. No. 2013-1967, 2013 N.J. CSC LEXIS 271, Final Decision (April 4, 2013).

Applicant's request that the Civil Service Commission issue a stay pending his appeal, to the Superior Court, Appellate Division, of the Commission's decision that the applicant did not possess one year of required continuous permanent service as of the closing date for the examination for Sheriff's Officer Lieutenant (PC0993N), Essex County, and thus was ineligible for the examination was denied. Because the Commission's decision was amply supported by substantial evidence, the applicant failed to demonstrate that he had a clear likelihood of success on the merits within the meaning of N.J.A.C. 4A:2-1.2(c). Moreover, even if he had so demonstrated, N.J.A.C. 4A:4-6.3(c) made it clear that the appeal did not provide a basis to hold up the appointment process. That was because there were other mechanisms for relief in the event that the applicant prevailed on appeal. In re Edward Esposito, CSC Dkt. No. 2013-1899, 2013 N.J. CSC LEXIS 89, Final Decision (February 25, 2013).

4A:2-1.3 Adjournments

(a) Any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:

1. Unavoidable appearance by an attorney for a party in any state or Federal court; or

2. Illness of a party evidenced by an affidavit and a doctor's certificate.

(b) Where an adjournment is found not to be for good and sufficient reason, the Civil Service Commission may impose a fine or penalty.

(c) See N.J.A.C. 1:1-9.6 for Office of Administrative Law adjournment rules.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a)1, substituted "Federal" for "federal"; and in (b), substituted "Civil Service Commission" for "Commissioner or Board".

Case Notes

Appeal of suspension of deceased medical technician was dismissed without prejudice. McCormick v. City of Glouchester, 96 N.J.A.R.2d (CSV) 475.

Appeal dismissed due to retirement and resignation of employees (citing former N.J.A.C. 4:1-5.9). Tyler et al. v. City of Paterson, 2 N.J.A.R. 272 (1979).

4A:2-1.4 Burden of proof

(a) In appeals concerning major disciplinary actions, N.J.A.C. 4A:2-2, the burden of proof shall be on the appointing authority.

(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 Civil Service Commission 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).
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), deleted ".1 et seq." following "N.J.A.C. 4A:2-2"; and in (c), substituted "Civil Service Commission" for "Commissioner and Board".

Case Notes

Fire department officials who were laid off by a township following a change in administration did not carry their burden per N.J.A.C. 4A:2-1.4(c) to show that the layoff was actuated by a bad faith motivation within the meaning of N.J.A.C. 4A:8-2.6(c) because while the proper layoff proceedings were not initially followed, those errors were corrected. Moreover, neither of the officials adduced any bona fide evidence of bad faith, and the fact that one of the officials indicated that the township's business administrator was rude to him, that fact alone was insufficient to constitute bad faith on the part of the township. To the contrary, the preponderance of credible evidence demonstrates that the township laid off the officials for purposes of efficiency and economy per N.J.A.C. 4A:8-1.1(a) based on changes in administration and the form of government. In re Hendrickson, Jr., et al, Vernon Twp., Dep't of Public Safety, OAL DKT. NO. CSV 4683-13, OAL DKT. NO. CSV 4684-13 (Consolidated), 2014 N.J. AGEN LEXIS 474, Initial Decision (August 5, 2014).

An owner of an auto who had repeatedly complained to the dealer about a foul odor being emitted by the air conditioning system did not meet his burden per N.J.S.A. 11A:2-21 and N.J.A.C. 4A:2-1.4(a) to show that a nonconformity or condition existed in his vehicle that was likely to cause death or serious bodily injury or which substantially impaired the use, value or safety of the vehicle. The owner had driven more than 13,000 miles in the vehicle and there was no evidence corroborating the owner's claim about a foul odor nor any showing that any such odor caused any illness. Weinstock v. Lexus, OAL Dkt. No. CMA 02837-14, 2014 N.J. AGEN LEXIS 187, Initial Decision (April 11, 2014).

An Administrative Law Judge (ALJ) concluded that the owner of a vehicle did not establish by a fair preponderance of the evidence that his complaints about the function of the "keyless go" feature of the vehicle constituted a nonconformity or a condition which substantially impaired the use, safety or value of the vehicle within the meaning of N.J.A.C. 4A:2-1.4(a). The manufacturer's representative performed extensive diagnostic testing on the keys and remotes, provided software updates, performed short tests for codes; programmed the engine control unit; conducted multiple road tests, inspected the fly wheel ring gear; removed and replaced the crank shaft hall sensor and cleared codes; conducted a complete vehicle inspection and performed service consistent with factory recommendations; replaced the interior keyless go antenna; and removed and replaced the antenna and function tested the replacement. Given the facts, which included that the owner had operated the vehicle for all but 10 days (during which service was performed) since October 2012 and had driven 19,000 miles without a documented incident, the evidence did not support a claim that there was a continuing nonconformity that substantially impaired the use value or safety of the vehicle. Kerwyn Pierre v. Mercedes-Benz USA, Inc., OAL Dkt. No. CMA 02921-14, 2014 N.J. AGEN LEXIS 166, Initial Decision (April 10, 2014).

An Administrative Law Judge (ALJ) concluded that a consumer who was prosecuting a Lemon Law claim against various automotive entities had not established, as required by N.J.A.C. 4A:2-1.4(a) and by a fair preponderance of the credible evidence, that the noise emitted by the vehicle under certain operating conditions was a nonconformity within the meaning of N.J.A.C. 13:45A-26.2 for which a remedy might be

obtained under the Lemon Law. That conclusion was based on the ALJ's determination that the consumer had presented no evidence of any mechanical difficulty caused by the noise; had presented no evidence to substantiate a claim that the value of the vehicle was diminished because of the noise; and had not substantiated his claim that the alleged nonconformity was likely to cause death or serious bodily injury. Stanislaw Labuda v. Chrysler Group, LLC, OAL Dkt. No. CMA 17548-13, 2014 N.J. AGEN LEXIS 66, Initial Decision (January 24, 2014).

On remand, an administrative law judge found that a psychiatric hospital did not meet its burden of proof under N.J.S.A. 11A:2.21 and N.J.A.C. 4A:2-1.4(a) that a senior medical security officer committed abuse of a patient. The security officer was credible and detailed in his testimony, and another security officer, who had an unobstructed view of the incident, corroborated his version of his actions. His actions were in response to the patient's grabbing his genitals in the confined space of the facility's store and were defensive in nature. In re Curtis Robinson, Dep't of Human Servs., Ann Klein Forensic Psychiatric Hosp., OAL Dkt. No. CSV 14260-12, 2013 N.J. AGEN LEXIS 303, Initial Decision (December 2, 2013).

Employee did not sustain the burden of proving, as required by N.J.A.C. 4A:2-1.4(c), that he was entitled to a retroactive employment date for the position of Correction Sergeant pursuant to N.J.A.C. 4A:4-1.10(c). The fact that another candidate with the same ranking for certification was appointed before the employee was of no consequence

because it was within the appointing authority's discretion per N.J.A.C. 4A:4-4.8(a)3 to select any of the top three interested eligibles in any order. The appointing authority thus was permitted to select the other candidate first, and the employee had not presented any substantive evidence regarding his bypass for the initial appointment that could lead the Civil Service Commission to conclude that the appointing authority had acted improperly or had abused its discretion. In re Loney, Dep't. of Corr., CSC Docket No. 2013-1651, 2013 N.J. CSC LEXIS 1200, Final Admin. Action (November 20, 2013).

Although a candidate's name appeared two times on an eligible list for the position of County Correction Sergeant (PC2785L) and (PC0982N), so that the candidate was ranked both first and fourth on the certification, an appointing authority properly counted the candidate's name only once, pursuant to N.J.A.C. 4A:4-4.2(c)2 and N.J.A.C. 4A:2-1.4(c). Nor did the appointing authority act improperly in bypassing the candidate in favor of two lower-ranked eligibles because that bypass was authorized by the "Rule of Three" in N.J.A.C. 4A:4-4.8 which no longer required the appointing authority to provide the candidate with a statement of reasons for the bypass. In re Yashkas, Cnty. Corr. Sergeant (PC2785L) and (PC0982N), Hunterdon Cnty., CSC Dkt. No. 2013-3121, 2013 N.J. CSC LEXIS 1142, Final Admin. Action (November 20, 2013).

Department of Corrections did not satisfy its burden of proof under N.J.A.C. 4A:2-1.4(a) in sustaining charges of incompetency, inefficiency or failure to perform duties, and neglect of duty against a civilian worker. The only evidence that the worker left a pair of needle nose pliers on top of a VAV box was the fact that the utilized the pliers at the location where they were found seven days later. The mere fact that the pliers were found there might be suspicious but not enough to convict him. I/M/O Kenneth Gaburo, South Woods State Prison, Dep't of Corr., OAL Dkt. No. CSV 11448-12 (Remand of CSV 8383-11), 2013 N.J. AGEN LEXIS 124, Initial Decision (June 5, 2013).

Firefighter was improperly terminated for violating N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee. The City of Asbury Park did not meet its burden of proof under N.J.A.C. 4A:2-1.4 when it failed to prove that the firefighter actually committed an act of domestic violence. The allegation was dismissed by the municipal court judge for lack of prosecution; the firefighter did not admit to the allegation; and the victim did not testify. In Re O'Gara, OAL Dkt. No. CSR 15573-12, 2013 N.J. AGEN LEXIS 76, Initial Decision (April 8, 2013).

Police officer who was the fourth ranked eligible on a certification for Police Lieutenant (PM2547K), Plainfield failed to establish that the action of the appointing authority in bypassing him was improper. The appointing authority, as required by N.J.A.C. 4A:4-4.8(b)4, had justified the bypass on the basis that disciplinary charges alleging that the officer had engaged in conduct unbecoming an employee, neglect of duty, failure to perform duties, providing records to unauthorized personnel and other misconduct were then pending. Given that the appointing authority's explanation for bypass was adequate, N.J.A.C. 4A:2-1.4(c) imposed on the officer the burden to show by a preponderance of the evidence that the appointing authority's decision was improper, a burden that the officer had failed to carry. In re Walz, Police Lieutenant (PM2547K), Plainfield, CSC Dkt. No. 2012-684, 2013 N.J. CSC LEXIS 213, Final Agency Action (April 5, 2013).

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).

An Administrative Law Judge concluded that an employee who had been laid off from her position as code enforcement/zoning officer for a borough failed to show that her layoff was not motivated by true considerations of economy and/or efficiency or was a result of bad faith within the meaning of N.J.A.C. 4A:8-1.1(a), N.J.A.C. 4A:2-1.4(c) and N.J.A.C. 4A:8-2.6(c). The uncontroverted and overwhelming evidence was that the borough did institute a layoff plan at a time when it was increasingly evident that measures had to be taken to confront rising costs and that, as a result of instituting the layoff, it did actually effectuate significant and massive economic benefit to the borough as well as efficiency as a result of the creation of a new interlocal agreement with a neighboring community. An essential consequence thereof was that the types of functions previously performed the employee and/or her assistant were largely re-assigned to others, thereby significantly reducing the borough's direct costs. In re Cathcart, Borough of Beach Haven, OAL Dkt. No. CSV 06387-07, AGENCY Dkt. 2007-4151-I, 2010 N.J. AGEN LEXIS 1027, Initial Decision (February 24, 2010).

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 and 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 substantiate the hearsay testimony regarding the abusive behavior and the technician's inconsistent recollection of the events diminished her ability to be a credible witness. In re Simmons, OAL Dkt. No. CSV 11726-07, 2009 N.J. AGEN LEXIS 799, Final Decision (February 11, 2009).

Personal assistant in the Office of Public Defender was properly demoted and re-assigned where the ALJ found, on conflicting evidence, that the assistant failed to process some 56 personnel action requests and failed to provide her manager with documentation necessary to respond to a civil suit filed by a former employee; the assistant's conduct in not performing a proper search for documents when requested by a supervisor, and her failure to process time-sensitive employee requests could have led to catastrophic results and it demonstrated that she was continuously deficient in the performance of her job responsibilities, even without regard to a prior disciplinary history. In re Ramos, OAL Dkt. No. CSV 50-06, 2009 N.J. AGEN LEXIS 987, Final Decision (February 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1426) adopted, which suspended a police officer for three days after the officer failed to obey an order to submit to a medical examination because, although the officer reported as directed, he refused to allow the independent physician to complete a full examination, claiming that he was there for an examination of his ankle, only; the officer was not in a position to substitute his own judgment concerning appropriate medical technique for that of the independent physician and the fact that he was concerned about the appointing authority attempting to "pension him out" of his job did not alter his duty to follow orders. In re Walski, OAL Dkt. No. CSV 01859-06, 2009 N.J. AGEN LEXIS 545, Civil Service Comm'n Decision (January 14, 2009).

ALJ failed to give sufficient credit and deference to the professional opinion of a licensed psychologist who examined a police officer for a determination as to his fitness for duty; the psychologist's report and conclusions were based on numerous test administrations, a personal interview, reviews of prior psychological testing and a review of the officer's employment record, providing detailed and reasonable conclusions that the officer was psychologically unfit for duty (rejecting 2008 N.J. AGEN LEXIS 768). In re Medina, OAL Dkt. No. CSV 7820-07, 2009 N.J. AGEN LEXIS 825, Final Decision (January 14, 2009).

Senior correction officer was properly removed after she intentionally misstated a material fact in connection with an altercation with an inmate; the evidence demonstrated that the officer was not hit by the inmate, as she had stated, but hit him in an attack provoked only by the inmate using language that the officer felt was disrespectful. The officer created a situation in which her fellow officers did not trust her to tell the truth and her conduct was so egregious that it warranted removal despite the absence of a disciplinary history. In re Reid, OAL Dkt. No. CSV 8809-07, 2008 N.J. AGEN LEXIS 965, Initial Decision (November 14, 2008), adopted (Civil Service Comm'n January 14, 2009), aff'd per curiam, No. A-3145-08T2, 2010 N.J. Super. Unpub. LEXIS 1068 (App.Div. May 18, 2010).

ALJ's determination that the appointing authority failed to prove by a preponderance of the credible evidence that an employee abused a resident could not be disturbed on appeal to the Civil Service Commission because the ALJ presented numerous specific reasons why the clients' testimony was not worthy of credit; the ALJ's rationale for finding the clients' testimony not credible was detailed, logical, and

reasonable, and therefore, afforded due deference. In re Fairmon, OAL Dkt. No. CSV 3289-08, 2008 N.J. AGEN LEXIS 1216, Civil Service Comm'n Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 397) adopted, in which the ALJ concluded, on conflicting evidence, that an off-duty police officer ran down the middle of a street with his service weapon in the air, effectively dispersing more than 100 people who had assembled to participate in illegal drag racing and then lied to Internal Affairs about what happened; progressive discipline was bypassed and he was removed because his actions jeopardized an undercover sting operation and also went to the heart of his ability to be trusted and function as a police officer. In re Beltre, OAL Dkt. No. CSV 07910-06, 2008 N.J. AGEN LEXIS 1411, Final Decision (July 30, 2008).

Appointing authority failed to present any evidence to establish that a correction officer who shared her home with her husband knew or was aware of the illegal items in a locked closet or that she had the means to access that closet; there was no basis to find that she engaged in conduct that constituted either possession of a controlled dangerous substance or unlawful possession of a weapon based on her mere presence at the address in question (adopting 2008 N.J. AGEN LEXIS 18). In re Henderson, OAL Dkt. No. CSV 9214-07, 2008 N.J. AGEN LEXIS 626, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 188) adopted, which determined that a correction officer's assertion that his gun was holstered at the scene of an altercation involving his son was not credible, based in part on his contradictory testimony during an unemployment hearing and also on the testimony of other witnesses; the correction officer, who failed to call the police regarding the altercation and brandished his service weapon at the scene, was properly terminated. In re Porch, OAL Dkt. No. CSV 01307-07 (CSV 9567-06 On Remand), 2008 N.J. AGEN LEXIS 574, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 55) adopted, which concluded that, in view of the divergent testimony presented by the employee and a fellow senior probation officer, and a credibility determination with regard to the critical facts, the employee had a knife in her desk drawer, but did not communicate a threat; charge of conduct unbecoming a public employee dismissed. In re Rodriguez, OAL Dkt. No. CSV 05518-06, 2008 N.J. AGEN LEXIS 576, Merit System Board Decision (March 12, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 826) adopted, which concluded that employee, a senior correction officer, did not facilitate a romantic relationship between an inmate and another correction officer or act as their lookout; nothing on the record supported the assertion that the employee manipulated her work schedule so that the couple could spend time together, and apart from uncorroborated hearsay originating from a highly unreliable source, there was no independent proof that the employee knew about the clandestine activity and failed to report it. Even though the Department of Corrections may have had reason to suspect that the employee aided or abetted the other officer's improper conduct, mere suspicion was no substitute for competent evidence at an administrative hearing. In re Livingston, OAL Dkt. No. CSV 05786-06, 2008 N.J. AGEN LEXIS 577, Merit System Board Decision (January 30, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 772) adopted, which found, based on the ALJ's credibility determinations, that a male corrections department sergeant made inappropriate sexual comments to a female senior corrections officer; the sergeant, who denied making the comments, was suspended without pay for 10 days. In re LaPoint, OAL Dkt. No. CSV 5590-07, 2008 N.J. AGEN LEXIS 506, Final Decision (January 16, 2008).

ALJ's conclusion, on conflicting evidence, that a cottage training technician was not guilty of patient abuse was not arbitrary, capricious, or unreasonable; the finding that the slapping sound was the result of a latex glove rather than the slapping of a patient was supported by competent evidence, given the ALJ's advantage of hearing, seeing, and assessing the credibility of the witnesses before him (adopting 2007 N.J. AGEN LEXIS 468). In re Bice-Bey, OAL Dkt. No. CSV 8296-06, 2007 N.J. AGEN LEXIS 1161, Merit System Board Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 582) adopted, which found that two senior correction officers were improperly terminated after an inmate escaped underneath a truck as it left the facility. One officer was at lunch when the escape occurred, no mirrors were provided to the officers, and facility policy did not require the other officer to crawl under trucks to perform an inspection as they left. In re Cowans, OAL Dkt. No. CSV 10725-06 and CSV 10748-06 (Consolidated), 2007 N.J. AGEN LEXIS 1062, Merit System Board Decision (November 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 368) adopted, which found that the appointing authority failed to meet its burden of proof to demonstrate by a preponderance of the evidence that a senior medical security officer abused a patient; in assessing conflicting evidence, any number of circumstances could have caused the patient's injuries and the record contained additional evidence that tended to establish the officer's innocence, including the testimony of fellow officers that they had never witnessed him engage in any abusive or improper behavior directed toward patients and that he had a reputation for truthfulness. In re Scipio, OAL Dkt. No. CSV 4447-06, 2007 N.J. AGEN LEXIS 1126, Merit System Board Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 432) adopted, which found that the appointing authority failed in its burden of proving that a cottage training technician falsely reported an incident of possible patient abuse where it offered no direct testimony by those alleged to be present at the incident and chose to rely upon investigative statements of some, but not all, of those alleged to have been present at the incident; the investigative statement of a key witness was missing from its file and the technician was credible in her testimony. In re Frake, OAL Dkt. No. CSV 45-06, 2007 N.J. AGEN LEXIS 1129, Merit System Board Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 614) adopted, which concluded that the appointing authority met its burden of proving that a senior correction officer was properly removed for testing positive for cocaine; although the officer contended that a hair follicle test revealed no drugs were in her system, there was no evidence submitted to suggest that the hair follicle test – performed nearly a month after the urinalysis was performed – was proof that no drugs were in her system when the initial drug test was performed and there was no evidence to indicate that it was a scientifically reliable test. In re Morris, OAL Dkt. No. CSV 8075-04, 2007 N.J. AGEN LEXIS 1160, Final Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 552) adopted, which concluded that a Human Services Technician was entitled to dismissal of the disciplinary charges against him where the appointing authority treated a charge of possession of a controlled dangerous substance as fact, even though the technician pleaded guilty to a municipal ordinance violation of loitering; furthermore, the appointing authority merely relied on the record that the technician was convicted of loitering, with no testimony establishing that his conduct disrupted the efficient operation of the hospital or destroyed respect for governmental employees. In re Love, OAL Dkt. No. CSV 8835-06, 2007 N.J. AGEN LEXIS 1172, Merit System Board Decision (September 12, 2007).

Thirty-day suspension of a sheriff's officer for failing to report her partner's smoking in a sheriff's vehicle was improper where the smoking violation was "trivial," smoking in a vehicle was common, and no other sheriff's officer was ever previously charged with a smoking violation; in addition, the penalty given to the officer stood in stark contrast to the four-day suspension that her partner received and such a discrepancy was ludicrous and nonsensical (adopting 2007 N.J. AGEN LEXIS 465). In re Ivan, OAL Dkt. No. CSV 4720-03 and CSV 8676-03 (Consolidated), 2007 N.J. AGEN LEXIS 1132, Merit System Board Decision (August 29, 2007), aff'd per curiam, No. A-1070-07T2, 2009 N.J. Super. Unpub. LEXIS 764 (App.Div. April 28, 2009).

Appointing authority failed to meet its burden of proof with regard to an unlawful strip search where the evidence revealed that the suspect voluntarily dropped his pants and underwear to prove he did not have

any drugs on him and that his actions were not at the request of the police officers. However, the officers were guilty of violating the departmental rule regarding investigation and reporting practices because they failed to report the incident, whether they had ordered a strip search or not, for which they received a 3-day suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 470). In re Peralta, OAL Dkt. No. CSV 9980-06 and CSV 10452-06, 2007 N.J. AGEN LEXIS 1073, Final Decision (August 29, 2007).

Termination of a sheriff's officer for her failure to qualify with her service weapon after nine attempts over a period of three days was proper, in spite of any animus that may have been established by her unwarranted suspension for an unrelated smoking incident; the range staff had no duty to guarantee her successful qualification and the ultimate responsibility was on the officer, who admittedly failed to practice (adopting 2007 N.J. AGEN LEXIS 465). In re Ivan, OAL Dkt. No. CSV 4720-03 and CSV 8676-03 (Consolidated), 2007 N.J. AGEN LEXIS 1132, Final Decision), (August 29, 2007), aff'd per curiam, No. A-1070-07T2, 2009 N.J. Super. Unpub. LEXIS 764 (App.Div. April 28, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 247) adopted, which found that a senior correction officer was properly removed following his positive drug test that revealed the presence of cocaine; the appointing authority presented evidence that it complied with random protocol and testing procedures and the officer declined to present competing expert testimony. In re Pecorella, OAL Dkt. No. CSV 4663-06, 2007 N.J. AGEN LEXIS 1131, Final Decision (June 20, 2007).

Safety specialist's seven-day suspension for knowingly entering false information on school bus inspection reports was reversed because, even if the appointing authority could show that the specialist failed to conduct thorough inspections, it failed to meet its burden of proving that he knowingly entered false information on the reports; of the two reports at issue, one was never entered into evidence and the appointing authority never presented any evidence that the specialist was the author of the second report. In re Greiner, OAL Dkt. No. CSV 7150-06, 2007 N.J. AGEN LEXIS 1153, Merit System Board Decision (June 20, 2007).

Although the appointing authority requested dismissal as it could not prove the sexual harassment charges against the Correction Sergeant without the cooperation of the sole witness, the Merit System Board could not ignore the seriousness of the accusation against a supervisor and was compelled to invoke its subpoena powers so that the witness, who was currently employed by the Department of Corrections, could be called to testify on remand. In re LaPoint, OAL Dkt. No. CSV 3585-06, Final Decision (April 25, 2007).

Where an ALJ found, on conflicting evidence, that an inmate was injured after a trooper slipped on a wet cell floor, the two collided, and the trooper's nameplate scratched and bruised the inmate's cheek around his eye, the trooper should have documented the injury in a written report and his failure to do so resulted in a five-day suspension; failure on the part of a trooper to promptly report and take proper police action in any situation reasonably requiring such action constituted neglect of duty (adopting 2007 N.J. AGEN LEXIS 133). In re Dammann, OAL Dkt. No. POL 6003-05, 2007 N.J. AGEN LEXIS 425, Final Decision (April 19, 2007).

Where an ALJ found, on conflicting evidence, that an inmate was injured after a trooper slipped on a wet cell floor, the two collided, and the trooper's nameplate scratched and bruised the inmate's cheek around his eye, the original arresting officer who noticed the change in the inmate's appearance should have documented the injury in a written report and his failure to do so resulted in a warning to be more vigilant in his observation of those under police custody; failure on the part of a trooper to promptly report and take proper police action in any situation reasonably requiring such action constituted neglect of duty (adopting 2007 N.J. AGEN LEXIS 133). In re Dammann, OAL Dkt. No. POL 6003-05, 2007 N.J. AGEN LEXIS 425, Final Decision (April 19, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 59) adopted, which concluded that a police officer did not meet his burden of showing that the rationale stated for not promoting him to sergeant on two separate occasions was pre-textual; it was not the appointing authority's burden to be more specific in identifying the information, namely the individuals promoted did not have serious or sustained disciplinary records worse than the officer, but it was the officer who had the burden of showing specific irregularities in the reason given for the bypasses that would have made them pre-textual. In re Bradley, OAL Dkt. No. CSV 5837-02, 2007 N.J. AGEN LEXIS 354, Final Decision (March 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 32) adopted, which concluded that the appointing authority failed in its burden of proving that a correction officer abused an inmate because testimony that the officer continuously stomped the heel of his boot on the arm of a female inmate as she left her arm protruding from her cell through the food port was not entirely credible; the two inmate witnesses who claimed to have seen the incident were not credible, not simply because of their criminal status, but because of the inconsistencies in their statements and testimony. In re Messinger, OAL Dkt. No. CSV 8947-05, 2007 N.J. AGEN LEXIS 1173, Merit System Board Decision (February 28, 2007).

Upon an independent review of the record, including a review of a videotape, the Merit System Board agreed with the ALJ's findings that a Human Services employee at a psychiatric hospital was aware of a patient's injury and failed to report it, but the Board rejected the ALJ's same conclusions as to a second employee; the videotape showed one employee going into the room where the injured patient was along with the individual who was responsible for the patient's injury, but the videotape did not definitely show that the second employee was aware of the patient's injury, given the fact that the second employee's view was blocked by others (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 733). In re Green, OAL Dkt. No. CSV 2832-05 and CSV 2835-05, 2006 N.J. AGEN LEXIS 1107, Merit System Board Decision (December 20, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 891) adopted, which concluded that the appointing authority failed in its burden of proving that a Human Services Technician witnessed an incident between a patient and another staff member, but failed to take appropriate action thereafter; in fact, the evidence demonstrated that the technician quickly went to where the other staff member and the patient had fallen, gained control over the situation, called for assistance, escorted the patient to the Quiet Room, and prepared a statement describing the incident. In re Fortson, OAL Dkt. No. CSV 8699-05, 2006 N.J. AGEN LEXIS 1130, Merit System Board Decision (December 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 966) adopted, which concluded, on conflicting evidence, that a Human Services Assistant refused to take a patient to the bathroom and that his actions in physically stopping the patient from going to the bathroom amounted to inappropriate physical contact and mistreatment of a patient; 10-day suspension was appropriate. In re Parks, OAL Dkt. No. CSV 8702-05, 2006 N.J. AGEN LEXIS 1131, Merit System Board Decision (December 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 699) adopted, which concluded that a junior sergeant was properly demoted to the position of correction officer where the appointing authority demonstrated by a preponderance of the evidence that the sergeant failed to perform a weapons check during her shift; the fact that she and her supervising partner may have created some other informal type of arrangement regarding the execution of their shift duties did not absolve her of her responsibility to perform that weapons inspection as the junior sergeant and as mandated by institutional policy. In re Golden, OAL Dkt. No. CSV 918-03, 2006 N.J. AGEN LEXIS 865, Final Decision (September 20, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 435) adopted, which found that developmental center caregiver was properly removed for abusing a patient and sleeping while on duty. Although the caregiver denied the charges, testimony was presented that the caregiver had turned on an overhead light while a resident was sleeping, pulled her out of bed after noticing that she had urinated on herself, refused to give another resident a bathroom key, and yelled at a resident who had vomited on herself. In re Oluku, OAL Dkt. No. CSV 11932-05, 2006 N.J. AGEN LEXIS 768, Final Decision (August 9, 2006).

Appointing authority failed in its burden of proving that a senior correction officer was guilty of conduct unbecoming a public employee, improper or unauthorized contact with an inmate, and undue familiarity with an inmate based, in large part, on the fact that the inmate's testimony was not credible; although it would have been improper to use the inmate's incarceration as the sole basis for finding him not credible, the inmate's incarceration was only one factor and others included the inmate's demeanor and conflicting accounts of what occurred (adopting 2006 N.J. AGEN LEXIS 340). In re Jenkins, OAL Dkt. No. CSV 6363-04, 2006 N.J. AGEN LEXIS 775, Merit System Board Decision (July 19, 2006).

Appointing authority failed in its burden of proving that a senior correction officer was guilty of conduct unbecoming a public employee, improper or unauthorized contact with an inmate, and undue familiarity with an inmate based, in part, on the fact that the ALJ was not convinced that the letters presented by the inmate were written by the officer; the ALJ was free to determine what weight to afford the handwriting expert's opinion and, contrary to the appointing authority's assertions, the ALJ did not discount the expert's opinion, but determined that the expert's opinion on its own was insufficient for the appointing authority to meet its burden of proof (adopting 2006 N.J. AGEN LEXIS 340). In re Jenkins, OAL Dkt. No. CSV 6363-04, 2006 N.J. AGEN LEXIS 775, Merit System Board Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 341) adopted, which concluded that the appointing authority failed to meet its burden of proving that a prison worker neglected his duty when he allegedly failed to discover a knife-like weapon among a prisoner's personal belongings during a search; the appointing authority did not prove that, following his search, the box was secured from tampering before the contraband was discovered, and other officials handling the box after his search failed to properly document their custody of the box. In re Ortiz, OAL Dkt. No. CSV 6670-04, 2006 N.J. AGEN LEXIS 628, Merit System Board Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 64) adopted, which concluded that the appointing authority did not meet its burden of proof against a senior correction officer, where the appointing authority's expert witness testified that it was equally as likely that the positive reading for marijuana was caused by passive inhalation as by active inhalation. In re Lore, OAL Dkt. No. CSV 544-05, 2006 N.J. AGEN LEXIS 538, Merit System Board Decision (May 24, 2006).

Appointing authority satisfied its burden of demonstrating that a budget officer's performance and work product remained unsatisfactory, despite being given ample notice and opportunity to correct his deficiencies, follow orders, and timely complete his assigned duties; even after the imposition of a 10-day suspension, the officer continued to submit untimely and inaccurate work and continued to refuse to complete assigned tasks and sign required time sheets for a significant period after his suspension, which justified the appointing authority's decision to remove him. In re Lucas, OAL Dkt. No. CSV 8051-02, 2006 N.J. AGEN LEXIS 564, Final Decision (May 10, 2006), aff'd per curiam, No. A-5532-05T3, 2007 N.J. Super. Unpub. LEXIS 1233 (App.Div. November 16, 2007).

Police officer was properly removed on a finding that he was unable to perform his duties where a restraining order for domestic violence prevented him from carrying a weapon and, even though the order was ultimately lifted, the ALJ found, on conflicting evidence, that the officer was not psychologically fit to serve as a police officer; the ALJ was within its right to credit one expert's testimony over another's and conclude that the officer presented a danger to himself and others (adopting 2006 N.J. AGEN LEXIS 67). In re Bergus, OAL Dkt. No. CSV 7416-02, 2006 N.J. AGEN LEXIS 631, Final Decision (April 5, 2006), aff'd per curiam, No. A-4669-05T1, 2007 N.J. Super. Unpub. LEXIS 2655 (App.Div. August 14, 2007).

In a civil administrative proceeding, even though possible loss of government employment is involved, an employee's silence in the face of highly relevant assertions well within the employee's personal knowledge can give rise to an adverse inference and can constitute one element among others in an ALJ's consideration of the employee's ultimate culpability (adopting 2006 N.J. AGEN LEXIS 42). In re Terry, OAL Dkt. No. CSV 7420-02, 2006 N.J. AGEN LEXIS 1122, Final Decision (March 8, 2006), aff'd per curiam, No. A-4451-05T1, 2007 N.J. Super. Unpub. LEXIS 2973 (App.Div. August 23, 2007).

Police officer was properly removed where the appointing authority proved by a preponderance of the evidence that she lied about her relationship with a felon in her pre-employment psychological interview, pre-employment application, and interview with Internal Affairs (adopting 2006 N.J. AGEN LEXIS 42). In re Terry, OAL Dkt. No. CSV 7420-02, 2006 N.J. AGEN LEXIS 1122, Final Decision (March 8, 2006), aff'd per curiam, No. A-4451-05T1, 2007 N.J. Super. Unpub. LEXIS 2973 (App.Div. August 23, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 44) adopted, which found on conflicting testimony that a developmental center employee kicked a patient in or near the groin. The patient had Down Syndrome and was deaf. In re Mount, OAL Dkt. No. CSV 10610-04, 2006 N.J. AGEN LEXIS 1097, Final Decision (March 8, 2006).

Administrative Law Judge erred in dismissing an employee's appeal from a 30-day suspension where neither the employee nor the appointing authority presented any evidence regarding the disciplinary action; the appointing authority had the burden of proof and where it failed to present any evidence in support of its action, the proper result was to dismiss the charges and reverse the penalty (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 702). In re Cooper, OAL Dkt. No. CSV 3639-03 and CSV 5037-04 (Consolidated), 2006 N.J. AGEN LEXIS 1109, Merit System Board Decision (March 8, 2006).

In a disciplinary action brought against a senior correction officer after his positive drug test for marijuana, discrepancies regarding other specimens and the container used to collect the officer's sample did not undermine the reasonable probability that the officer's specimen had not been altered in any important respect between collection and analysis; the ALJ's findings otherwise were unreasonable and contrary to the credible evidence in the record. In re Gonsalvez, OAL Dkt. No. CSV 8601-02, 2006 N.J. AGEN LEXIS 1128, Final Decision (February 22, 2006), aff'd per curiam, No. A-4080-05T5, 2007 N.J. Super. Unpub. LEXIS 1369 (App.Div. October 31, 2007).

In a disciplinary action against a correction officer recruit on claims that he made inappropriate sexual comments, exposed himself, and masturbated in front of a fellow recruit, the ALJ's determination that the complaining witness was not credible was unreasonable and contrary to the evidence in the record where the witness's account of the critical details of the incident remained consistent, and the minor inconsistencies cited by the ALJ regarding the precise words uttered by the recruit, his exact location during the masturbation, and the time of the witness's telephone call to her supervisor were of little consequence; additionally, the record was devoid of any reason why the complaining witness would lie about what occurred during the shift in question. In re Royster, OAL Dkt. No. CSV 6360-04, 2005 N.J. AGEN LEXIS 1087, Final Decision (December 7, 2005), aff'd per curiam, No. A-2435-05T5, 2007 N.J. Super. Unpub. LEXIS 1260 (App.Div. April 19, 2007).

Six-month suspension of a state police officer was proper where there was substantial credible evidence in the record that the officer failed to take possession of controlled dangerous substances found in a restroom at a racetrack and also failed to properly conduct an investigation into the incident; there was evidence that, even after interviewing the suspect, the officer failed to obtain his name and that the officer actually instructed the guards to flush the heroin down the toilet (rejecting 2005 N.J. AGEN LEXIS 596). Div. of State Police v. Morales, OAL Dkt. No. POL 4868-04, 2005 N.J. AGEN LEXIS 1468, Final Decision (November 14, 2005), aff'd per curiam, No. A-1576-05T5, 2007 N.J. Super. Unpub. LEXIS 2065 (App.Div. February 7, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 526) adopted, in which the ALJ found, on conflicting evidence, that a painter for the school district was guilty of conduct unbecoming a public employee and theft of school property after he attempted to take a camera from the school; the painter's contention that he intended to ask permission to temporarily borrow the camera was belied by the fact that, instead of seeking

immediate permission, he took the camera to a different room and placed it under a drop cloth. In re Joyce, OAL Dkt. No. CSV 9392-03, 2005 N.J. AGEN LEXIS 1222, Final Decision (October 19, 2005).

On an independent review of the record, including review of a surveillance videotape, the Merit System Board disagreed with the ALJ's findings and concluded that the appointing authority met its burden of proof that a Human Services Assistant was guilty of abusing a patient; the video revealed that the assistant grabbed the patient, threw him down on the ground, did not offer any assistance, and left the scene. In re McKoy, OAL Dkt. No. CSV 8344-02, 2005 N.J. AGEN LEXIS 1218, Final Decision (October 19, 2005).

Police officer was reinstated when removed on hearsay evidence that was less than competent. Rhodes v. Union City Police Department, 95 N.J.A.R.2d (CSV) 643.

Assault upon a patient was not sufficiently proven to justify removal of therapy program assistant. Berrien v. Department of Human Services, 95 N.J.A.R.2d (CSV) 629.

Termination of training technician at developmental center was not justified absent evidence of endangering a client through neglect of duty. Forde v. Hunterdon Developmental Center, 95 N.J.A.R.2d (CSV) 577.

Suspension of public employee was not warranted when appointing authority failed to carry burden of proof on charge of insubordination. Pennoh v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 514.

Insufficient evidence precluded removal of corrections officer on charges of unbecoming conduct. Parham v. Department of Corrections, 95 N.J.A.R.2d (CSV) 439.

Charges of misconduct were insufficient to sustain suspension of corrections officer in absence of credible evidence in record. Tyson v. Department of Corrections, 95 N.J.A.R.2d (CSV) 419.

Removal of training technician was not warranted when sole witness to alleged beating of client was not credible. Murray v. Department of Human Services, 95 N.J.A.R.2d (CSV) 407.

Removal of nurse was not warranted absent credible proof of actual assault on patient. Fontenot v. Ancora Psychiatric Hospital, 95 N.J.A.R.2d (CSV) 291.

Prison worker's removal for insubordination not supported by sufficient evidence. Balkaran v. Northern State Prison, 95 N.J.A.R.2d (CSV) 256.

No preponderance of credible evidence that layoffs were in bad faith. Edwards v. Department of Community Affairs Employee Layoffs, 95 N.J.A.R.2d (CSV) 29.

Charges in disciplinary proceedings against police officers with respect to sports betting were not sustained. State Police v. Hall, Buhan, 95 N.J.A.R.2d (POL) 1.

Proof; patient abuse. Rivera v. Woodbine Developmental Center, 94 N.J.A.R.2d (CSV) 705.

Appointing authority Proved that employee was incompetent, inefficient, failed to perform her duties and conducted herself in a manner unbecoming a public employee. Janowski v. Bergen County Department of the Judiciary, 94 N.J.A.R.2d (CSV) 550.

Employee was entitled to all reasonable inferences from his evidence that layoff was in bad faith. Beattie v. Camden County Department of Buildings and Operations, 94 N.J.A.R.2d (CSV) 529.

There was not sufficient proof that guard was sleeping on duty. Webster v. Burlington County Jail, 94 N.J.A.R.2d (CSV) 389.

Evidence insufficient; neglect of duty or conduct unbecoming public employee. Karl v. New Brunswick Police Department, 94 N.J.A.R.2d (CSV) 199.

Failure to prove that correction officer was guilty of missing a call-in. Mowenn v. New Jersey State Prison, 93 N.J.A.R.2d (CSV) 545.

Discrimination or harassment not shown to have caused unsatisfactory evaluation; termination at end of probationary period. Amin v. Department of Transp., 93 N.J.A.R.2d (CSV) 406.

Failure to adhere to documenting requirements; urine testing. Riley v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 385.

Order to submit urine specimens for drug testing was not justified. Riley v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 385.

Evidence did not show failure to report client abuse. Grant v. North Princeton Developmental Center, 93 N.J.A.R.2d (CSV) 332.

Failure of proof that employee was guilty of client abuse. Locklear v. New Lisbon Developmental Center, 93 N.J.A.R.2d (CSV) 197.

Failure of proof that employee disobeyed order. Lott v. Woodbridge Developmental Center, 93 N.J.A.R.2d (CSV) 141.

Abuse of client not proven. Brent v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 82.

There was failure of proof that employee sought compensation improperly. Cressinger v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 63.

Absent showing that inspector passed noncomplying vehicle suspension was unwarranted. Inge v. Division of Motor Vehicles, 93 N.J.A.R.2d (CSV) 47.

Town failed to sustain burden of proof and removal was unwarranted. Corso v. West New York, 93 N.J.A.R.2d (CSV) 43.

Confession to drug use was not subject to independent corroboration and was cause for state trooper's dismissal. State Police v. Naranjo, 93 N.J.A.R.2d (POL) 17.

It was not shown that employee was guilty of client abuse. Hopkins v. New Jersey Department of Human Services, 93 N.J.A.R.2d (CSV) 17.

Evidence; sleeping while on duty; removal not warranted. Glenn v. Department of Corrections, 92 N.J.A.R.2d (CSV) 918.

Evidence; intention to steal sneakers from impounded car; removal not warranted. Walsh v. City of Vineland, 92 N.J.A.R.2d (CSV) 833.

Evidence; inappropriate physical contact with a client; suspension not warranted. Stewart v. Arthur Brisbane Child Treatment Center, 92 N.J.A.R.2d (CSV) 827.

Evidence; physical abuse of a client; removal not warranted. Mestres v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 823.

Failure of proof; layoff in bad faith; presumption that measures removing them were for reasons of economy. In the Matter of Layoffs of Certain Employees of Bergen Pines County Hospital, 92 N.J.A.R.2d (CSV) 779.

Proof failed to show that employee resigned under duress or that her employer acceded to her efforts to rescind. Torres v. Buttonwood Hospital, 92 N.J.A.R.2d (CSV) 753.

Psychiatric technician's medical condition and history was not sufficient to deprive her of employment. Smith v. Essex County Hospital Center, 92 N.J.A.R.2d (CSV) 702.

Failure to prove that employee engaged in an act of client abuse. Brooks v. Ancora Developmental Center, 92 N.J.A.R.2d (CSV) 664.

Failure to show that officer was improperly bypassed for promotion to police captain. Hannafey v. Middletownship, 92 N.J.A.R.2d (CSV) 594.

Failure to sustain disciplinary charge. Angiuoli v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 570.

Failure to obtain a second urine sample for retesting did not prevent removal of police officers. Higgins v. Department of Corrections, 92 N.J.A.R.2d (CSV) 525.

Evidence failed to establish abuse of client. Woolridge v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 316.

Failure to prove that employee stuck his finger in client's eye. Jones v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 291.

Failure to establish neglect of duty and/or conduct unbecoming a police officer. Ogonowski v. Police Department, Atlantic City, 92 N.J.A.R.2d (CSV) 264.

Failure of evidence to support charge of physical abuse of patient. Van Doimen v. Greystone Park, 92 N.J.A.R.2d (CSV) 223.

Failure to establish physical abuse of clients; removal not justified. Hannah v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 195.

Failure to sustain burden of proof; suspension. DeSantis v. New Jersey Training School, 92 N.J.A.R.2d (CSV) 193.

Evidence was sufficient to find employee guilty of coercion and intimidation of a co-worker; removal. Perrin v. N.J. Veteran's Memorial Home, Vineland, 92 N.J.A.R.2d (CSV) 148.

Evidence was insufficient to find that officer struck juvenile; removal not justified. Dorsey v. Department of Corrections, Atlantic City, 92 N.J.A.R.2d (CSV) 92.

Evidence was insufficient to find that nurse struck two patients. Baker v. North Princeton Developmental Center, State Dept. of Human Services, 92 N.J.A.R.2d (CSV) 84.

Evidence was insufficient to find that care worker slapped a patient; removal. N.J.S.A. 11A:2-21. Gholston v. North Jersey Developmental Center, 92 N.J.A.R.2d (CSV) 82.

Evidence established abuse of patient. Williams v. Marlborough Psychiatric Hosp., State Dept. of Human Services, 92 N.J.A.R.2d (CSV) 66.

Evidence was insufficient to find inappropriate physical contact with inmate. Sepulveda v. New Jersey Training School for Boys, Jamesburg, 92 N.J.A.R.2d (CSV) 65.

Evidence established that employee abused resident; removal. New Jersey Veterans' Memorial Home, Parimus v. Cotton, 92 N.J.A.R.2d (CSV) 60.

Release at end of working test period; failure to meet burden of establishing bad faith. N.J.S.A. 11A:4-15, 4A:2-4.1. Jackson v. Meadowview Hosp., Hudson County, 92 N.J.A.R.2d (CSV) 49.

Inconsistencies in record precluded finding as to making of false and misleading official statements. State Police v. Suarez, 92 N.J.A.R.2d (POL) 29.

Evidence was insufficient to justify removal. Robinson v. Salem County, 92 N.J.A.R.2d (CSV) 20.

Alleged misrepresentation of facts by police officer as to presence of radar unit in troop car was not substantiated. State Police v. McClelland, 92 N.J.A.R.2d (POL) 19.

Evidence was insufficient to find that human services assistant mentally or physically abused patient. Pierce v. Vineland Developmental Center, New Jersey Department of Human Services, 92 N.J.A.R.2d (CSV) 15.

Witness standoff left false statement charge unsubstantiated and required police officer's exoneration. State Police v. Crawford, 92 N.J.A.R.2d (POL) 9.

Evidence was sufficient to justify removal from employment. Bigley v. Hunterdon Developmental Center, 92 N.J.A.R.2d (CSV) 5.

False report charge was not substantiated and precluded dismissal of police officer. State Police v. McGovern, 92 N.J.A.R.2d (POL) 1.

Failure to prove that employee engaged in patient abuse. Walker v. Violend Developmental Center, 91 N.J.A.R.2d (CSV) 91.

Evidence was sufficient to find abuse of patient and threatening supervisor. Knight v. Trenton Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 85.

Evidence was sufficient to find employee falsified his attendance record. Edmonds v. Ancora Psychiatric Hospital, 91 N.J.A.R.2d (CSV) 67.

Evidence was insufficient to support patient's allegation of physical abuse. Almedia v. Atlantic County Department of Health Institutions, 91 N.J.A.R.2d (CSV) 49.

Evidence established neglect of duty, willful violation of law, conduct unbecoming public employee and dishonest and immoral conduct. Smith v. Municipal Court of the Township of Hamilton, 91 N.J.A.R.2d (CSV) 37.

Release from position at end of extended working test period; failure to establish that employer acted in bad faith. Nardone v. New Jersey Commission for the Blind Visually Impaired, 91 N.J.A.R.2d (CSV) 35.

Evidence was sufficient to find that worker burned client with hot water and failed to fully report the injuries. Witcher v. New Lisbon Developmental Center, 91 N.J.A.R.2d (CSV) 31.

Evidence was sufficient to find technician punched a patient in the face. Willis v. Trenton Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 27.

Discharge at end of working test period; failure to establish that employer acted in bad faith. O'Connor v. Health Services Center of Camden County, 91 N.J.A.R.2d (CSV) 23.

Evidence was sufficient to find neglect of duties, insubordination, and unbecoming conduct. McIver v. Newark Housing Authority, 91 N.J.A.R.2d (CSV) 19.

Evidence was sufficient to find absenteeism and tardiness and deliberate and material false misrepresentation on employment application. N.J.S.A. 11A:4-10. Essex County Jail v. Burchett, 91 N.J.A.R.2d (CSV) 5.

Evidence was sufficient to find chronic, excessive and abusive absenteeism and lateness. N.J.S.A. 4A:2-2.3. Daniels v. Evergreen Manor, Camden County, 91 N.J.A.R.2d (CSV) 3.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-5.10). Davis v. Newark Public Library, 9 N.J.A.R. 84 (1987).

Burden of proof rests with employee challenging economic layoff (citing former N.J.A.C. (4:1-5.10). Tyler et al. v. City of Paterson, 2 N.J.A.R. 272 (1979).

In an appeal from a disciplinary action, the burden of proof is on the appointing authority (citing former N.J.A.C. 4:1-5.10). Clark v. New Jersey Dep't of Agriculture, 1 N.J.A.R. 315 (1980).

4A:2-1.5 Remedies

(a) Seniority credit may be awarded in any successful appeal.

(b) Back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. See N.J.A.C. 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Civil Service Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

Amended by R.2012 d.007, effective January 3, 2012.
See: 43 N.J.R. 2395(a), 44 N.J.R. 65(a).
In (b), substituted "Civil Service Commission or where the Commission" for "Commissioner or Board or where the Board", and inserted the last sentence.

Case Notes

A wrongfully discharged employee was entitled to both vacation leave and sick leave credits. Rule invalid (citing former N.J.A.C. 4:1-5.5(a)). Eaddy v. Dep't of Transp., 208 N.J.Super. 156, 505 A.2d 162 (App.Div.1986) appeal dismissed 105 N.J. 569, 523 A.2d 200.

Correction officer seeking enforcement of a settlement agreement was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a). That regulation was inapplicable because the matter did not present an adjudication of the merits of the disciplinary charges and levied against the officer before the Commission. In addition, the officer would not have a basis for receiving counsel fees under N.J.A.C. 4A:2-1.5 because the record did not indicate that the appointing authority's action was based on any improper motivation. In re Benita Cisrow, Dep't. of Corr., CSC DKT. No. 2013-2347, 2013 N.J. CSC LEXIS 999, Final Decision (November 8, 2013).

Although an applicant for Fire Fighter was bypassed pursuant to N.J.A.C. 4A:4-4.8(a)3 because he had been deemed to be medically unfit, once he took and passed a second medical examination, at the request of the Fire Director, his appointment was mandated. The Personnel Director could not claim that the applicant was not provided by a bona fide offer of employment made by the Fire Director. She was present when the offer was made but did not object or withdraw the offer. However, the applicant was not entitled to counsel fees and back pay under N.J.A.C. 4A:2-1.5(b) because the failure to appoint was not done in bad faith or with invidious motivation. The appointing authority had legitimate concerns about the applicant's medical fitness and presented reasonable, yet unpersuasive arguments, for its actions. In re Joseph Piserchio, Fire Fighter (M2377H), Newark, CSC Dkt. No. 2013-573, 2013 N.J. CSC LEXIS 311, Final Decision (April 17, 2013).

Although a Senior Security Guard was not properly laid off when the appointing authority improperly utilized a seasonal position where a permanent appointment was needed, sufficient cause was not established for an award of back pay or counsel fees under N.J.A.C. 4A:2-1.5(b). The record did not evidence that the original determination of layoff rights was done in bad faith or with invidious motivation. Therefore, the matter was akin to administrative error and generally, no vested or other rights are accorded by an administrative error. In re Michael Morris, City of Trenton, CSC Dkt. No. 2012-1733, 2013 N.J. CSC LEXIS 276, Final Decision (April 3, 2013).

Record in proceedings brought by an employee to challenge the action of the Department of Corrections in reassigning him to a different work location without initiating appropriate, prior disciplinary proceedings afforded no basis for an award of counsel fees to the employee under N.J.A.C. 4A:2-1.5(b) because such an award was properly made only where the appointing authority unreasonably failed or delayed to carry out an order of the Civil Service Commission or where the Commission found sufficient cause based on the particular case. Here, since the Department returned the employee to his prior location well within the 20-day period provided in the Commission's order, no basis for a fee award was present. In re Robert Trent, Department of Corrections, CSC Docket No. 2012-2923, 2013 N.J. CSC LEXIS 203, Final Decision (March 8, 2013).

Although the Commission found that a correction officer recruit was improperly removed following his working test period, the Commission did not find that he was entitled to a permanent appointment based on the successful completion of his working test period, only that he was simply entitled to a new six-month working test period. Therefore, sufficient cause was not demonstrated to award back pay and counsel fees. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

Where a police officer was retired due to a disability and the appointing authority amended the Final Notice of Disciplinary Action to reflect his retirement and did not pursue the disciplinary charges against him, the officer's appeal of his discipline was moot. However, no sufficient cause was presented that the appointing authority acted in bad faith, which would have entitled the officer to attorney's fees. In re Bowles, OAL Dkt. No. CSV 3256-09, 2009 N.J. AGEN LEXIS 816, Final Decision (July 22, 2009).

Even though an employee was entitled to a new working test period due to irregularities during the original working test period, the employee was not entitled to back pay and counsel fees because there was no determination that he successfully completed the working test period and was, therefore, entitled to a permanent appointment; rather, the employee was simply entitled to a new three-month working test period, during which time his performance would be evaluated. In re Bernal, OAL Dkt. No. CSV 3154-07, 2008 N.J. AGEN LEXIS 1054, Final Decision (October 22, 2008).

Although Department of Education Manager was found not to have violated the New Jersey State Policy Prohibiting Discrimination in the Workplace, N.J.A.C. 4A:7-3.1, he was not entitled to back pay or counsel fees; pursuant to N.J.A.C. 4A:2-1.5, the employee did not show that the actions of the appointing authority in finding a violation of the State Policy and terminating his unclassified position were made in bad faith (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 177). In re Hearn, OAL Dkt. No. CSV 04991-05, Final Decision (October 10, 2007).

Sufficient cause not demonstrated to award back pay where employee was not entitled to a permanent appointment based on successful completion of the working test period, but rather was simply entitled to a new four-month working test period. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Reinstated county correction officer was not entitled to recover counsel fees because the appointing authority did not unreasonably delay implementing the Board's order after the parties were unsuccessful in attempting to resolve the amount of back pay due; the record also failed to indicate that the appointing authority's actions were based on any improper motivation. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Appellant suspended and subsequently removed from title of Senior Systems Analyst was reinstated to duties appropriate to his permanent title (citing former N.J.A.C. 4:1-5.5). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:2-1.6 Reconsideration of decisions

(a) Within 45 days of receipt of a decision, a party to the appeal may petition the Civil Service Commission for reconsideration.

(b) A petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

(c) Each party must serve copies of all materials submitted on all other parties.

Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (a), substituted "Within 45 days of" for "Upon the".
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), substituted "Civil Service Commission" for "Commissioner or Board"; and in (b)1, inserted a comma following the first occurrence of "proceeding".

Case Notes

A motion for reconsideration of a final administrative decision must be made within the period provided for the taking of an appeal. Matter of Hill, 241 N.J.Super. 367, 575 A.2d 42 (A.D.1990).

Senior corrections officer was an employee on date when complaint which formed basis of harassment conviction was filed, for purposes of forfeiture statute. 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. Moore v. Youth Correctional Institute at Annandale, 230 N.J.Super. 374, 553 A.2d 830 (App.Div.1989) affirmed 119 N.J. 256, 574 A.2d 983.

An applicant who was deemed to be ineligible for the promotional examination for Supervisor 1 MVC (PS3710T), Motor Vehicle Commission based on his failure to establish that he possessed the required experience per N.J.A.C. 4A:4-2.6(a) was not entitled to reconsideration of that ruling because he did not show, as required by N.J.A.C. 4A:2-1.6(b), the existence of new evidence or additional information not presented at the original proceeding that would change the outcome and the reasons that such evidence was not presented at the original proceeding; or that a clear material error had occurred. That is, the applicant's experience (or lack thereof) was addressed in the original decision and he did not demonstrate clear material error or that new information would change the outcome. In re Dioses, et al., Supervisor 1 MVC (PS3710T), Motor Vehicle Comm'n, CSC Docket No. 2014-936, Final Administrative Action (December 6, 2013).

Candidate was not entitled to reconsideration of a final determination upholding the bypass of his name on the County Correction Officer eligible list pursuant to N.J.A.C. 4A:2-1.6(b). Although the appointing authority might not have supplied the candidate with the materials he requested, the candidate had the opportunity to reply to the appointing authority's response to his appeal and fully submitted documentation in attempt to refute the basis for the bypass of his name. The fact remained that the candidate did not list his motor vehicle accidents or fully explain the circumstances to deem them "incidents" as he claimed. In re Jesse Suttor, Cnty. Corr. Officer (S9999K), Passaic Cnty., CSC Dkt. No. 2013-216, 2013 N.J. CSC LEXIS 972, Final Decision (October 2, 2013).

Civil Service Commission found that an employee did not meet the standard for reconsideration of the denial of her request for a hearing with respect to her demotion under N.J.A.C. 4A:2-1.6(b) and did not sustain her burden of establishing the timeliness of her appeal under N.J.A.C. 4A:2-4.2. The employee did not dispute that she was personally served the Final Notice of Disciplinary Action, and she provided no valid explanationIn re Joyce Maldonado, Berkeley Twp, CSC Dkt. No. 2014-150, 2013 N.J. CSC LEXIS 934, Final Decision (October 2, 2013).

City's request for reconsideration of a prior decision of the Civil Service Commission granting relief to an employee who established that he had been improperly laid off, which relief included the rescission of the layoff and the restoration of the employee to the stated position with seniority and benefits was denied because the city did not show, as required by N.J.A.C. 4A:2-1.6(b), that a clear material error had occurred. Moreover, new evidence before the Commission corroborated the employee's original claim that he was displaced from his position in favor of his successor because the city wished to reward the successor for contributions made to the mayoral campaign. That evidence thus established that the city knowingly and purposely violated civil service laws and rules to place the successor in the position occupied by the employee and demonstrated animus towards the employee. That showing was more than sufficient to support a grant of back pay and counsel fees as authorized by N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Morris, CSC Docket No. 2013-2927, 2013 N.J. CSC LEXIS 758, Final Administrative Decision (September 4, 2013).

Order by an appellate division court that the Civil Service Commission reconsider some part of an earlier ruling involving a public employee is not a request for reconsideration by an appointing authority that must meet the standards of N.J.A.C. 4A:2-1.6. In re Joseph Napoleone, CSC Dkt. No. 2013-3243, 2013 N.J. CSC LEXIS 481, Final Decision (August 7, 2013).

Applicant who challenged the score awarded to him on certain technical components of the promotional examination for Deputy Fire Chief (PM1145N) did not persuade the Civil Service Commission that he was entitled to reconsideration of its decision sustaining those scores as permitted by N.J.A.C. 4A:2-1.6(b) because the applicant's concerns were fully addressed in the challenged decision, which explained that the possible courses of ac as to why the appeal was not filed within the permitted timeframe when she was clearly apprised of the procedural requirements for filing an appeal. tion (PCAs) utilized in the scoring were not inclusive of all aspects of behavior in a presentation, which behaviors were viewed holistically. Because the applicant did not establish either that new evidence or additional information was properly considered or that a clear material error had occurred, reconsideration was not warranted. In re James Costa, Deputy Fire Chief (PM1145N), Newark, DOP Dkt. No. 2013-2780, 2013 N.J. CSC LEXIS 680, Final Decision (July 19, 2013).

Reconsideration of the Civil Service Commission's denial of an employee's request for sick leave injury benefits was proper under N.J.A.C. 4A:2-1.6(b) when the employee presented new evidence that the de Quervain's tenosynovitis he had previously suffered as the result of a wrist injury had resolved at some point and that he was out of work only for carpal tunnel syndrome. The appointing authority failed to present any arguments or evidence in response to this medical documentation. In re Frank DeVita, Dep't of Corr., CSC Dkt. No. 2013-2554, 2013 N.J. CSC LEXIS 421, Final Decision (June 26, 2013).

Reconsideration of candidates' failure to indicate possession of the required certification for an open competitive examination for Hazardous Materials Responder, Union County, was granted pursuant to N.J.A.C. 4A:2-1.6(b) based on the presentation of new information. A review of the certificates provided on reconsideration revealed that the certificates were issued by the New Jersey State Police, Homeland Security Branch, Special Operations Section, Hazardous Materials Response Unit and met the standards in the examination announcement. Thus, the candidates sufficiently documented that they had completed the required Level 2 Emergency Medical Operations training. In re William Billson and Alexandra Califf, Hazardous Materials Responder (C0281P), Union Cnty., CSC Dkt. Nos. 2013-2978, 2013-2979, 2013 N.J. CSC LEXIS 659, Final Decision (June 5, 2013).

Reconsideration of a denial of an employee's appeal of a Civil Service Commission ruling that she lacked the required minimum experience and thus was ineligible for a promotional examination for Technical Assistant Personnel (PS0229G), Department of Environmental Protection was denied. Even if the Commission had sustained the employee's claim that she spent 20% of her workweek performing out-of-title technical, clerical personnel work, that additional experience credit would yield about 11 months of experience, still nine months short of the minimum requirement. Moreover, the employee's concerns were fully addressed in the prior ruling. Because the employee did not show that a clear material error had occurred in the original determination or that new or additional information would change the outcome of the appeal, she did not establish grounds for reconsideration per N.J.A.C. 4A:2-1.6(b). In re Melissa Burk-Pocino, Technical Assistant Personnel (PS0229G), Dep't of Env't Prot., DOP Docket No. 2013-2174, 2013 N.J. CSC LEXIS 321, Final Agency Action (April 19, 2013).

Former manager of a county nutrition program did not make the showing required by N.J.A.C. 4A:2-1.6(b) to obtain reconsideration of a prior order removing her from her position for misconduct including conduct unbecoming public employee, misuse of public property and other sufficient cause. The manager's request for reconsideration did not include new evidence or additional information that would change the outcome nor did the manager show that a clear, material error occurred in the original decision. Specifically, there was no showing that error was committed with respect to credibility determinations made by the administrative law judge and the manager also failed to show that the proceedings were unfair in any manner. In re Gonzales, CSC Docket No. 2012-3487, 2013 N.J. CSC LEXIS 322, Final Agency Action (April 17, 2013).

City demonstrated that its failure to properly dispose of a certification containing the names of three eligibles for the position of Electrical Inspector (M2399N), Mount Holly, including a continuing failure to respond to requests relating to the duties of a provisionally appointed employee, resulted from significant turnover in key positions in the city and associated communication and management lapses. Since this was new information that was not considered by the Civil Service Commission when it assessed a $1,000 fine against the city for its non-compliance, reconsideration of the fine as requested by the city was appropriate per N.J.A.C. 4A:2-1.6(b) as well as rescission of the fine. In re Electrical Inspector (M2399N), Mount Holly, CSC Docket No. 2013-2284, 2013 N.J. CSC LEXIS 199, Final Agency Action (April 17, 2013).

Grounds meeting the criteria in N.J.A.C. 4A:2-1.6(b) for reconsideration of a decision rejecting an applicant's appeal for admission into the applicant pool for a certain civil service examination were not shown because the applicant's concerns about the decision had been addressed in the prior decision and because he failed to demonstrate either that a clear material error had occurred or that he was in possession of new information which would change the outcome. The "new information" presented by the applicant at best tended to show that he had misunderstood the application process but that was not grounds for acceptance of an untimely appeal, especially because the due date for applications was in August 2010 and the applicant did not raise the issue until February 2012. In re Ditsche, Entry Level Law Enforcement Examination (S9988M), DOP Dkt. No. 2013-2065, 2013 N.J. CSC LEXIS 228, Final Agency Action (April 8, 2013).

Employee was not entitled to reconsideration of a decision pursuant to N.J.A.C. 4A:2-1.6(b) of the Civil Service Commission upholding her release at the of her working test period. The Commission already considered her request for copies of confidential documents to challenge the good faith of the appointing authority's decision to release her, and she did not provide any legal precedent indicating that she was entitled to the information protected by N.J.S.A. 52:27D-420. She did not show that the Commission made a material error by refusing her access to redacted case files. In re Beverly-Ann Schilling, Ocean Cnty. Bd. of Social Svcs., CSC Dkt. No. 2013-957, 2013 N.J. CSC LEXIS 263, Final Decision (April 4, 2013).

Employee did not provide a valid explanation for her failure to file an appeal, as N.J.A.C. 4A:2-4.2 required, within the 20 day period after her receipt of notice that she was being returned to her permanent title of Cottage Training Technician after she received an unsatisfactory rating for her working test period as a Cottage Training Supervisor. Since the Appeal Rights Letter specifically advised her to file her appeal directly with the Commission within 20 days of her receipt of the notice, the employee's explanation that she understood that a departmental EEO Officer would "handle everything" did not meet the criteria in N.J.A.C. 4A:2-1.6(b) that had to be met in order to win reconsideration of a prior Commission decision. In re Ginger Ferrell New Lisbon Developmental Center Department of Human Services, CSC Docket No. 2013-1335, 2013 N.J. CSC LEXIS 370, Final Decision (April 3, 2013).

Employee's failure to file, per N.J.A.C. 4A:2-1.6(a), a timely request that the Civil Service Commission reconsider its prior decision returning the employee to a prior position on a finding that the Department of Corrections' action in reassigning him was improper because it had not initiated appropriate disciplinary proceedings prior to the reassignment, which reconsideration presumably would have sought additional relief in the form of an award of counsel fees award as permitted by N.J.A.C. 4A:2-2.12, afforded grounds for the denial of the employee's request for fees, nor did the employee articulate any grounds on which the 45 day deadline for the filing of a reconsideration request was properly extended. In re Robert Trent, Department of Corrections, CSC Docket No. 2012-2923, 2013 N.J. CSC LEXIS 203, Final Decision (March 8, 2013).

Grounds were not shown for reconsideration by the Civil Service Commission of its determination that rejected a finding by the Administrative Law Judge (ALJ) that the employee had good cause to refuse to comply with an order of his supervisor and instead finding that the employee was properly disciplined for insubordination. The employee failed to show that clear material error within the meaning of N.J.A.C. 4A:2-1.6(b) had occurred in connection with the consideration of his supervisor's testimony, alleged by the employee to have been the result of improper coaching and manipulation, because, in fact, the ALJ had rejected that testimony as not credible and the Commission had accepted that credibility determination in its review, which had focused on the issue of good cause. In re Alex Siniavsky, Department of Corrections, CSC Docket No. 2012-3664, 2013 N.J. CSC LEXIS 209, Final Decision (March 7, 2013).

County was not entitled to relief on its claim that, prior to the issuance of the initial decision of the Administrative Law Judge (ALJ), it had entered into a binding settlement agreement between it and a wrongly-removed county correction officer to settle her back pay and benefit claims because the purported agreement was never brought before the ALJ or the Civil Service Commission as contemplated by N.J.A.C. 1:1-19.1. Nor did the county bring the purported agreement to the attention of the ALJ in a timely manner by a motion to reopen the record per N.J.A.C. 1:1-18.5(c) or, once the ALJ ruled, by the filing of a request per N.J.A.C. 1:1-18.8(d) to extend the deadline for the filing of its objections to the ALJ's ruling. Because the county did not bring the agreement to either the ALJ or the Commission, neither arbiter ever considered it and there was no basis for "reconsideration" of the matter as permitted by N.J.A.C. 4A:2-1.6(b). In re Keisha Henderson, Essex County, CSC Docket No. 2013-1607, 2013 N.J. CSC LEXIS 180, Final Decision (March 7, 2013).

Civil Service Commission refused to reconsider its prior ruling finding that an employee who had failed to appear to take the oral portion of an examination for the position of Battalion Fire Chief (PM0146P), Newark, ostensibly because he was attending his daughter's high school graduation, was not entitled to be granted a make-up examination, which ruling was based on the Commission's finding that the circumstances presented by the employee did not meet the criteria in N.J.A.C. 4A:4-2.9(c) but was a schedule conflict that was not a valid reason for a make-up examination. Moreover, because the employee did not show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case as well as valid reasons for his failure to present such evidence during the original proceeding, the employee had failed to meet the standards in N.J.A.C. 4A:2-1.6(b) upon which a request for reconsideration was properly granted. In re Dorian Herrill, Battalion Fire Chief (PM0146P), Newark, CSC Docket No. 2013-1447, 2013 N.J. CSC LEXIS 27, Final Decision (February 8, 2013).

Fire captain was not entitled to reconsideration of a Civil Service Commission decision pursuant to N.J.A.C. 4A:2-1.6(b) because he did not present new or additional information that would have changed the outcome of the case. As provided in the original decision, he did not have displacement rights to the title of Fire Prevention Specialist because he was neither properly serving as a provisional nor was he permanent in that title. There was no record of the City appointing him from a certification as required under N.J.A.C. 4A:4-1.10(a). In re Agripino Figueroa, City of Camden, CSC Dkt. No. 2012-2660, 2013 N.J. CSC LEXIS, Final Decision (January 10, 2013).

4A:2-1.7 Specific appeals

(a) For specific appeal procedures see:

1. Awards in State service (N.J.A.C. 4A:6-6.10);
2. Classification (N.J.A.C. 4A:3-3.9);
3. Discipline, major (N.J.A.C. 4A:2-2);
4. Discipline, minor (N.J.A.C. 4A:2-3);
5. Discrimination in State service (N.J.A.C. 4A:7-3.2 and 3.3);
6. Employment list removal for medical reasons (N.J.A.C. 4A:4-6.5);
7. Employment list removal for psychological reasons (N.J.A.C. 4A:4-6.5);
8. Examinations (N.J.A.C. 4A:4-6);
9. Grievances (N.J.A.C. 4A:2-3);
10. Layoffs (N.J.A.C. 4A:8-2.6);
11. Overtime in State service (N.J.A.C. 4A:3-5.10);
12. Performance Assessment Review in State service (N.J.A.C. 4A:6-5.3);
13. Reprisals (N.J.A.C. 4A:2-5);
14. Resignations (N.J.A.C. 4A:2-6);
15. Salary (job reevaluation) in State service (N.J.A.C. 4A:3-4.3); and
16. Supplemental compensation on retirement in State service (N.J.A.C. 4A:6-3.4).

(b) Any appeal not listed above must be filed in accordance with N.J.A.C. 4A:2-1.1.

Administrative correction to (a), with deletion of (a)11 and renumbering of old (a)12-18 to new (a)11-17.
See: 22 N.J.R. 165(a).
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Deleted ".1 et seq." following N.J.A.C. references throughout; in (a)5, substituted "and 3.3" for "through 4A:7-3.4"; and in (a)11, deleted "et seq." following N.J.A.C. reference.
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a)15, substituted "State" for "state", and inserted "and"; deleted former (a)16; and recodified (a)17 as new (a)16.

Case Notes

Appeals to Department of Personnel (DOP) and Merit System Board by police officer were timely. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

4A:2-1.8 Appeal processing fees

(a) A $20.00 processing fee shall be charged for all appeals and requests for relief filed with the Civil Service Commission, subject to the exemptions in (e) below, except that no fee shall be charged for the following types of appeals:

1. Stay or interim relief (N.J.A.C. 4A:2-1.2), except that:
   i. Interim relief requests filed pursuant to N.J.A.C. 4A:2-2.5(e) (violation of departmental disciplinary hearing requirements) are subject to the appeal fee; and
   ii. Requests for stay filed pursuant to N.J.A.C. 4A:2-1.2(f) are subject to the appeal fee;
2. Petition for reconsideration of an appeal that is not subject to an appeal fee (see N.J.A.C. 4A:2-1.6);
3. Grievance in State service (N.J.A.C. 4A:2-3.1);
4. Reprisal or political coercion (N.J.A.C. 4A:2-5.2);
5. Classification (N.J.A.C. 4A:3-3.9);
6. Job reevaluation (N.J.A.C. 4A:3-4.3);
7. Waiver of salary overpayment (N.J.A.C. 4A:3-4.21);
8. Retroactive appointment date (N.J.A.C. 4A:4-1.10);
9. Extension of an eligible list (N.J.A.C. 4A:4-3.3);
10. Revival of an eligible list (N.J.A.C. 4A:4-3.4);
11. Relaxation of the intergovernmental transfer rule (N.J.A.C. 4A:4-7.1A);
12. Relaxation of the donated leave rule (N.J.A.C. 4A:6-1.22);
13. Layoff rights (N.J.A.C. 4A:8-2.6(a)2);
14. Enforcement of a Civil Service Commission decision or a determination by a Division of the Civil Service Commission (N.J.A.C. 4A:10-2.1); or
15. Appointment waiver (N.J.A.C. 4A:10-2.2).

(b) The fee shall be paid by check or money order, made payable to NJCSC, and submitted with the appeal.

(c) Appeals filed on behalf of multiple appellants must include a $20.00 fee for each appellant, except that:

1. In cases where, on behalf of all similarly situated members of a unit represented by a union, an attorney or authorized union representative files a request for a stay or other interim relief that does not fall under N.J.A.C. 4A:2-1.2, because it does not pertain to a pending appeal, such request is only subject to one $20.00 fee; and
2. Appeal fees as described above may be combined in one check or money order.

EXAMPLE 1: An attorney representing a local union seeks an order on behalf of all affected unit members to stay a layoff from occurring in response to a proposed layoff plan. The request does not fall under N.J.A.C. 4A:2-1.2, because it does not pertain to a pending appeal. Therefore, the request is subject to a fee. However, as it is filed on behalf of all similarly situated union members by an authorized representative, the attorney is only required to submit one $20.00 fee in total, rather than a fee for each unit member.

EXAMPLE 2: An attorney appeals the good faith of a layoff on behalf of 20 members of an affected unit represented by a local union. The attorney also seeks an order to stay the layoff from occurring pending a hearing on the good faith layoff appeal. The pending appeal, regarding the good faith of the layoff, is subject to a fee. Therefore, the attorney is required to submit a $20.00 fee for each appellant in the good faith layoff appeal for a total of $400.00. The attorney decides to submit a check for $400.00, rather than write 20 checks in the amount of $20.00 for each appellant, although either approach is permissible. However, no separate fee is required for the stay request because it pertains to the pending appeal. See N.J.A.C. 4A:2-1.8(a)1.

(d) Appeals received without a fee shall not be processed unless the appellant submits, within the time required by written notice from the Commission, the required fee, or proof of exemption as described in (e) below. Fees received after the due date shall not be accepted unless good cause is shown by the appellant.

(e) An appellant shall be granted a waiver of the fee if the appellant:

1. Has established veterans' preference pursuant to N.J.S.A. 11A:5-1 et seq.; or

2. Provides documentation showing that he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

i. General Assistance—a copy of the appellant's benefits identification card (if one was issued) or a letter from the appellant's local municipal welfare director;

ii. Work First New Jersey Act—a copy of the appellant's Families First card; or

iii. Supplemental Security Income—a copy of the appellant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(f) The fee is for processing purposes only and shall not be refunded for any reason except when submitted in error for an exempt appeal.

New Rule, R.2011 d.173, effective June 20, 2011.
See: 43 N.J.R. 470(a), 43 N.J.R. 1419(b).

Case Notes

Counsel who represented a police officer who prevailed on his claim that he had been wrongly removed from his position was entitled to compensation at the hourly rate of $175, not at his billed rate of $375, because counsel provided insufficient information to justify an award at the billed rate. Specifically, the certification did not elaborate as to the specific nature or subject matter of cases for which he was paid at the $375 hourly rate nor any basis on which it could be concluded that he has particular expertise in labor or employment law. In the absence of such a showing, an award based on an hourly rate of $175 was proper under N.J.A.C. 4A:2-2.12. As for the related claim for costs, because subpoenas were not required to be served by process servers, the cost thereof was not reimbursable per N.J.A.C. 1:1-11.2, while the $20 appeal processing fee was also nonreimbursable per N.J.A.C. 4A:2-1.8(f). In re Hulse, Newark, CSC Docket No. 2013-3505, 2013 N.J. CSC LEXIS 1151, Final Administrative Action (December 6, 2013).

Candidate who was ineligible to take a promotional examination for County Services Specialist (PS1394K), Department of Children and Families because she did not meet the minimum requirements by the closing date could not recover her $20 fee paid for filing an appeal under N.J.A.C. 4A:2-1.8(f) because the fee was for processing purposes only and was not refundable unless it had been submitted in error, which was not the case here. In re Brown, et al., Cnty. Servs. Specialist, (PS1394k), Dep't. of Children and Families, CSC Dkt. Nos. 2013-1705, 2013-1818, 2013-1707, 2013-1712, 2013-1741, 2013-1745, 2013-1792, 2013-1782, 2013-1799, 2013-1755, 2013-1756, 2013-1868, 2013-1736, 2013-1676, 2013-1735 and 2013-1757, 2013 N.J. CSC LEXIS 1168, Final Admin. Action (November 20, 2013).

Appointing authority improperly denied a correction officer's request for sick leave injury benefits on the basis that her injury was the result of a preexisting should injury pursuant to N.J.A.C. 4A:6-1.6(d)2. It failed to provide any medical documentation in support of its determination, while the correction officer provided a medical note indicating that the prior shoulder surgery was unrelated to the present injury. However, the correction officer did not show that her appeal was exempt from the fee imposed under N.J.A.C. 4A:2-1.8(f). In re Cheryl Hoffman, Dep't. of Corr., CSC Dkt. No 2012-577, 2013 N.J. CSC LEXIS 497, Final Decision (July 17, 2013).

Applicant who prevailed on appeal from a ruling of the Division of Selection Services and Recruitment (DSR) that she did not adequately justify her failure to attend an examination was not entitled to relief from the filing fee for the appeal imposed by N.J.A.C. 4A:2-1.8 because the same was a processing fee levied on all appellants other than those who were exempted by rule. The applicant's claim that the fee was "unfair" did not afford grounds for relief therefrom. In re Donna Kaczor, Clerk 3 (C0753P), Bergen Cnty., CSC Dkt. No. 2013-2592, 2013 N.J. CSC LEXIS 624, Final Decision (May 16, 2013).

Applicant was not entitled to retake an open competitive examination for Administrative Clerk (M0208P). Although she alleged that numerous announcements were made over the school intercom that created a disturbance in taking the examination, she failed to challenge the manner in which the examination was administered at the examination site as required by N.J.A.C. 4A:4-6.4(c). Because the appeal fee she paid was for processing only and was not submitted in error for an exempt appeal, she was not entitled to a refund of the appeal fee under N.J.A.C. 4A:2-1.8(f). In re Nicole M. Jackson, Admin. Clerk (M0208P), East Orange, CSC Dkt. No. 2013-659, 2013 N.J. CSC LEXIS 61, Final Decision (January 9, 2013).

SUBCHAPTER 2. MAJOR DISCIPLINE

Cross References

Applicability of this subchapter to SES members, see N.J.A.C. 4A:3-2.9.

4A:2-2.1 Employees covered

(a) This subchapter applies only to permanent employees in the career service or a person serving a working test period.

(b) Appointing authorities may establish major discipline procedures for other employees.

(c) When the State of New Jersey and the majority representative have agreed pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to a procedure for appointing authority review before a disciplinary action is taken against a permanent employee in the career service or an employee serving a working test period, such procedure shall be the exclusive procedure for review before the appointing authority.

(d) When the State of New Jersey and the majority representative have agreed pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to a disciplinary review procedure that provides for binding arbitration of disputes involving a disciplinary action that would be otherwise appealable to the Commission under N.J.A.C. 4A:2-2.8, of a permanent employee in the career service or a person serving a working test period, such procedure shall be the exclusive procedure for any appeal of such disciplinary action.

Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Added (c) and (d).
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (d), substituted the second occurrence of "that" for "which", and substituted "Commission" for "Board".

Case Notes

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. 4:1-16.8). O'Malley v. Department of Energy, 109 N.J. 309, 537 A.2d 647 (1987).

Doctrine of equitable estoppel inapplicable to allow provisional employee to retain position (citing former N.J.A.C. 4:1-16.8). Omrod v. N.J. Dep't of Civil Service, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 75 N.J. 534, 384 A.2d 513.

Ordinarily, permanent civil service employees can be discharged or demoted only for cause, and they have pre-termination appeal and hearing rights; however, provisional employees can be terminated at any time at the discretion of the employer. Melani v. County of Passaic, 345 A.2d 579.

Because a city employee who was serving as the provisional deputy director of human services did not hold that title in a permanent capacity within the meaning of N.J.A.C. 4A:2-2.1(a), she lacked standing under N.J.A.C. 4A:8-2.6 to appeal her demotion from that position as part of a general layoff of city employees necessitated by fiscal constraints. In re City of Trenton Layoffs, Dep't of Admin. & Fin., OAL Dkt. No. CSV 876-11, AGENCY Dkt. Nos. 2011-2141 et al., 2014 N.J. AGEN LEXIS 70, Initial Decision (February 10, 2014).

Although employee was not permanent in the title of Supervisor, Traffic Maintenance, the employee's underlying permanent status in a career service title gave him the right to appeal a suspension; it was axiomatic that, in accepting a provisional appointment to a higher title, the employee did not relinquish the rights he had as a permanent employee. In re Agins, OAL Dkt. No. CSV 4062-06, 2007 N.J. AGEN LEXIS 1053, Merit System Board Remand Decision (July 25, 2007).

In the absence of permanent status in a career service title, the Board lacks jurisdiction to entertain major discipline appeals and there is no right to a hearing. In re Gooden, OAL Dkt. No. CSV 6905-05, 2006 N.J. AGEN LEXIS 630, Final Decision (May 24, 2006).

4A:2-2.2 Types of discipline

(a) Major discipline shall include:

1. Removal;

2. Disciplinary demotion; and

3. Suspension or fine for more than five working days at any one time.

(b) See N.J.A.C. 4A:2-2.9 for minor disciplinary matters that are subject to a hearing, and N.J.A.C. 4A:2-3 for all other minor disciplinary matters.

(c) The length of a suspension in a Final Notice of Disciplinary Action, a Commission decision, or a settlement, when expressed in "days," shall mean working days, unless otherwise stated.

Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (a)2, added "and" at the end; in (a)3, substituted a period for a semicolon at the end; deleted (a)4 and (a)5; and added (b) and (c).
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (c), substituted "Commission" for "Board".

Case Notes

Employee did not demonstrate that Department of Labor's request to reallocate career position of Director to SES was made in bad faith and without complying with statutory procedures governing disciplinary proceedings. Matter of Baykal, 707 A.2d 467, 309 N.J.Super. 424.

Ordinarily, permanent civil service employees can be discharged or demoted only for cause, and they have pre-termination appeal and hearing rights; however, provisional employees can be terminated at any time at the discretion of the employer. Melani v. County of Passaic, 345 A.2d 579.

Human Services Technician who, on three occasions within a few minutes, kicked the wheelchair of a resident of a veterans home with enough force to propel it backwards was properly removed from her position on a finding that she had engaged in conduct unbecoming a public employee and was guilty of neglect of duty in violation of N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3(a). The technician expressed apparent impatience with the resident's repeated attempts to leave the T.V. room despite the absence of any directive or instruction that prohibited the resident from freely moving around the unit in which she resided. The technician's conduct in kicking the resident's wheelchair repeatedly as the resident tried to exercise her privilege of departing the T.V. room constituted an unacceptable restraint on the resident's freedom. Although the resident suffered from some confusion, she was alert and aware of her surroundings, and the technician's actions were humiliating and resulted in mental anguish to the resident. Notwithstanding the lack of physical injury to the resident, the technician's conduct, nevertheless, strayed mightily from the standards expected of a certified nursing assistant and provided adequate grounds for her removal from her position. In re Brownwest-Dunbar, N.J. Veterans Memorial Home Menlo Park, Dep't of Military & Veterans Affairs,

OAL DKT. NO. CSV 00318-14, 2014 N.J. AGEN LEXIS 477, Initial Decision (August 6, 2014).

The failure by a senior investigator at a correctional institution to advise a corrections officer who was selected for random drug-testing of his rights, including that he could provide a second urine sample at the same time, which sample could be retested in the event that the sample tested by the department tested positive for illegal substances, at most deprived the officer of potentially exculpatory evidence but not actual exculpatory evidence. That being so, that procedural error did not afford grounds for relief from the correctional institution's action, based on the fact that cocaine metabolites were found in his urine sample, in removing him from his position for conduct unbecoming and other sufficient case within the meaning of N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3. In re Schwaner, Mountainview Youth Corr. Facility, OAL DKT. NO. CSR 02835-14, 2014 N.J. AGEN LEXIS 442, Initial Decision (August 1, 2014).

Employee was absent from duty for five or more consecutive business days without approval of his supervisor in violation of N.J.A.C. 4A:2-6.2 and he breached the terms of a Conditional Letter of employment, resulting in his resignation not in good standing and supporting other related charges against him under N.J.A.C. 4A:2-2.2, N.J.A.C. 4A:2-2.3(a)6; N.J.A.C. 4A:2-2.3(a)7; and N.J.A.C. 4A:2-2.3(a)11. There was no debate that he failed to report to work following his arrest and incarceration and that he failed to contact his supervisors to determine his date of return or to explain his non-appearance. Although he asserted that he called his supervisor, he offered no proof of this call. In re Ravin Morrison, City of Newark Dep't. of Eng'g., OAL Dkt. No. CSV 00844-14, 2014 N.J. AGEN LEXIS 359, Initial Decision (July 17, 2014).

Administrative law judge (ALJ) ordered that a determination of the Passaic Police Department removing a school resource officer (SRO) from employment under N.J.A.C. 4A-2-2.3 be affirmed. The SRO posted suggestive comments on the Instagram account of someone whom he stated he did not know at the time but who was a student at the school. His threat to harm himself to get the attention of his ex-girlfriend had the effect of causing the Department to expend officers to respond to him. Because he had four disciplinary incidents in the year since he graduated from the police academy, the ALJ concluded that removal was appropriate under N.J.A.C. 4A:2-2.2. In re Carlos Gomez, City of Passaic Police Dep't., OAL Dkt. No. CSR 02863-14, 2014 N.J. AGEN LEXIS 395, Initial Decision (July 2, 2014).

A custodian employed by a board of education in a public high school was properly suspended for 10 days based on evidence that he had screamed profanities at his supervisor, had walked out without completing assigned work, had failed to report for work altogether on the next day, and had failed to follow instructions relative to signing in and out. Such conduct was unbecoming a public employee within the meaning of N.J.A.C. 4:2-2.2 and also constituted neglect in the performance of his duties. Given the evidence relating to the custodian's conduct, the 10-day suspension was appropriate and reasonable. In re George, Jersey City Sch. Dist., OAL DKT. NO. CSV 03802-13, 2014 N.J. AGEN LEXIS 244, Initial Decision (May 29, 2014).

An Administrative Law Judge concluded that a county department of family services had adequately proven that an employee had caused a disturbance in front of her co-workers as well as members of the public who were present in the office by yelling at and using profanities towards a coworker on the other side of the office area. Given the nature of the conduct as well as the fact that the employee had previously been disciplined for having engaged in a confrontation with a coworker, the 30-day suspension imposed by the department for conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.2 was appropriate. In Re Yohaira Garcia, Hudson Cnty. Dep't of Family Servs., OAL Dkt. No. CSV 10202-12, AGENCY Dkt. No. 2013-151, 2014 N.J. AGEN LEXIS 168, Initial Decision (April 9, 2014).

Action by an appointing authority in removing an employee from her position as a Judiciary Account Clerk, Judiciary was unwarranted because the employer failed to prove that the employee falsified her time reports for January 18, 2012, which was a day on which she was called for jury duty but thereafter released when it was determined that her service was not needed. While she gave imprecise information to her superior regarding the length of time she spent was at the courthouse after jury duty, which if knowing and willful, could have constituted insubordination or conduct unbecoming within the meaning of N.J.A.C. 4A:2-2.2-2.3, she was not charged as having done so, and the totality of the record showed that the decision to remove her was arbitrary, capricious, and unreasonable as well as not supported by substantial evidence on the record. Moreover, not only was the employee entitled to be reinstated into her position with back pay, benefits and seniority but the appointing authority was also responsible for reasonable counsel fees per N.J.A.C. 4A:2-2.12. In re Wang, Judiciary, Union Vicinage, CSC DKT. NO. 2013-211, OAL DKT. NO. CSV 11707-12, 2013 N.J. CSC LEXIS 1072, Final Administrative Action (December 18, 2013).

Finding of an administrative law judge (ALJ) that there was a verbal altercation between a judiciary clerk and a manager and that the clerk's conduct was unbecoming to a public employee within the meaning of N.J.A.C. 4A:2-2.3 was upheld based in part on testimony that established that the clerk was loud, angry, and dismissive with the manager for a brief period after the manager had requested work print outs. However, the 10-day suspension that was imposed by the appointing authority for the incident was excessive under N.J.A.C. 4A:2-2.2 in light of the short duration of the incident, the fact that no profanity was expressed during the incident, and the work requested was otherwise completed in a timely manner. Further the clerk's prior history of discipline had been minimal. A five-day suspension was imposed by the ALJ and was upheld by the Civil Service Commission on appeal because the shorter suspension period more appropriately balanced management's need to maintain proper decorum with the clerk's right to be forewarned of management's expectations. In re Moran, Superior Court of New Jersey, Union Vicinage, CSC Dkt. NO. 2012-3435, 2013 N.J. CSC LEXIS 1075, Final Administrative Action (November 7, 2013).

Action of an appointing authority in removing an employee from her position as a Human Services Technician at a psychiatric hospital was justified under N.J.A.C. 4A:2-2.2(a) because the hospital met its burden in proving by a preponderance of credible evidence that the employee mentally and physical abused a client. A DVD produced at the hearing showed that the employee psychologically abused the client by throwing food from the refrigerator at the nurse's station into the garbage in front of the client, who was hungry and wanted to eat, which precipitated the client's outburst. The employee then went into the client's room, further agitating the client, which resulted in a physical altercation in violation of the hospital's policies and procedures regarding physically touching patients. In re Esther S. Peters, Trenton Psychiatric Hosp., Dep't. of Human Services, OAL Dkt. No. CSV 1745-11, 2013 N.J. CSC LEXIS 824, Final Decision (October 16, 2013).

An Administrative Law Judge concluded, based on conflicting testimony, that an employee serving as a Judiciary Clerk in fact committed misconduct in relation to his confrontation with his supervisor and that such misconduct was conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6. However, though the penalty proposed by the appointing authority, which was a 10-day suspension without pay, was authorized by law including N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.4, it was unduly harsh given these facts. The Administrative Law Judge thereupon concluded that an unpaid five day suspension was more appropriate and represented a proper response where, as here, proper workplace decorum had not been maintained. In re Moran, Superior Court of New Jersey — Union Vicinage, OAL Dkt. No. CSV 08100-12, Initial Decision (October 4, 2013).

Employee was appropriately removed from public employment as a Cottage Training Technician with a resignation not in good standing based on job abandonment pursuant to N.J.S.A. 11A:2-6, N.J.S.A. 11A:2-20, and N.J.A.C. 4A:2-2.2. Although the employee was not able to call his employer, the New Lisbon Development Center, when he was absent from work because he was incarcerated, his mother did call. However, it was not the policy of New Lisbon to grant a leave of absence when an employee was incarcerated, and he had no leave time remaining that he could have used during this period. In re Tyrone Hart

New Lisbon Dev. Ctr. Dep't. of Human Serv., OAL Dkt. No. CSV 2856-13, 2013 N.J. CSC LEXIS 967, Final Decision (October 2, 2013).

The Civil Service Commission affirmed the action of an appointing authority in removing a female employee from her position as a data entry operator at a county correction center for misconduct including neglect of duty and conduct unbecoming a public employee. That removal had been effected in part in reliance on the testimony of several other employees of the center to the effect that the female had hugged, kissed and bit the neck of a male correction officer who not only did not consent to the conduct but in fact was embarrassed and distressed by it. Such testimony had been found to have been credible and consistent and to have established grounds sufficient under N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3 for the female employee to be removed from her employment for misconduct. In re Naomi Rivera, Hudson County Department of Corrections, CSC DKT. NO. 2013-2374, OAL DKT. NO. CSV 04359-13, 2013 N.J. CSC LEXIS 842, Final Administrative Decision (September 18, 2013).

The Civil Service Commission affirmed the action of an appointing authority in imposing a 10 working day suspension upon a correction department lieutenant for "other sufficient cause" within the meaning of N.J.A.C. 4A:2-2.3(a)12. That discipline had been imposed on account of the lieutenant's conduct in either failing to undertake the required inventory of facility keys or by conducting an inadequate inventory that failed to reveal that keys in fact were missing. By reason thereof, numerous locks had to be replaced. The nature of her carelessness was such that the safety and security of inmates and staff was compromised. Given the seriousness of the misconduct, imposition of a ten-day suspension was authorized by N.J.A.C. 4A:2-2.2. In re Sherry Leaks. Mid-State Correctional Facility, Department of Corrections, CSC DKT. NO. 2013-2419, OAL DKT. NO. CSV 03913-13, 2013 N.J. CSC LEXIS 844, Final Administrative Decision (September 18, 2013).

Civil Service Commission granted an appointment waiver when an examination for Executive Assistant that had been generated as the result of a provisional appointment to the subject title but the examination was no longer required because the individual had been removed from the title. However the appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to its administration under N.J.A.C. 4A:10-2.2(a)1. The Commission ordered an assessment for the costs of the selection process pursuant to N.J.S.A. 11A:4-5 and N.J.A.C. 4A:2.2(a)2. The misclassification of a provisional by the appointing authority was insufficient to support a waiver of the costs of the selection process and the appointing authority expressed its willingness to pay selection costs. In re Executive Assistant (M0416P), Roselle,), CSC Dkt. No. 2013-3445, 2013 N.J. CSC LEXIS 779, Final Decision (September 18, 2013).

The Civil Service Commission concluded, based on an independent review of the record, that the conduct of a corrections officer in fraternizing with an inmate and in providing false statements relative thereto during a related investigation was "conduct unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 because it clearly violated the policy of the Department of Corrections, which policy recognized that such a prohibition was crucial to maintaining the safety and security of the prison system. Given the officer's prior disciplinary record and the institution's grave concern that the officer's conduct had made it possible for contraband to be introduced into the facility, major discipline including removal, as authorized by N.J.A.C. 4A:2-2.2, was appropriately imposed by the DOC. In re Lewis, CSC Docket No. 2013-1252, OAL Docket No. CSR 346-13, 2013 N.J. CSC LEXIS 879, Final Administrative Action (September 4, 2013).

Determination by an Administrative Law Judge (ALJ) that an employee's behavior in a confrontation with her supervisor after the employee's request for compensatory time was rejected was insubordinate and constituted conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3 was approved by the Civil Service Commission. As the exchange between the employee and the supervisor became heated, the employee ignored the supervisor's request to keep her voice down, accused the supervisor of denying the request for compensatory time due to the employee's race, alluded to confidential information about the supervisor's son that the employee had by reason of her position as a medical records clerk, and used inappropriate language. Based on the record, the Commission concluded that the action of the appointing authority in suspending the employee for ten working days was in accord with N.J.A.C. 4A:2-2.2 and approved the same. In re Sharpe, Newark Sch. Dist., CSC DKT. NO. 2012-2930, OAL DKT. NO. CSV 05147-12, 2013 N.J. CSC LEXIS 823, Final Administrative Action (September 4, 2013).

Testimony of several other employees of a county correction center to the effect that a female employed as a data entry operator had hugged, kissed and bit the neck of a male correction officer who not only did not consent to the conduct but in fact was embarrassed and distressed by it was credible and consistent and established grounds sufficient under N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3 for the female employee to be removed from her employment based on misconduct including neglect of duty and conduct unbecoming a public employee. Naomi Rivera v. Hudson Cnty. Dep't of Corr., OAL Dkt. No. CSV 04359-13, Initial Decision (August 2, 2013).

Civil Service Commission, while accepting and adopting the findings of fact made by the Administrative Law Judge (ALJ) to the effect that a code enforcement officer was properly charged with incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, and other sufficient cause within the meaning of N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3(a) by reason of conduct that included failure to submit timely inspection reports, failure to report back to work after lunch, refusal to participate in team projects, conduct in threatening to throw a senior officer out a window, and failure to answer a city-issued cell phone during regular work hours. The Commission, however, rejected the ALJ's recommendation that the officer be suspended for four months and instead imposed a six-month suspension, concluding that the lengthier suspension was proper given the officer's disciplinary record, which included ten significant disciplinary infractions in the prior ten years. In re Elmore Gaines, CSC Dkt. No. 2012-2931, OAL Dkt. No. CSV 7694-12, 2013 N.J. CSC LEXIS 592, Final Decision (June 26, 2013).

Conduct of a corrections officer in fraternizing with an inmate and in providing false statements relative thereto during a related investigation was "conduct unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 because it clearly violated the policy of the Department of Corrections, which policy recognized that such a prohibition was crucial to maintaining the safety and security of the prison system. Given the officer's prior disciplinary record and the institution's grave concern that the officer's conduct had made it possible for contraband to be introduced into the facility, major discipline including removal, as authorized by N.J.A.C. 4A:2-2.2, was appropriately imposed. In re Lewis, OAL Dkt. No. CSR 00346-13, 2013 N.J. AGEN LEXIS 159, Initial Decision (June 14, 2013).

Corrections officer was properly disciplined under N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3 for conduct unbecoming resulting from an allegation of simple assault against his girlfriend. While the imposed suspension of 132 work days or six calendar months was a significant jump in penalty from the previous five-day suspension for the conduct relating to another attack, it was not so disproportionate to the alleged incident as to warrant a reduction. In re Ah'Kaleem Ford, Hudson Cnty. Dep't. of Corr., OAL Kdt. Nos. CSV 07692-12, CSR 15066-12, 2013 N.J. AGEN LEXIS 99, Initial Decision (May 22, 2013).

After an administrative law judge recommended the reduction of a penalty from 15 working days to 10 working days on charges of insubordination and intentional disobedience or refusal to accept an order, assaulting or resisting authority, disrespect, or use of insulting or abusive language arising from the Senior Correction Officer's refusal to search a cell upon a direct legal order, the Civil Service Commission upheld the 15 working day suspension under N.J.A.C. 4A:2-2.2. The Officer disobeyed a lawful order from a supervisor, even after the order was confirmed by a shift commander, which subverted discipline. In re Alfred Blanks, Department of Corrections, OAL Dkt. No. CSV 5497-12, 2013 N.J. CSC LEXIS 93, Final Decision (March 6, 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).

Although a correction sergeant violated the policies prohibiting employees from transferring materials between inmates, the officer's actions were mitigated by the fact that he was trying to meet the personal hygiene needs of an inmate; the officer's sole purpose was to provide an inmate with personal care items that were available to all other inmates in the reception area. Six-month suspension, rather than removal, was warranted (adopting 2011 N.J. AGEN LEXIS 441). In re Jones, OAL Dkt. No. CSR 3716-11, 2011 N.J. CSC LEXIS 1137, Civil Service Comm'n Decision (October 19, 2011).

Supervising laborer tested positive for cocaine, but there was no evidence of impairment at the workplace and removal under the appointing authority's "zero tolerance" policy was too harsh of a penalty. The Commission was not bound by the appointing authority's drug policy in determining the proper penalty and a six-month suspension was more appropriate where non-law enforcement employees were often provided a "second chance" in similar situations. In re Colombo, OAL Dkt. No. CSV 1324-11, 2011 N.J. CSC LEXIS 1186, Civil Service Comm'n Decision (September 23, 2011).

Failure of a police officer to accurately report the events surrounding a hit-and-run accident and his attempt to shield a fellow firefighter tended to destroy public respect in the delivery of governmental services. Even in the face of an unblemished disciplinary record, removal was appropriate (adopting in part and rejecting in part 2011 N.J. AGEN LEXIS 356). In re Ferrarella, OAL Dkt. No. CSR 2552-11 and CSR 2781-11, 2011 N.J. CSC LEXIS 1187, Final Decision (September 21, 2011).

While it was evident that a police officer misrepresented the facts in his initial report to his superiors and during the internal affairs investigation, unlike his fellow officer, he tried to rectify his error by advising his superiors that he had misspoken in his first statement and later provided a truthful account. The officer was the newest officer on the force that evening, had a close, trusting relationship with his fellow officer, and relied on his fellow officer for direction as to how to proceed; the reliance on a more senior officer and his actions to rectify his error mitigated his culpability, warranting a six-month suspension as opposed to removal (adopting in part and rejecting in part 2011 N.J. AGEN LEXIS 356). In re Ferrarella, OAL Dkt. No. CSR 2552-11 and CSR 2781-11, 2011 N.J. CSC LEXIS 1187, Civil Service Comm'n Decision (September 21, 2011).

Senior correction officer's action of storing unauthorized contraband in his locker, which included a pipe cutter that could have been used as a weapon, clearly created a security risk to the prison. Removal, rather than a six-month suspension, was appropriate (adopting in part and rejecting in part 2011 N.J. AGEN LEXIS 401). In re Jones, OAL Dkt. No. CSR 13317-10, 2011 N.J. CSC LEXIS 1185, Final Decision (September 21, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 250) adopted, in which the ALJ found, on conflicting evidence, that a Human Services Assistant was not sleeping while she was assigned one-to-one supervision of a patient who later escaped; instead, the assistant violated a policy of maintaining constant eye contact with the patient when she turned her back on the patient to wash her hands, effectively allowing the patient to elope. The penalty of removal was excessive, given the many years of service the assistant had provided, her reputation for being hard-working and helpful, and her particular history with this patient, who was known to be an eloper; thus, a 45-day suspension was appropriate. In re Smith, OAL Dkt. No. CSV 00024-10 and CSV 00985-10, 2011 N.J. CSC LEXIS 834, Civil Service Comm'n Decision (July 27, 2011).

Imposition of a 60-working-day suspension, a 90 working day suspension, and the removal of a county correction officer were justified after the officer failed to appear in court on two occasions to address a summons issued to her as well as corresponding warrants. Although the appointing authority sought removal due to the officer's excessive absenteeism, failure of a law enforcement officer to appear and remain in court could not be tolerated and was worthy of a severe sanction. In re Ocharo, OAL Dkt. No. CSR 6087-10, 2011 N.J. CSC LEXIS 107, Final Decision (March 18, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 22) adopted, which concluded that a six-month suspension, rather than removal, was the appropriate remedy for a correction officer's absenteeism; while her absences caused the appointing authority to pay overtime to employees who had to cover her position, disciplinary hearings regarding her absenteeism were so close in time that the officer did not get an opportunity to learn and improve from prior disciplines. Additionally, the officer did not have any disciplinary infractions in her five years of service. In re Hamilton, OAL Dkt. No. CSR 11919-10, 2011 N.J. CSC LEXIS 342, Civil Service Comm'n Decision (March 18, 2011).

Credible evidence supported the ALJ's conclusion that the appointing authority failed to prove that a senior correction officer provided an inmate with the personal address of a civilian without her consent; however, on finding that the officer had failed to obtain permission for secondary employment as a personal trainer, the ALJ erred in reducing the officer's penalty from removal to an oral reprimand. Notwithstanding the officer's benign disciplinary history and years of service, the imposition of a 60-working-day suspension was appropriate (adopting with modification 2010 N.J. AGEN LEXIS 576). In re Aziz, OAL Dkt. No. CSR 1749-10, 2011 N.J. CSC LEXIS 51, Civil Service Comm'n Decision (February 17, 2011).

Senior correction officer was properly removed for undue familiarity with an inmate after the officer discussed a fellow officer's tattoo with an inmate without that officer's knowledge, as well as shared information about his own tattoo, thus creating a risk to himself, the other officer, and the facility in general (adopting 2010 N.J. AGEN LEXIS 629). In re Hendershot, OAL Dkt. No. CSR 8155-10, 2011 N.J. CSC LEXIS 10, Final Decision (February 17, 2011).

Six-month suspension was appropriate where a police lieutenant who was on suspension from the police department and did not have the right to represent himself as an active lieutenant falsely implied he was an active member of the department by displaying his identification to airport personnel (adopting in part and rejecting in part 2010 N.J. AGEN LEXIS 526). In re Andriani, OAL Dkt. No. CSR 5436-10, 2011 N.J. CSC LEXIS 70, Civil Service Comm'n Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 582) adopted, which found that a senior correction officer was properly removed for failing to promptly report an inmate's attempts to procure a cell phone through bribery. Although the officer clearly never intended to accept the bribe, his two-day delay in reporting the incident was a lapse of judgment that potentially endangered members of the public and other employees of the institution. In re Kobi, OAL Dkt. No. CSR 07084-10, 2011 N.J. CSC LEXIS 12, Final Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 682) adopted, which found that a 30-day suspension, rather than removal, was the appropriate penalty for a police officer following a random drug screen that resulted in a positive test for the prescription drug Butalbital, for which the officer did not have a prescription. The ALJ found credible the officer's testimony that she unknowingly and mistakenly took her mother's Butalbital medication believing it was another tablet of her Acetaminophen with Codeine. In re Swinney, OAL Dkt. No. CSR 08976-10, 2011 N.J. CSC LEXIS 17, Civil Service Comm'n Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 525) adopted, which found that a county correction officer was properly removed after he failed to complete prison rounds on seven occasions, on six different dates. Prison rounds, though boring at times, were essential to the integrity and competence of prison operations and the officer aggravated his

inappropriate conduct by failing to resume rounds once undistracted, failing to notify a supervisor, and most egregiously, entering false information in the log. In re McKie, OAL Dkt. No. CSR 2815-10, 2011 N.J. CSC LEXIS 14, Final Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 591) adopted, which concluded that a senior correction officer was properly removed after attempting to bring his cellular telephone into the secured area of a youth facility, thereby jeopardizing the safety and well-being of not only himself but other staff, inmates, and the general public. In re Gilsenan, OAL Dkt. No. CSV 7785-10, 2011 N.J. CSC LEXIS 71, Final Decision (January 19, 2011).

Removal, rather than a six-month suspension, was warranted where a senior correction officer fabricated a story of an attempted escape in order to ensure that a particular inmate was subject to severe discipline following the inmate's failure to comply with an order to vacate an area of a loading dock when a truck was entering. The officer's story caused his superiors to call a "Code 22" lock-down, a rare event which significantly disrupted the prison's operations (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 1093). In re Gordon, OAL Dkt. No. CSR 11268-09, 2010 N.J. AGEN LEXIS 690, Final Decision (February 24, 2010).

Although a human services assistant may not have intended to cause a patient pain when pushing him, initiating any physical contact with a patient was extremely troublesome because it could have led to unnecessary escalation and agitation; the assistant was properly suspended for 90 days. In re Parker, OAL Dkt. No. CSV 10072-09, 2010 N.J. CSC LEXIS 502, Civil Service Comm'n Decision (January 27, 2010).

Thirty-day, rather than a ten-day, suspension was warranted after a township employee engaged in a fist fight with his brother, who was a fellow township employee. The employee had numerous prior minor disciplinary actions and the fact that it was a "family disagreement" was immaterial given that the fight occurred between two township employees in full view of the public (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1254). In re Merola, OAL Dkt. No. CSV 2395-08, 2008 N.J. AGEN LEXIS 1214, Final Decision (October 8, 2008).

Human services assistant should have discovered injuries to a patient by more carefully observing the patient at a shift change when she assumed responsibility for him; however, no other person who was also responsible for checking on the patient noticed his injuries, including the prior shift worker. Under those circumstances, removal was too harsh of a penalty, but the assistant's failure to discover the injury at some time, either at the shift change or during the night was serious, warranting a 10 working day suspension. In re Matthews, OAL Dkt. No. CSV 10610-08, 2009 N.J. CSC LEXIS 1436, Civil Service Comm'n Decision (October 7, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 565) adopted, which found that, under the doctrine of progressive discipline, a hospital attendant properly received a 30-day suspension for continuous violation of the dress code and abuse of sick leave before and after holidays and weekend leave. The attendant had been warned on numerous occasions that she was not to wear a white lab coat to work because it caused confusion as to her position at the hospital, but the she persisted in doing so. In re Gallagher, OAL Dkt. No. CSV 10665-06, 2009 N.J. CSC LEXIS 1441, Final Decision (October 7, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 522) adopted, which found that a 45-day suspension of a senior correction officer was appropriate where the officer violated procedures by opening cell doors and abandoning her post without receiving permission or relief during a lockdown, resulting in a fight between two inmates from separate cells. In re Warren, OAL Dkt. No. CSV 00718-09, 2009 N.J. CSC LEXIS 296, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 443) adopted, which found that, although overwhelming evidence existed as to a sergeant's use of indecent, profane and uncivil language directed toward a superior officer in response to a work-related comment by him amply supported the charges of insubordination, the sergeant was a 13-year employee of the Department with an unblemished record before the incident; although her conduct on that day was inexcusable, it reflected an aberration in her overall performance and, in view of the absence of any prior disciplinary actions, the appropriate penalty was 5 days' suspension, which constituted a minor disciplinary action. In re Brown, OAL Dkt. No. CSV 03395-09, 2009 N.J. AGEN LEXIS 890, Final Decision (August 19, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 438) adopted, which found that a 10-day suspension was justified where a payroll adviser failed to adjust an employee's base salary as directed; by intentionally disregarding an order given by a supervisor as well as by the mayor, she failed to perform her duties as a payroll clerk. In re Angermueller, OAL Dkt. No. CSV 11700-08, 2009 N.J. AGEN LEXIS 796, Final Decision (August 5, 2009).

Removal, rather than a six-month suspension, was appropriate where a correction officer was involved with an inmate in another facility and attempted to conceal the relationship; there was a danger of the officer's position being compromised if anyone learned of the relationship (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 440). In re Livingston, OAL Dkt. No. CSV 11903-08, 2009 N.J. AGEN LEXIS 440, Final Decision (August 5, 2009).

Ten-day, rather than five-day, suspension of a senior correction officer was appropriate upon a finding that the officer failed to conduct a complete inventory of tools utilized by inmates assigned to his supervision and did not notice that metal tongs were missing until approximately six hours after his shift started; the officer had previously received five official reprimands, four for attendance-related issues and one for being out of uniform, and, although no actual harm occurred to an individual or to property, the officer was charged with making a serious mistake due to carelessness which could have resulted in danger and/or injury to persons or property (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 327). In re Tripp, OAL Dkt. No. CSV 2837-08, 2009 N.J. AGEN LEXIS 977, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 434) adopted, which found that a public works employee was properly removed for chronic and excessive absenteeism after he was a no call and no show after a morning lunch break; the employee had previously signed a last chance document with the City and failed to provide the appropriate documentation of his alleged illness. In re Garzarelli, OAL Dkt. No. CSV 411-09, 2009 N.J. AGEN LEXIS 818, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 288) adopted which found that a senior correction officer was properly removed after the ALJ found, on conflicting evidence, that the officer had been facilitating sexual liaisons between inmates, participating in undue fraternization and providing contraband to inmates; her conduct was nothing short of disgraceful and an embarrassment to the institution and, although civil service law contemplated progressive discipline, nothing short of removal was an appropriate remedy. In re Davenport, OAL Dkt. No. CSV 10288-05, 2009 N.J. AGEN LEXIS 902, Final Decision (June 24, 2009).

Human services assistant was properly removed after a videotape showed that he attempted to intimidate one patient and that he grabbed another patient by the shoulder and pulled him back, which was in contrast to the assistant's testimony that he had to restrain the patient due to aggression; the assistant's argument that he was acting in a defensive manner was not persuasive since he was moving toward the patient while in a boxing stance. The assistant's actions were sufficiently egregious to warrant his removal even if he had a largely unblemished prior record. In re Santana, OAL Dkt. No. CSV 10607-08, 2009 N.J. AGEN LEXIS 789, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 248) adopted, which found that a truck driver was properly suspended for 180 days after he tested positive for cocaine on July 24, 2007 (for which he received a one-day suspension), and then tested positive again as the result of a return-to-work test on August 29, 2007; contrary to the driver's contention that the "return-to-work" test should not have been administered when he had

not returned to work, a "return-to-work" test with a negative result is a precondition for an employee to return to work. In re Gourrier, OAL Dkt. No. CSV 03930-08, 2009 N.J. AGEN LEXIS 891, Final Decision (June 10, 2009).

Civil Service Commission had jurisdiction over a fire officer's disciplinary action because the imposed discipline was not a dispute over the North Hudson Regional Fire and Rescue's polices, e.g., application of the sick leave and modified duty, which would have required arbitration, but, rather, the officer's 15-day suspension was a major discipline from which he appealed before the Commission and he did not file a PERC claim (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 161). In re Woltmann, OAL Dkt. No. CSV 11286-07, 2009 N.J. AGEN LEXIS 794, Civil Service Comm'n Decision (June 10, 2009).

Where a superior court had already concluded that a child protective services worker "abused or neglected" her one-year old son by engaging in a car chase and a standoff situation while under the influence of marijuana in the presence of her son, a review of her employment record was unnecessary, as her actions were so severe that her separation from the Department of Children and Families was the only proper penalty. In re Hayman, OAL Dkt. No. CSV 10152-08, 2009 N.J. AGEN LEXIS 785, Final Decision (June 10, 2009).

County Correction Lieutenant was properly demoted to the position of County Correction Sergeant after the ALJ found, on conflicting evidence, that the lieutenant made disparaging sexual remarks to a subordinate officer on various dates based on her sexual preference; the lieutenant was in a leadership position and was sometimes in charge of the entire facility, and all employees were entitled to work in an environment free of unlawful discrimination and conduct which was harassing. Moreover, the demotion was an appropriate balancing of the lieutenant's prior work history and the utterly offensive and derogatory comments that he made based on the subordinate's sexual orientation (adopting 2009 N.J. AGEN LEXIS 154). In re Delgado, OAL Dkt. No. CSV 2735-08, 2009 N.J. AGEN LEXIS 813, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 253) adopted, which concluded that a custodian was properly suspended for 10 days after his refusal to obey legitimate orders to bring chairs to the gymnasium, his failure to report to the principal's office, and his calling his supervisor an obscene name, while the principal was attempting to have him carry out a legitimate order; the custodian's conduct was sufficiently egregious to permit the imposition of a suspension even in the absence of his prior disciplinary record. In re Stokley, OAL Dkt. No. CSV 11071-07, 2009 N.J. AGEN LEXIS 791, Final Decision (May 27, 2009).

Supervisor was properly demoted to the title of judicial clerk for chronic or excessive absenteeism where she exhausted her sick, vacation and administrative leave in each year from 2003 through 2006, was absent without pay for more than 40 days during the same period, exhausted all of her allotted sick, vacation and personal time for 2007 by October 2007 and continued to be absent without permission; the appointing authority's prior leniency was not a tacit approval of the appellant's conduct and while her absences may have been sick-related absences, her absences disrupted her unit and compromised the level of efficiency of the services provided to the public (adopting 2009 N.J. AGEN LEXIS 70). In re Lauffer, OAL Dkt. No. CSV 4293-08, 2009 N.J. AGEN LEXIS 984, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 118) adopted, which found that a licensed practical nurse was properly removed after the ALJ found, on conflicting evidence, that she left the facility for approximately three hours to get her nails done, leaving only one LPN in charge of all 58 residents. In re Reed, OAL Dkt. No. CSV 10239-08, 2009 N.J. AGEN LEXIS 900, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 75) adopted, which found that a 20-day, rather than 7-day suspension, was appropriate where a custodian engaged in a longstanding pattern of excessive absenteeism and lateness and had a history of comparable offenses for which he was suspended for five days, reprimanded, and suspended for seven days; a greater sanction was necessary to impress upon the custodian that superiors and fellow employees depended upon him to fulfill his custodial responsibilities, and to mitigate the possibility of a hazardous environment for those who work at and attended the schools. In re Weeks, OAL Dkt. No. CSV 11073-07, 2009 N.J. AGEN LEXIS 792, Final Decision (April 15, 2009).

Removal was the proper penalty where a chemist was not a resident of Trenton and he supplied incorrect and misleading information to the appointing authority regarding his residency. In re Emelumba, OAL Dkt. No. CSV 2214-08, 2009 N.J. AGEN LEXIS 974, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 111) adopted, which found that a cottage training technician knew her obligation to call-in her intended absences no later than one hour of the time her shift was scheduled to begin, but failed to do so on four occasions; her repeated offenses for similar conduct led to the conclusion she would not rehabilitate her work ethic to guarantee her employer she would abide by its attendance and related absence policy. In re Brown, OAL Dkt. No. CSV 4693-08, 2009 N.J. AGEN LEXIS 819, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 115) adopted, which found that a human services technician was properly removed after having inappropriate contact with a patient because, although the technician did not intend to harm the patient, there was no reason for her to hold on to the patient after the room was locked, which had the effect of escalating instead of deescalating the situation; additionally, the technician had three five-day sentences and a five-month suspension for verbal abuse of a patient. In re Cloyd, OAL Dkt. No. CSV 8809-08, 2009 N.J. AGEN LEXIS 997, Final Decision (April 15, 2009).

While the OAL and the Commission are not strictly bound by the terms set forth in a Last Chance agreement, where the parties voluntarily agree to a penalty of removal for any subsequent violation, the Last Chance Agreement can be used by the Commission as a significant factor to be considered, along with a worker's prior disciplinary history, when determining the appropriate penalty in an appeal. In re King, OAL Dkt. No. CSV 11696-08, 2009 N.J. AGEN LEXIS 904, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 35) adopted, which found that a custodial worker was properly removed for chronic and excessive absenteeism where she had four prior suspensions for excessive absenteeism and a "Last Chance Agreement," which was a clear warning to that any further attendance difficulties would be more harshly dealt with; the appointing authority did all it could to accommodate the worker, including a transfer to a daytime shift in a different school, but it was clear that numerous reprimands and suspensions were not enough to compel improvement in the worker's attendance. In re Brown, OAL Dkt. No. CSV 3042-08, 2009 N.J. AGEN LEXIS 815, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 34) adopted, which found that a cooking instructor was properly removed for chronic lateness and absenteeism because, even if the last chance agreement between the instructor and the appointing authority was not dispositive, the circumstances dictated removal where the instructor had a history of chronic absenteeism, including an official reprimand in 2001 and 2003, respectively, a three day suspension in July 2003, a five day suspension in November 2003, a 15 day suspension in December 2003, and the three month suspension which was part of an earlier settlement, wherein the DOC sought his removal, in 2005. In re Keat, OAL Dkt. No. CSV 2026-08, 2009 N.J. AGEN LEXIS 973, Final Decision (March 11, 2009).

ALJ erred in finding that a building maintenance worker's prior discipline for leaving his assigned work area without permission could not be considered in determining a proper punishment for subsequent violations because the ALJ erroneously believed that the prior charge was part of the parties' earlier settlement agreement, when, in fact, the prior agreement did not encompass the charge; therefore, the appointing authority was within its right to remove the worker after his third such infraction (rejecting 2008 N.J. AGEN LEXIS 985). In re Wicker, OAL

Dkt. No. CSV 8394-07 and CSV 10250-07, 2009 N.J. AGEN LEXIS 827, Final Decision (February 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 6) adopted, which found that a cemetery caretaker was properly removed from her position after engaging in conduct unbecoming a public employee by drinking on the job, possessing marijuana on the job, driving a county vehicle while intoxicated, and being criminally charged with driving while under the influence of alcohol; although the caretaker claimed that she was simply hung over from the night before, her testimony was not believable. In re Cochrane, OAL Dkt. No. CSV 10073-08, 2009 N.J. AGEN LEXIS 784, Final Decision (February 25, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 961) adopted, which found that a police officer who faxed confidential information to an individual without authorization, lied about the incident during an Internal Affairs investigation, and failed to carry out his duty with respect to signing and distributing police reports was properly demoted. There was no support for the officer's charge that he was demoted in retaliation for charging the city with fraud or in filing a whistleblower suit against the police department in federal court. In re Oras, OAL Dkt. No. CSV 1022-06, 2008 N.J. AGEN LEXIS 1051, Final Decision (December 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 746) adopted, which concluded that a county correctional officer was properly removed from office for sleeping while on duty, the first time when the officer was stationed in a hospital room in the early morning with a shackled inmate and the second time when the officer was assigned to a dorm in the county correctional facility where inmates were seen milling around him. The danger to himself and others was so blatantly obvious and his explanations so lacking in credibility that it was clear that the officer did not understand the nature of the job he was in, and these two incidents were so egregious in nature as to warrant his immediate removal. In re O'Mullan, OAL Dkt. No. CSV 12226-05, 2008 N.J. AGEN LEXIS 1091, Final Decision (December 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 765) adopted, which concluded that a police officer was properly removed on allegations of domestic abuse, even after the victim recanted her earlier statements, because the evidence demonstrated that the officer not only abused the victim but lied about it and attempted to procure false testimony from his friend; removal was appropriate despite the officer's military history and honorable conduct in his neighborhood. In re Mayfield, OAL Dkt. No. CSV 6564-07, 2008 N.J. AGEN LEXIS 1063, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 846) adopted, which concluded that a campus police sergeant was properly removed after he purchased and injected anabolic steroids in an effort to impress his girlfriend with his increased muscle mass and then refused to identify the individual who sold him the substance and related paraphernalia. In re Fleming, OAL Dkt. No. CSV 6485-07, 2008 N.J. AGEN LEXIS 1231, Final Decision (November 6, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 841) adopted, which found, on conflicting evidence, that a police officer was properly suspended for 20 days after he was rude when approached by three woman from a daycare center who were concerned that there was gang activity nearby, refusing to take a report and later submitting a false report about his whereabouts; however, because the officer had an unblemished disciplinary history and had been a member of the department for 13 years, a 20-day suspension was appropriate, even if more extensive discipline may have been authorized. In re Henriques, OAL Dkt. No. CSV 01462-08, 2008 N.J. AGEN LEXIS 1202, Final Decision (November 6, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 849) adopted, which concluded that a correction lieutenant, who twice refused to cooperate with the Special Investigations Division by ordering a correction officer to provide a specimen for a drug testing urinalysis, frustrated an important drug-testing policy and was guilty of unbecoming conduct and a neglect of duty; however, the lieutenant had served for many years and had not been the subject of major discipline, so a 15-day, rather than 45-day suspension, was appropriate. In re Dudich, OAL Dkt. No. CSV 10114-07, 2008 N.J. AGEN LEXIS 1083, Civil Service Comm'n Decision (November 6, 2008).

Where a prison employee admitted to falsifying his attendance records and providing extravagant gifts to his supervisor, both at the behest and under threat from the supervisor, but failed to report the activities to higher level authorities, his actions could have potentially undermined the safety and security of the correctional facility; despite his lack of significant disciplinary history, the employee's removal was warranted because he had not shown himself to have the character or sense of responsibility to shield himself from the stresses and pressures of a correctional setting (adopting 2008 N.J. AGEN LEXIS 789). In re Elmaghrabi, OAL Dkt. No. CSV 3548-08, 2008 N.J. AGEN LEXIS 1217, Final Decision (October 22, 2008).

Thirty-working day suspension was warranted after two sheriff's officers engaged in irresponsible and reprehensible behavior by having a serious physical altercation while on duty in a public area in front of other county employees (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 764). In re Leach, OAL Dkt. No. CSV 6373-07 and CSV 6745-07 (Consolidated), 2008 N.J. AGEN LEXIS 1230, Civil Service Comm'n Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 788) adopted, which concluded that a 20-day, rather than 30-day, suspension of a police officer was the appropriate penalty for leaving the township in a police vehicle without permission, being in a liquor store in violation of departmental rules, and then subsequently evading questions during an investigation of the incident; the officer was a 14-year veteran with a perfect disciplinary record and had been commended on five different occasions, whereas he was in the liquor store for only three minutes. In re Manson, OAL Dkt. No. CSV 2390-08, 2008 N.J. AGEN LEXIS 1213, Final Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 619) adopted, which concluded that removal of a county correction officer was appropriate after two separate instances in which the officer filed a false report and used excessive force against an inmate; both events, although serious, would not have warranted termination, but the officer had four major disciplines for conduct unbecoming a public employee and neglect of duty, each entailing suspension of 30 days or more. In re Garcia, OAL Dkt. No. CSV 9777-07, 2008 N.J. AGEN LEXIS 1069, Final Decision (October 8, 2008).

Administrative law judge (ALJ) ordered that the action of the County of Essex in removing a hospital attendant for conduct unbecoming a public employee and violation of hospital policies and procedures was not justified under N.J.S.A. 11A:2-6, N.J.S.A. 11A:2-20, N.J.A.C. 4A:2-2.2, and N.J.A.C. 4A:2-2.3(a). In view of divergent testimony, the ALJ concluded that the attendant attempted a least restrictive intervention by speaking to a patient who was both verbally abusive and had a history of "hitting everyone." The attendant did not place the patient into seclusion or use a clinically inappropriate restriction. The attendant moved the patient, without restraints, to the quiet room or ante room area in order to reduce stimuli and minimize further disruption in accordance with hospital procedure. In re Annata Wade, Essex Cnty., OAL DKT. No. 1544, 2008 N.J. AGEN LEXIS 1544, Initial Decision (October 6, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 741) adopted, which found, on conflicting evidence, that a city laborer removed approximately $30 of plumbing parts belonging to the City without permission or authorization and secreted them; however, the laborer's conduct did not warrant removal and a more appropriate penalty was a 30-working-day suspension, based on the fact that the laborer had been an employee for 19 years and had an unblemished record. In re Williams, OAL Dkt. No. CSV 01455-08, 2008 N.J. AGEN LEXIS 1201, Civil Service Comm'n Decision (September 24, 2008).

Removal from position of supervising sheet metal worker with public school district on grounds of (1) misrepresentation of facts of his criminal history on his job application and (2) abuse of authority by instructing subordinates to remove school district property for personal gain, was modified to six-month suspension where (1) school district did not prove that the alleged "crime" was in fact a crime and not a dis-

orderly persons offense but (2) while that there was no policy concerning the disposal of scrap metal, it was abundantly clear that a public employee should not be able to profit when disposing of materials belonging to the appointing authority. That contractors were allowed to keep the salvaged proceeds for the sale of scrap they collected was inconsequential since the terms of a contract with an outside vendor may be clearly different from the responsibilities of employees with regard to appointing authority property. In re Delli Santi, OAL Dkt. No. CSV 11901-07, 2008 N.J. AGEN LEXIS 1088, Civil Service Comm'n Decision (September 24, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 745) adopted, which concluded that a police officer was properly removed from office for conduct unbecoming and other sufficient cause for allegedly going on a family vacation and being at a work site for his landscaping business while, in both instances, he was on extended sick leave and did not have permission of his supervisor, particularly since the General Order which described the police department's sick-leave policy was very specific where it stated that an officer on sick leave must remain ". . . at his home unless he receives a Supervisor's permission to leave." In re Wright, OAL Dkt. No. CSV 11929-07, 2008 N.J. AGEN LEXIS 1090, Final Decision (September 24, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 742) adopted, which concluded on conflicting testimony that a Judiciary Account Clerk 2 who was charged with unlawfully taking child support payments totaling $2,000 and refraining from depositing the cash in a state account, was properly removed notwithstanding the clerk's largely unblemished prior record. Although the clerk was a 20-year employee and her prior record included only a six-day suspension, removal was the proper penalty since it went without saying that the theft of funds fell short of that which the public has a right to expect, especially in the court system. In re Shabazz-Allen, OAL Dkt. No. CSV 3592-06, 2008 N.J. AGEN LEXIS 1055, Final Decision (September 24, 2008).

Police officer who had justifiably arrested a citizen for drunk and disorderly behavior but then detained the citizen in municipal jail for an unreasonable amount of time for improper and retaliatory reasons, was properly removed from office where he had previously received a 120 working day suspension and the offending conduct reflected an egregious abuse of discretion and authority. While the discretion given to police officers to determine length of detention was meant to include consideration of factors such as a detainee's combative conduct while in custody and the availability of a responsible adult to whom a detainee can be released, the length of the arrestee's detention was directly related to the police officer's desire to frustrate and aggravate the arrestee's wife in retaliation for her negative vote as a member of a zoning board of adjustment against the police officer's wife's variance application. In re Sharin, OAL Dkt. No. CSV 4705-05, 2008 N.J. AGEN LEXIS 1225, Final Decision (September 24, 2008).

County correction lieutenant was properly suspended for 60 days on charges of conduct unbecoming a public employee, insubordination, and other sufficient cause after the lieutenant was seen yelling at a county correction captain in a belligerent manner, leading a witness to believe that the lieutenant was going to do physical harm to the captain; regardless of his disciplinary history, the lieutenant's offense was sufficiently egregious to warrant a 60-day suspension and, if anything, the fact that a supervisory law enforcement officer was guilty of such conduct compounded the seriousness of the offense (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 402). In re Oyola, OAL Dkt. No. CSV 9782-07, 2008 N.J. AGEN LEXIS 1236, Final Decision (September 10, 2008).

In a disciplinary action against a county correction lieutenant, the ALJ erred in concluding that portions of the lieutenant's disciplinary record were not subject to review for purposes of progressive discipline because the prior offenses were too remote in time; where the officer had some history of adjudicated disciplinary action within a reasonable time, consideration of further disciplinary actions that were more than seven years old was permissible (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 402). In re Oyola, OAL Dkt. No. CSV 9782-07, 2008 N.J. AGEN LEXIS 1236, Final Decision (September 10, 2008).

Theory of progressive discipline should not have been used in a disciplinary action in which an assistant family services worker was found working at her restaurant on a day in which she was supposed to have been working in the field for the appointing authority; the worker had only been in a field position working with clients for a short time and her misconduct demonstrated that she was not trustworthy (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 620). In re Jiles, OAL Dkt. No. CSV 10042-07, 2008 N.J. AGEN LEXIS 620, Final Decision (August 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 362) adopted, which concluded that a police officer was properly suspended for 10 days after he cashed checks when there were insufficient funds in the account and failed to timely reimburse the store because the officer's actions and omissions had the potential to negatively impact the Police Department in relation to the public; where the officer had previously received a 30-day suspension for an incident occurring at a bar while he was off duty, the imposition of a 10-day suspension regarding the checks in question was consistent with the rules. In re Moran, OAL Dkt. No. CSV 03391-01 and CSV 01560-03 (Consolidated), 2008 N.J. AGEN LEXIS 1410, Final Decision (July 16, 2008).

Even if a nursing home institutional attendant was legitimately ill and falsified a doctor's note only to avoid being sent home and missing more work, the attendant's conduct warranted removal; the attendant was responsible for a vulnerable population and held a position of trust, i.e., the maintenance of patient records (modifying 2008 N.J. AGEN LEXIS 358). In re Bundy, OAL Dkt. No. CSV 724-08, Final Decision (July 16, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 360) adopted, which concluded that removal of a city laborer employed for 19 years was proper because he tested positive on a random drug test, after having executed a Letter of Conditional Employment agreement; the agreement was a condition of the laborer's return to employment after admitting to a drug problem and undergoing rehabilitation, and the positive drug test was within 90 days of his return. In re Hayward, OAL Dkt. No. CSV 03287-08, Final Decision (July 16, 2008).

Termination of a laborer-heavy was modified to a four-month suspension because, although his positive drug test for marijuana was serious given his safety-sensitive position, the laborer's disciplinary history did not evidence any formal discipline since he began working for the township 15 years prior; for non-law enforcement employees who are not held to the stricter standard of conduct expected of law enforcement officers, a "second chance" is generally provided by appointing authorities in similar situations. In re Daraklis, OAL Dkt. No. CSV 6744-07, 2008 N.J. AGEN LEXIS 717, Merit System Board Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 287) adopted, which concluded that mitigating circumstances existed to reduce a correction officer's penalty for failing to conduct half-hour inmate counts, resulting in a delay in the discovery of a fatally ill inmate; removal was not justified where the officer was a new transferee with only five days on the job who had never served a third shift nor worked in an administrative segregation unit and thus did not have sufficient training to have been assigned to such a sensitive position. In re Washington, OAL Dkt. No. CSV 5886-07, 2008 N.J. AGEN LEXIS 715, Merit System Board Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 224) adopted, which concluded that removal was warranted for a laborer who had a lifting restriction preventing him from performing the essential functions of the position and who was found, despite his testimony to the contrary, to have frequently refused to perform job requirements. In re Delgado, OAL Dkt. No. CSV 9697-07 (CSV 11940-05 On Remand), 2008 N.J. AGEN LEXIS 721, Final Decision (May 21, 2008).

In determining the proper penalty for a public employee's infraction, several factors must be considered, including the seriousness of the underlying incident, the concept of progressive discipline, when appropriate, and the employee's prior record. In re Pettiford, OAL Dkt. No.

CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

As a law enforcement officer, a Correction Officer is held to a higher standard than a civilian public employee. In re Pettiford, OAL Dkt. No. CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 293) adopted, which concluded that an eight-day suspension was warranted for a police officer's failure to obey an order to holdover and work overtime and failure to communicate through regular channels; the police officer had worked 42 hours during the three previous days. In re Hannibal, OAL Dkt. No. CSV 12920-05, 2008 N.J. AGEN LEXIS 607, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 161) adopted, which concluded that 45-day suspension, rather than removal, of a police officer was warranted. The officer was the union representative and claimed to have been summoned to assist another officer undergoing internal affairs questioning when a scuffle developed. Testimony conflicted as to how the scuffle had started and the officer, with 20 years experience, contended that he was being prevented from doing his job as union representative. In re Rowe, OAL Dkt. No. CSV 11935-07, 2008 N.J. AGEN LEXIS 596, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 194) adopted, which concluded that removal of a senior correction officer was warranted, notwithstanding a largely unblemished record, after the officer ignored directives barring familiarity and dealings between correction officers and inmates and smuggled in voluminous amounts of food for an inmate; the officer's misconduct was so severe that progressive discipline was bypassed. In re Battle, OAL Dkt. No. CSV 06489-07, 2008 N.J. AGEN LEXIS 578, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 227) adopted, which concluded that a correction officer's removal was proper based on a positive drug test for marijuana; although no witnesses with personal knowledge were found on remand to testify regarding the drug testing procedure and chain of custody, the documentary evidence was sufficient to meet the appointing authority's burden of proof. In re Brown, OAL Dkt. No. CSV 12280-06 (CVS 8874-04 On Remand), 2008 N.J. AGEN LEXIS 602, Final Decision (May 7, 2008).

Unrefuted positive test result for drug use has uniformly been held by the Merit System Board to warrant removal from employment for law enforcement employees. In re Brown, OAL Dkt. No. CSV 12280-06 (CVS 8874-04 On Remand), 2008 N.J. AGEN LEXIS 602, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 221) adopted, which concluded that a sign maker's separation from employment in the city's public works department was proper for inability to perform essential duties under N.J.A.C. 4A:2-2.3(a)3; the sign maker's loss of function due to an injury was permanent, causing an inability to perform about a third of the duties, the city had accommodated the employee by allowing time for recovery and light or limited duty, and the city did not have permanent light or limited duty available. Under these circumstances, a resignation in good standing, rather than removal, was appropriate in order to avoid stigma to the employee. In re Drake, OAL Dkt. No. CSV 8579-07 (CSV 8618-06 On Remand), 2008 N.J. AGEN LEXIS 526, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 222) adopted, which found that the city was well within its rights to request a water works laborer to return to work until providing additional medical documentation to further verify his medical condition, and when the employee did not return to work, the city properly considered the absences unauthorized and the employee to have abandoned his position, pursuant to N.J.A.C. 4A:2-6.2(b) and (c). However, the employee did get the documentation to the city and thus his actions were not so grave as to warrant termination; instead, a 60-day suspension was appropriate. In re Boyd, OAL Dkt. No. CSV 8836-07, 2008 N.J. AGEN LEXIS 625, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 188) adopted, which emphasized that law enforcement officers, including correction officers, are held to the highest standards of conduct, as they are vested with powers and responsibilities not held by other public employees. In re Porch, OAL Dkt. No. CSV 01307-07 (CSV 9567-06 On Remand), 2008 N.J. AGEN LEXIS 574, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 200) adopted, which concluded that a county maintenance repairer was properly removed after pleading guilty to receipt of stolen property and breach of the peace, given the employee's previous six-month suspension and the sensitive areas in which maintenance repairers must work. In re Ditchkus, OAL Dkt. No. CSV 10252-07, 2008 N.J. AGEN LEXIS 587, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 162) adopted, which found that removal of a corrections officer was the proper disciplinary action under N.J.A.C. 4A:2-2 for conduct unbecoming, neglect of duty, harassment, and "other sufficient cause" under N.J.A.C. 4A:2-2.3, based on the officer's playing of a DVD in the facility in the presence of an inmate, failing to maintain her logbook, insubordination, and intimidation and harassment toward her fellow officers; the environment of a correction facility is such that rules must be adhered to in order to preserve order and safety and, even if each individual infraction was not egregious, the officer's behavior had to be considered as a whole. In re Waiters, OAL Dkt. No. CSV 13121-05, 2008 N.J. AGEN LEXIS 530, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 191) adopted, which concluded that termination was proper for a public works laborer who was informed after surgery that he must be at full capacity to work and thereafter did not call in sick on a daily basis or provide a doctor's note specifying the date he could return to full duty. The progressive penalties required for termination of a civil service employee pursuant to *West New York v. Bock*, 38 N.J. 500 (1962), were sufficient where the laborer had received multiple warnings of termination over the years due to excessive absenteeism; although the previous disciplinary actions were minor and there were none from March 2004 until Sept. 2006, the impact on the city's small public works department was major and enhanced suspensions would have only penalized the city. In re Pressley, OAL Dkt. No. CSV 4501-07, 2008 N.J. AGEN LEXIS 503, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 197) adopted, which concluded that a building maintenance worker, who drove a township motor vehicle while under the influence of alcohol, resulting in suspension of his driver's license for two years, was properly removed; assuming that the employee was disabled by alcoholism, the township had repeatedly accommodated him despite previous offenses and there was no township employment available for him that did not require a driver's license. In re Overton, OAL Dkt. No. CSV 8542-07, 2008 N.J. AGEN LEXIS 525, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 108) adopted, which concluded that a campus police officer was properly removed where the evidence clearly showed that, while on duty and using a University computer, the officer sent numerous e-mails to a fellow employee whom he was pursuing romantically, e-mailed a confidential police report to her, and posted an offensive and menacing MySpace.com profile in her name after being rejected, and then continued to incur unauthorized charges on a University cellular phone pending the criminal investigation into the matter; such conduct was unbecoming of an officer and was incompatible with service as a police officer. In re Mandi, OAL Dkt. No. CSV 4824-07, 2008 N.J. AGEN LEXIS 559, Final Decision (April 23, 2008).

Ninety working day suspension, rather than 60 working day suspension, was appropriate where the employee, a Personnel Assistant II for the New Jersey Department of Corrections with responsibility for processing secondary employment applications, was found to have neglected her duties and failed to perform certain of them, resulting in the investigation of innocent employees, and to have created false backdated memos in an effort to cover up her neglect; the employee's disregard of duties caused significant disruption at the prison and un-

necessary work, and the employee had a substantial disciplinary record, including a recent 60 working day suspension. The Merit System Board will not tolerate such conduct, which undermines the trust that is placed on staff members with responsibility for personnel records (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 53). In re Alonso, OAL Dkt. No. CSV 4219-07, 2008 N.J. AGEN LEXIS 548, Final Decision (April 9, 2008).

Proper penalty for a police officer, who forwarded a crime scene photograph to a civilian without authorization and for no reason other than either morbid entertainment gratification or to attempt to impress someone, was 30 days suspension; mitigating factors such as remorse for lapse in judgment and the fact that the investigation was not compromised did not warrant a penalty reduction, and the lack of any prior disciplinary record was balanced against the fact that the officer was a relatively short-term employee at the time (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 109). In re Curry, OAL Dkt. No. CSV 5512-06, 2008 N.J. AGEN LEXIS 505, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 112) adopted, which concluded that an aide whose driver's license had been suspended for driving while impaired was properly removed because a valid driver's license was a condition of employment; additionally, the aide's disciplinary record revealed that he had difficulty with supervision and with alcohol, having been disciplined on at least two prior occasions for offenses related to alcohol. In re Foster, OAL Dkt. No. CSV 6964-07, 2008 N.J. AGEN LEXIS 1289, Final Decision (April 9, 2008).

Notwithstanding a police officer's relatively unblemished history of discipline, a 20-day suspension, rather than a 7-day suspension, was warranted where the officer failed to maintain constant visual observation of a prisoner, allowing for his escape; such conduct demonstrated neglect of the officer's duty and placed the public at risk (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 50). In re Davis, OAL Dkt. No. CSV 3475-05, 2008 N.J. AGEN LEXIS 538, Final Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 82) adopted, which found that a Human Services Assistant was properly removed following his conviction for simple assault and failure to appear at work for five consecutive days. The employee pleaded guilty to simple assault following a domestic dispute and could not collaterally attack the conviction by attempting to show mitigating factors; removal was required pursuant to N.J.S.A. 30:4-3.5. In re Hammie, OAL Dkt. No. CSV 4526-07, 2008 N.J. AGEN LEXIS 554, Final Decision (March 12, 2008).

Correction officer who had called in sick and was not available to answer his home phone during his shift as required by department rules was subject to two-day suspension, despite his contention that he had called in sick because he was closing on a house (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 20). In re Layton, OAL Dkt. No. CSV 12206-06, 2008 N.J. AGEN LEXIS 598, Merit System Board Decision (February 27, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 797) adopted, which found that where a Human Services Assistant engaged in a fight on State property, such behavior was "other sufficient cause" for disciplinary action pursuant to N.J.A.C. 4A:2-2.3(a)11; however, because the assistant was not the aggressor, a 90-day suspension was an appropriate penalty. In re Tyson, OAL Dkt. No. CSV 2338-07, 2008 N.J. AGEN LEXIS 535, Merit System Board Decision (February 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 51) adopted, which found that removal of a fire alarm operator for unexcused absences was the proper disciplinary action because the duties of an operator were crucial, and the operator's failure to follow procedures had the potential to put the public safety at risk and to disrupt operations of the appointing authority; in addition, the operator had a substantial disciplinary record evidencing serious violations and a pattern of disregard for procedures and the public safety. In re Bugg, OAL Dkt. No. CSV 3975-05, 2008 N.J. AGEN LEXIS 542, Final Decision (February 27, 2008).

Where police officer had been charged with performing his security duty without his duty belt and holster on, ALJ's recommendation to modify a 10-day suspension to a five-day suspension was proper since officer's actions did not rise to the level of willful defiance and were more akin to indifference or negligence; such actions were not worthy of a major discipline, especially in light of the officer's prior disciplinary history. In re Stewart, OAL Dkt. No. CSV 12227-05, 2008 N.J. AGEN LEXIS 601, Final Decision (February 27, 2008).

Where police officer had been charged with revealing confidential information when he wrongfully posted a director's memorandum addressing access to city buildings to outsiders, ALJ's recommendation to reverse a five-day suspension and dismiss the charge was improper. The posting of the memorandum, though harmless, was still a violation of a police department regulation and it was clear that the memorandum contained official orders that should not have been disseminated to the public without approval. However, given the innocuous nature of the officer's actions, and the factual circumstances presented, an official written reprimand was the appropriate penalty. In re Stewart, OAL Dkt. No. CSV 12227-05, 2008 N.J. AGEN LEXIS 601, Final Decision (February 27, 2008).

Where police officer had been charged with neglect of duty for failing to submit an administrative submission to his commanding officer disclosing that he had received a subpoena to appear in municipal court for testimony, ALJ's recommendation to modify a one-day suspension to a written warning was improper and the one-day suspension was reinstated. It is a fundamental principle of the workplace, especially in a paramilitary organization, that rules and regulations are to be followed, and a police officer cannot be permitted to pick and choose which rules and regulations he or she will adhere to. Given the police department's admission that the policy was not strictly adhered to, the imposition of a minor discipline for the infraction was proper. In re Stewart, OAL Dkt. No. CSV 12227-05, 2008 N.J. AGEN LEXIS 601, Final Decision (February 27, 2008).

Six-month suspension of a senior correction officer was appropriate after a prisoner committed suicide while the officer was on duty because, while the evidence may not have supported the officer's removal for incompetency or neglect of duty, the evidence did support a finding that the officer falsified facts in connection with work; the officer's admitted failure to perform his duties in a timely manner and his falsification of official records were egregious infractions, whether or not it was established that grave consequences resulted (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 670). In re Castillo, OAL Dkt. No. CSV 4472-05, 2007 N.J. AGEN LEXIS 1027, Merit System Board Decision (December 19, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 734) adopted, which found that a sanitation employee was properly removed following a confrontation with a co-employee in which he and his brother threatened the co-employee with violence and violence subsequently was inflicted; whether the employee or his brother wielded the bat that caused the co-employee serious injury was irrelevant where the employee's participation was unquestionable and unrefuted. In re Keyes, OAL Dkt. No. CSV 3598-06, 2007 N.J. AGEN LEXIS 1022, Final Decision (December 19, 2007).

Where a pumping station operator with a county municipal utilities authority was charged with taking his fifteen-minute break in excess of one hour and fifteen minutes with a company vehicle without authorization, removal of the employee was improper and a four-month suspension was the proper penalty. The employee was a 17-year employee whose disciplinary record only evidenced one major disciplinary action, a 15-day suspension, and several minor disciplinary actions; while the employee's actions adversely affected the public's perception of the utilities authority, the employee's conduct was not of such an egregious nature as to justify a penalty of removal regardless of any mitigating factors. In re Stallworth, OAL Dkt. No. CSV 2297-07, 2007 N.J. AGEN LEXIS 1020, Merit System Board Decision (December 19, 2007).

Construction official was properly removed where the ALJ found, on conflicting evidence, that the official not only failed to require sub-code officials to work on their scheduled days and to keep accurate records of their work hours, but he also signed payroll sheets verifying hours they had not actually worked. The official failed to demonstrate that this was

merely "flex time"; instead, it was clear that the employees did not work the number of hours for which they were paid, costing the city thousands of dollars (adopting 2007 N.J. AGEN LEXIS 672). In re D'Altrui, OAL Dkt. No. CSV 6621-02 and CSV 8524-03, 2007 N.J. AGEN LEXIS 1150, Final Decision (December 5, 2007).

Even if a senior correction officer's cocaine use was linked to his post traumatic stress disorder, the Americans with Disabilities Act did not require an employer to continue to employ a current drug user, particularly where he was employed in a safety sensitive position; unrefuted positive test result for cocaine use has uniformly been held by the Board to warrant removal from employment for law enforcement employees. In re Harris, OAL Dkt. No. CSV 6806-05, 2007 N.J. AGEN LEXIS 1016, Final Decision (December 5, 2007).

Removal of county correction officer on grounds that she intentionally threw a pair of scissors at an inmate, causing cuts to his left middle finger and thumb, that she failed to report the incident to a supervisor and failed to have the inmate's injuries treated by medical personnel, was modified to a 90-day suspension where officer had been employed by the county since November 1990 and her disciplinary record evidenced 11 minor disciplines and a disciplinary demotion. The present infractions were not so inherently egregious that they warranted the officer's removal in light of her long record of service and disciplinary history and the fact that the most serious allegation, namely that she intentionally threw the scissors at the inmate, was withdrawn. In re Golden, OAL Dkt. No. CSV 12214-06, 2007 N.J. AGEN LEXIS 1035, Merit System Board Decision (December 5, 2007).

Fifteen-day suspension of employee Museum Assistant was proper where the Museum Director had asked a developmentally challenged student visiting the museum if he would resort to violence if he were asked to take out the garbage, and in response, the employee stated to the student, "just remember, when you want to kill everyone in the building, you do it when there's no witnesses"; the employee's claim that he was merely joking was insufficient to mitigate the fact that he advocated violence to a developmentally challenged student (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli, OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

Employee's highly inappropriate comment advocating violence to a developmentally challenged student coupled with the employee's prior history of an alleged altercation with a fellow employee provided a sufficient basis for the appointing authority to order a fitness for duty psychological examination. However, the indefinite suspension of the employee for refusing to take the psychological examination was improper, as indefinite suspension is limited by N.J.A.C. 4A:2-2.7 to matters in which there is a pending criminal complaint or indictment (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli, OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 667) adopted, which found that 129 absences during a nine-month period clearly constituted excessive absenteeism, warranting removal of a public works facility laborer; removal is appropriate when there is a long-term, consistent, unapproved course of habitual and chronic absenteeism. In re Blakely, OAL Dkt. No. CSV 2104-06, 2007 N.J. AGEN LEXIS 1085, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 675) adopted, which concluded that a firefighter was properly removed for refusing to obey a direct order of a superior officer to comply with a safety regulation governing the length of the firefighter's hair, sideburns, mustaches, and beards. Excessive hair growth either on the head or face may have prevented a good "face seal" when wearing a self-contained breathing apparatus; although requiring him to be clean-shaven violated the tenets of his religion, the firefighter offered no solution that would have enabled him to be accommodated as a firefighter where fighting fires required the use of the apparatus. In re Wright, OAL Dkt. No. CSV 9711-02, 2007 N.J. AGEN LEXIS 1182, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 770) adopted, which found that a police officer's failure to provide requested information during a departmental investigation constituted insubordination for which a 20-day suspension, without pay, was an appropriate discipline; such failure was especially egregious in light of the serious nature of the police officer's initial complaints about his lieutenant, the fact that he was given ample time to comply with the requests, and the fact that he was not forthright in his dealing with the investigating officer. In re Rowe, OAL Dkt. No. CSV 3470-05, 2007 N.J. AGEN LEXIS 1108, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 658) adopted, removing city Right To Know Program project specialist for incompetency, inefficiency, or failure to perform after city was fined for incomplete surveys of chemical stores, also placing co-workers and the public at risk. In re McMahon, OAL Dkt. No. CSV 9309-05, 2007 N.J. AGEN LEXIS 1088, Final Decision (October 24, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 620) adopted, which found that social services office worker employed with the county for over 24 years was properly suspended for 60 days for two instances of insubordination and for failure to perform. The employee had once failed to report for work when ordered, she had failed to produce a doctor's note when requested, and she had been disciplined for poor quality of work. In re Venner, OAL Dkt. No. CSV 12285-06, 2007 N.J. AGEN LEXIS 1082, Final Decision (October 24, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 612) adopted, which concluded that a public works laborer was properly removed for neglect of duty when, after being directed by his supervisor, he failed to look for and repair potholes; the worker was disciplined 12 separate times in an 11-year period, for charges that included four counts of conduct unbecoming, two counts of insubordination and one count of neglect of duty, and the worker's significant disciplinary record, in conjunction with his continuing misconduct, warranted his removal. In re Mayfield, OAL Dkt. No. CSV 5883-06, 2007 N.J. AGEN LEXIS 1140, Final Decision (October 10, 2007).

Police sergeant was suspended for 10 days without pay for using abusive language toward a subordinate, failure to be courteous to a fellow officer, and failure to conduct himself in a gentlemanly manner for engaging in fisticuffs (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 661). In re Chasmar, OAL Dkt. No. CSV 11183-02, 2007 N.J. AGEN LEXIS 1065, Final Decision (October 10, 2007).

Initial Decision to discipline a county maintenance employee for riding his bicycle prior to signing out and smoking in a highly restricted area containing flammable materials was appropriate, but removal was modified by the Merit System Board to a four-month suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 618). In re Robertson, OAL Dkt. No. CSV 11300-06, 2007 N.J. AGEN LEXIS 1066, Merit System Board Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 611) adopted, which concluded that, in light of a police officer's excessive absences and failure to follow rules of conduct involving same, he abused sick leave and did not perform the duties expected of him and removal was appropriate; employee's argument that, due to his alcoholism, the town should have provided him with an opportunity to rehabilitate pursuant to the Law Against Discrimination, was not persuasive, as an employer is only required to accommodate a known disability. In addition, the appointing authority already had allowed the officer one leave of absence for rehabilitation. In re Caruso, OAL Dkt. No. CSV 5591-07, 2007 N.J. AGEN LEXIS 1056, Final Decision (September 26, 2007), aff'd per curiam, No. A-1612-07T1, 2009 N.J. Super. Unpub. LEXIS 1536 (App.Div. April 15, 2009).

Human Services Assistant was properly removed on charges that he committed a serious mistake due to carelessness and mistreatment of a patient where the assistant used force in applying a foot restraint that he knew he was not authorized to apply (adopting 2007 N.J. AGEN LEXIS 577). In re Clarke, OAL Dkt. No. CSV 6364-04, 2007 N.J. AGEN LEXIS 1146, Final Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 598) adopted, in which a county welfare agency employee was suspended for 90 days with 30 days held in abeyance for one year for disclosing private facts about a welfare recipient. The employee had disclosed private welfare benefit information in open court during a custody action in which she was personally involved. In re Ayuso, OAL Dkt. No. CSV 10724-06, 2007 N.J. AGEN LEXIS 1061, Final Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 554) adopted, which concluded that a 120-day suspension was warranted under N.J.A.C. 4A:2-2.3(a)11 where a police officer was found to have intentionally thrown a pack of lit firecrackers in close proximity to a fellow officer in order to alarm and frighten her and also to have intentionally shot the same officer in the thigh with a plastic pellet from a confiscated handgun; the officer's relatively unblemished disciplinary record and numerous commendations mitigated the penalty. In re Sharin, OAL Dkt. No. CSV 17-04, 2007 N.J. AGEN LEXIS 1083, Final Decision (September 12, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 565) adopted, which concluded that a public works laborer was properly removed for bringing an aerial practice bomb to township property, causing alarm and distress and disrupting the township's business; the laborer endangered the health, safety, and welfare of his fellow employees and of the public and also had an extensive history of prior misconduct and discipline. In re Cook, OAL Dkt. No. CSV 7555-02, 2007 N.J. AGEN LEXIS 1156, Final Decision (September 12, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 580) adopted, which found that a correction officer was properly removed after he pleaded guilty to fourth-degree child abuse and admitted under oath that he knowingly touched his 11-year-old step-daughter's vaginal area; although the officer attempted to offer mitigating testimony during the penalty phase of the disciplinary action, the statements he made during the criminal plea hearing supported a conclusion that the officer took advantage of his position of trust in his own family to improperly touch a child and such actions were sufficiently egregious to make him unworthy of his position of trust with the State of New Jersey, without regard to concepts of progressive discipline. In re Gonzalez, OAL Dkt. No. CSV 2583-07 (6581-04 On Remand), 2007 N.J. AGEN LEXIS 1102, Final Decision (September 12, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 438) adopted, in which a police officer was terminated for sick leave policy abuse. The officer had received counseling about his use of sick leave, which involved a pattern of booking off on weekend days and at the beginning or end of his tour. The officer had also failed to provide medical documentation after being placed on Medical Certification following his initial pattern of abuse. In re Smith, OAL Dkt. No. CSV 11064-06, 2007 N.J. AGEN LEXIS 1074, Final Decision (August 29, 2007).

Municipal sanitation laborer was suspended for three months for fighting with a sanitation truck driver, based on a finding of conduct unbecoming a public employee, but his service record did not support an ALJ finding that removal was appropriate (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 399). In re Johnson, OAL Dkt. No. CSV 1027-06, 2007 N.J. AGEN LEXIS 1069, Merit System Board Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 282) adopted, which found that removal of municipal public works laborer for her second positive drug test after signing a "last chance agreement" was appropriate. Thereafter, the laborer had reported to work unfit for duty and had refused to submit to a urine test. In re O'Brien, OAL Dkt. No. CSV 12098-05, 2007 N.J. AGEN LEXIS 1080, Final Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 464) adopted, which found that a 10-day suspension of a correction officer was appropriate where the officer was absent from his work without approval and in violation of the time and attendance policy of the employer. In re McKnight, OAL Dkt. No. CSV 2049-06, 2007 N.J. AGEN LEXIS 1084, Final Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 466) adopted, in which the ALJ found, on conflicting evidence, that a police officer issued 12 summonses to a neighbor in an act of retaliation for a neighborhood dispute, signing another officer's name and identification to the summonses and then later filing false reports denying knowledge of the incident and attempting to implicate other officers; the issuance of false summonses in retaliation for a neighborhood dispute, beyond being harassment, was an egregious breach of the public trust and unwarranted use of authority, deserving a six-month suspension. In re Gonzalez, OAL Dkt. No. CSV 5013-04, 2007 N.J. AGEN LEXIS 1134, Final Decision (August 15, 2007), aff'd per curiam, No. A-0644-07T2, 2009 N.J. Super. Unpub. LEXIS 2010 (App.Div. July 31, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 469) adopted, which concluded that, although a senior building maintenance worker did not have a record of any disciplinary action, the fact that he admittedly went to an area that he should have avoided and later proceeded to escalate his "yelling" at two of his supervisors, during working hours, at his place of employment, in front of other employees and perhaps clients, necessitated, at the very least, a 10-day suspension. In re Brown, OAL Dkt. No. CSV 08952-06, 2007 N.J. AGEN LEXIS 1175, Final Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 367) adopted, which concluded that 60-day suspension of a Human Services Assistant at a psychiatric hospital was justified where the ALJ found, based on conflicting evidence and the credibility of the witnesses, that the employee verbally abused a patient. In re Moss, OAL Dkt. No. CSV 4442-06, 2007 N.J. AGEN LEXIS 1125, Final Decision (July 25, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 400) adopted, in which a county custodial employee was removed for failure to comply with a settlement in an earlier action requiring him to complete a drug rehabilitation program. The employee had completed only 14 days of a 28-day agreed-upon program, contending that he could not complete the program because his insurance would not pay. In re Brown-Bey, OAL Dkt. No. CSV 1152-06, 2007 N.J. AGEN LEXIS 1076, Final Decision (July 25, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 404) adopted, which found that removal of a city water meter repairer after his driver license was suspended for driving while intoxicated was appropriate. The employee was required to have a valid driver license to drive a city vehicle, and he had contended that the city was required to accommodate him during his driver license suspension period. In re Heater, OAL Dkt. No. CSV 12281-06, 2007 N.J. AGEN LEXIS 1081, Final Decision (July 25, 2007).

Juvenile detention officer's removal was warranted after her conviction for harassment against a juvenile detainee; the offense was of an egregious nature, and the officer was collaterally estopped from denial of the offense conduct. In re White, OAL Dkt. No. CSV 11893-05 (CSV 3885-04 On Remand), 2007 N.J. AGEN LEXIS 1077, Final Decision (June 20, 2007).

Although a Human Services Assistant engaged in conduct unbecoming a public employee when she attacked a fellow employee at work, the evidence demonstrated that the fellow employee was a former lover who had been harassing the employee and, while the employee was not without fault for physically attacking him after a verbal assault, removal was too harsh of a penalty; a 30-day suspension, rather than removal, was the appropriate discipline (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 274). In re Wagner, OAL Dkt. No. CSV 2974-06, 2007 N.J. AGEN LEXIS 1100, Merit System Board Decision (June 20, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 178) adopted, which concluded that termination of municipal public works employee was warranted due to several instances resulting in discipline during his 14 months of employment. The employee ultimately engaged in loud angry behavior toward his supervisor and left work without signing out, amounting to refusal to submit to supervisory authority and insubordination. In re Siebold, OAL Dkt. No. CSV 10202-05, 2007 N.J. AGEN LEXIS 1068, Final Decision (May 9, 2007).

Failure to properly inspect school buses by not completing proper form or raising each bus for each inspection constituted neglect of duty; while the employee's prior record of service was a consideration, 25 years with the Motor Vehicle Commission and no prior discipline, employee's neglect had potential for disastrous consequences and warranted seven days suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 162). In re Simurda, OAL Dkt. No. CSV 7151-06, 2007 N.J. AGEN LEXIS 1049, Final Decision (April 25, 2007).

That an employee served in a low-level non-supervisory position was irrelevant in determining the proper discipline to be imposed for his use of threatening and inappropriate language with others; verbal threats by any employee, regardless of his position, cannot be tolerated in the workplace (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 111). In re Rahming, OAL Dkt. No. CSV 3450-06, 2007 N.J. AGEN LEXIS 1107, Final Decision (April 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 60) adopted, which concluded that a "step 6" penalty of a 10-day suspension was proper for a corrections officer's chronic or excessive absenteeism and violation of the county's absenteeism policy; although the corrections officer contended that he had a "bona fide excuse" for being 20 minutes late in unexpectedly having no one to care for his three-year-old, the officer did not have a back-up plan for childcare and the particular situation resulted from a failure to plan rather than from a genuine emergency. In re Kendrick, OAL Dkt. No. CSV 6719-06, 2007 N.J. AGEN LEXIS 358, Final Decision (March 28, 2007).

Ten-day suspension was reduced to a five-day suspension for a county correction officer's third violation of the attendance policy, which occurred in the same month as her first two violations; it is an employee's responsibility to keep track of his or her leave time. However, in light of the officer's disciplinary history and the Board's recognition that the officer may have relied on inaccurate information concerning her paid leave time balances, the penalty was reduced. In re Bowser, OAL Dkt. No. CSV 6519-06, 2007 N.J. AGEN LEXIS 356, Merit System Board Decision (March 14, 2007).

Where a county correction officer grieved "step one" and "step two" violations of the attendance policy, which were minor disciplinary actions, and the charges were sustained with no evidence that the officer appealed the actions further, the ALJ's decision to review the appropriateness of the step one and step two violations was improper; only the third violation was at issue before the ALJ. In re Bowser, OAL Dkt. No. CSV 6519-06, 2007 N.J. AGEN LEXIS 356, Merit System Board Decision (March 14, 2007).

Suspension of 10 days was appropriate for a corrections officer's third violation of calling in sick after his sick leave was exhausted, despite that he did not receive notice of the first two violations until after the third had occurred, thus affording him no opportunity to amend his behavior. The officer's claim that he did not know until then that his sick leave was exhausted afforded him no relief. The officer received notice of his offenses and had the opportunity to defend himself, and it is an employee's responsibility to keep track of his or her leave time. In re Cliver, OAL Dkt. No. CSV 6518-06, 2007 N.J. AGEN LEXIS 355, Final Decision (March 14, 2007).

Merit System Board is not bound by the appointing authority's penalty schedule. In re Cliver, OAL Dkt. No. CSV 6518-06, 2007 N.J. AGEN LEXIS 355, Final Decision (March 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 23) adopted, which concluded that police officer's 12-day suspension for conducting an improper vehicular pursuit was too harsh, considering all the aggravating and mitigating factors, and the penalty was modified to five days. The fact that there was a policy difference between state and local authorities that was not adequately addressed in the county training was a strong indicator of how vehicular pursuit was a complex, sensitive, and problem-fraught area; in addition, this was the officer's first offense and his record included an award for saving a small child's life and other commendations. In re Hamlet, OAL Dkt. No. CSV 6718-06, 2007 N.J. AGEN LEXIS 357, Merit System Board Decision (March 14, 2007).

Penalty increased to 90-working day suspension for a public school security guard involved in repeated motor vehicle accidents; the guard had been at fault in two of six on-duty motor vehicle accidents and he had a history of disciplinary actions. In re Onyema, OAL Dkt. No. CSV 11938-05, 2007 N.J. AGEN LEXIS 348, Final Decision (March 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 43) adopted, which concluded that a laborer charged with 57 occasions of absenteeism without notice to superior or good cause was improperly terminated where the county failed to impose progressive discipline prior to removal. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

Appointing authority's attempt to impose punishment at a later date for excessive absences previously addressed in a letter of reprimand was improper; reviving a stale charge in an attempt to impose a greater penalty at a later date is improper, and double punishment for the same offenses will be rejected. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 14) adopted, which concluded that 6-day, 10-day, and 30-day suspensions and removal were appropriate, notwithstanding 13-year employment, where the record indicated a consistent, extended pattern of refusal to work mandatory overtime; the correction officer provided virtually no defense for his refusal to work overtime, except for such specious reasons as attendance at athletic events, and had received numerous warnings, minor discipline, and major discipline and had not changed his behavior. In re Matarazzo, OAL Dkt. No. CSV 3973-06, 2007 N.J. AGEN LEXIS 426, Final Decision (February 28, 2007).

There was no competent, credible evidence regarding how a juvenile at a juvenile detention center received a cut on his head, and it was entirely possible that the cut was self-inflicted; however, since sufficient evidence indicated that the juvenile detention officer entered the juvenile's cell without summoning assistance, in violation of the center's clear policies regarding aggressive residents, the officer was suspended for three months. In re Ferguson, OAL Dkt. No. CSV 9888-03 and CSV 5514-04 (Consolidated), 2007 N.J. AGEN LEXIS 295, Merit System Board Decision (February 28, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 42) adopted, which found that county laborer was properly removed for chronic or excessive absenteeism after missing more than 270 days during three years; he had been warned that repeated violations would lead to removal and repeated absences burdened his employer. In re Williams, OAL Dkt. No. CSV 12219-05, 2007 N.J. AGEN LEXIS 349, Final Decision (February 28, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 13) adopted, which concluded that termination of a police officer was the proper disciplinary action after the officer tested positive for cocaine during routine random drug screening; law enforcement officers hold special status in their communities, carry weapons, and are responsible for maintaining order and safety and are, therefore, held to a higher standard than civilian public employees. In re Phillips, OAL Dkt. No. CSV 12924-05, 2007 N.J. AGEN LEXIS 1090, Final Decision (February 28, 2007).

Removal of a firefighter for drug use was proper because a firefighter is charged with safety sensitive functions and must be free from the debilitating influence of controlled dangerous substances (adopting 2006 N.J. AGEN LEXIS 1033). In re Gonzalez, OAL Dkt. No. CSV 7558-02, 2007 N.J. AGEN LEXIS 964, Final Decision (January 31, 2007), aff'd per curiam, A-4847-06T3, 2009 N.J. Super. Unpub. LEXIS 70 (App.Div. January 15, 2009).

Where the record failed to establish that an employee took $5 with the intent to keep it and, in fact, immediately attempted to return the money once she realized she had forgotten it in her pocket, a five-day suspension, rather than removal, was the appropriate penalty (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 1034). In re

Payton, OAL Dkt. No. CSV 7740-05, 2007 N.J. AGEN LEXIS 1168, Merit System Board Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 803) adopted, which concluded that 10-day and 20-day suspensions for a county correction officer's absences were properly imposed under the theory of progressive discipline; contrary to the officer's arguments, the Merit System Board was not bound by any contractual agreements of employers and employees or their bargaining units regarding major disciplinary matters, but had plenary authority to determine the appropriate level of discipline for the offense involved. In re Teel, OAL Dkt. No. CSV 08757-05, 2006 N.J. AGEN LEXIS 1132, Final Decision (December 20, 2006), aff'd per curiam, No. A-2917-06T1, 2008 N.J. Super. Unpub. LEXIS 540 (App.Div. May 29, 2008).

Possible sanctions under the Health Insurance Portability and Accountability Act of 1996 were irrelevant in a disciplinary action brought against a hospital attendant for disclosing information about a patient without his consent (adopting 2006 N.J. AGEN LEXIS 802). In re Williams, OAL Dkt. No. CSV 7849-05, Merit System Board Decision (November 15, 2006).

Where a hospital attendant was asked by a patient's family member where she worked (a psychiatric hospital) and whether she knew a particular individual, the attendant should have realized that she was disclosing confidential information about a patient, but her actions were not so egregious as to warrant a 45-day suspension, especially in light of the attendant's 30-year employment history; therefore, her penalty was modified to a 20-day suspension (adopting 2006 N.J. AGEN LEXIS 802). In re Williams, OAL Dkt. No. CSV 7849-05, Merit System Board Decision (November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 796) adopted, which concluded that a city laborer was properly removed for chronic and excessive absenteeism after accruing 49 unexcused absences during 2004 and 55 unexcused absences during slightly more than one half of 2005, for a total of 103 unexcused absences in a year and a half. In re Baker, OAL Dkt. No. CSV 691-06, 2006 N.J. AGEN LEXIS 1120, Final Decision (November 1, 2006).

Licensed practical nurse did not engage in the mental abuse of a patient, although the appointing authority did meet its burden of showing that she engaged in verbal abuse by continuing to argue with him and escalating his agitation, rather than following his behavioral plan; however, because of the nurse's 22-year history with no prior infraction, a four-month suspension was adequate (adopting in part and modifying in part 2006 N.J. AGEN LEXIS 738). In re Ray, OAL Dkt. No. CSV 8907-05, 2006 N.J. AGEN LEXIS 912, Merit System Board Decision (October 19, 2006).

Employee Relations Coordinator was properly removed when he was overheard saying after a meeting with the CEO, that, "I have to go off grounds before I kill someone. I need to calm down," and that he was leaving before he "kill[ed] him"; a person serving in this high level supervisory title was expected to demonstrate the highest level of decorum, control, and respect as an example for all other employees. In re Natter, OAL Dkt. No. CSV 8689-05, 2006 N.J. AGEN LEXIS 911, Final Decision (October 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 31) adopted, in which the ALJ found, on conflicting evidence, that a cottage technician was properly suspended for 10 days for insubordination after she refused to accept a reasonable order to be reassigned to a different unit during her shift, voicing illness as a mere pretext for not following a supervisor's reasonable directive. In re Edison, OAL Dkt. No. CSV 549-05, 2006 N.J. AGEN LEXIS 908, Final Decision (October 18, 2006).

Penalty for a tree trimmer's failure to obtain a driver's license was modified from removal to resigned in good standing because the City violated due process by creating an impossible condition upon his employment, which it knew he could not fulfill; the City kept the tree trimmer employed for five months before it attempted to do anything about the fact he had lost his license and then gave him six months to obtain his license or be removed, knowing that he could not obtain his license during that time because it had been suspended by the Court for two years. In re Zafain, OAL Dkt. No. CSV 442-06, 2006 N.J. AGEN LEXIS 794, Initial Decision (September 25, 2006), adopted (Merit System Board November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 483) adopted, which concluded that a police officer was properly removed, as, despite the officer's contrary testimony, it was clear that the officer disobeyed an order from his superiors by failing to attend counseling sessions for anger management, which failure amounted to insubordination and neglect of duty, and also lied to his superiors by generating a report which represented that he was attending counseling sessions. Because of the special position that a police officer holds in the community, it is essential that he or she is truthful; deliberate misrepresentations by a law enforcement officer is the type of behavior that can be classified as conduct unbecoming a public employee. In re Torres, OAL Dkt. No. CSV 07378-05, 2006 N.J. AGEN LEXIS 870, Final Decision (September 20, 2006), aff'd per curiam, No. A-1450-06T3, 2008 N.J. Super. Unpub. LEXIS 697 (App.Div. June 4, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 707) adopted, which concluded that removal of senior center caregiver was warranted. The caregiver had exhibited paranoid and inappropriate behavior that resulted in her failure to properly care for the clients under her charge. In re Walters, OAL Dkt. No. CSV 12214-04, 2006 N.J. AGEN LEXIS 859, Final Decision (September 20, 2006).

Suspensions of 20 days and 16 days for fire alarm operator's unauthorized absences were not unduly harsh or disproportionate; the operator had an extensive history of minor disciplinary infractions involving time and attendance (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 432). In re Bugg, OAL Dkt. No. CSV 9411-04, 2006 N.J. AGEN LEXIS 777, Final Decision (August 9, 2006).

Senior security guard could not be punished twice for the same conduct and, contrary to the appointing authority's assertions, letters that were written by a supervisor, placed in the guard's personnel file, and copied to the Labor Relations Unit were "official letters of reprimand", even though that particular supervisor did not have the authority to discipline employees; the appointing authority was attempting to impose double punishment for the same offense and attempting to revive a stale charge in order to impose a greater penalty at a later date, which was improper (adopting 2006 N.J. AGEN LEXIS 364). In re Onwuzuruike, OAL Dkt. No. CSV 5737-04, 2006 N.J. AGEN LEXIS 774, Merit System Board Decision (August 9, 2006).

Removal of correction officer, and not 60-day suspension, was proper where employee had a short employment tenure and prior major discipline; moreover, the activation of a false fire alarm is a serious offense especially given the heightened security concerns in a correctional facility and the risk to the safety of the other officers and inmates (officer yelled and set off fire alarm when he was denied permission to contact his son's daycare center after being ordered to work overtime). In re Bell, OAL Dkt. No. CSV 3527-05, 2006 N.J. AGEN LEXIS 771, Final Decision (August 9, 2006).

Removal of a police officer was the proper penalty after the ALJ found, on conflicting evidence, that the officer was aware that a woman with whom he had sex was under the age of 21 and inebriated, and that he was involved with three different women, who were not connected in any way, all who alleged that they were sexually exploited by him; the officer was a law enforcement officer who should have been aware of the potential dire consequences that the consumption of alcohol could have on a person's ability, whether underage or not, to make reasoned decisions regarding her actions, including consenting to sexual intercourse (adopting 2006 N.J. AGEN LEXIS 403). In re Cofone, OAL Dkt. No. CSV 6774-05 (CSV 2578-01 and CSV 6148-03 On Remand), 2006 N.J. AGEN LEXIS 776, Final Decision (July 19, 2006), aff'd per curiam, No. A-0306-06T5, 2008 N.J. Super. Unpub. LEXIS 1694 (App.Div. July 16, 2008).

Parole officer failed to properly perform her duties, which involved maintaining appropriate supervision of parolees and accurate recordkeeping of her cases, where she admitted that she failed to open an

envelope containing her casebook review and she did not correct her deficiencies; the officer's disciplinary record did not mitigate against her removal, as her record contained two major disciplines on similar charges and the officer's failure to properly perform her job duties posed a great risk to the public and to the livelihood of the parolees (adopting 2006 N.J. AGEN LEXIS 329). In re James, OAL Dkt. No. CSV 9992-02 and CSV 7762-04 (Consolidated), 2006 N.J. AGEN LEXIS 566, Final Decision (June 21, 2006).

Officer's removal was appropriate where the ALJ found, on conflicting evidence, that the officer found her husband in possession of heroin and failed to take action, allowed her husband to elude capture and prosecution for criminal activity, consorted with known criminals, and admitted to knowing that her husband possessed guns and other dangerous controlled substances in her home; the officer had an affirmative obligation to provide this information to the police department and, in failing to do so, she subordinated her obligation as a police officer and her allegiance to her fellow officers when she associated with her husband after knowing that he was committing criminal acts (adopting 2006 N.J. AGEN LEXIS 321). In re Morton, OAL Dkt. No. CSV 2374-05 (CSV 2300-04 On Remand), 2006 N.J. AGEN LEXIS 615, Final Decision (June 7, 2006).

Police officer failed to safe keep a firearm when his service revolver became inoperable and it was left for over a year in his garage in a nylon bag; the contents of the bag were easily accessible and the fact that the weapon was inoperable was of no consequence. Suspension of 60 days was warranted (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 330). In re Martin, OAL Dkt. No. CSV 11478-04, 2006 N.J. AGEN LEXIS 529, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 290) adopted, which concluded that N.J.A.C. 4A:2-2.3(a)4 supported the removal of a custodial worker from his position where the worker was absent from work for 56 days between December 2001 and April 2002, did not initially disclose the fact that he was absent for any medical reason, and the documentary evidence submitted was insufficient to demonstrate the medical treatment the worker was undergoing; additionally, the worker had at least two prior disciplinary actions for excessive absenteeism and was well-acquainted with the policy regarding work attendance. In re Nixon, OAL Dkt. No. CSV 1559-03, 2006 N.J. AGEN LEXIS 614, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 258) adopted, finding removal appropriate for drug use during period of agreed upon mandatory testing. In re Shannon, OAL Dkt. No. CSV 05034-05, 2006 N.J. AGEN LEXIS 611, Final Decision (May 10, 2006).

Suspension of 10 days was appropriate where the charge of conduct unbecoming a public employee was sustained; notwithstanding the fact that the police officer may have been the victim of a "family feud," a domestic incident occurred in his home, the off-duty officer was slightly intoxicated, and police intervention was required. The public expects municipal police officers to present a personal background that exhibits respect for the law and rules (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 156). In re Pina, OAL Dkt. No. CSV 5515-04, 2006 N.J. AGEN LEXIS 622, Final Decision (April 26, 2006), aff'd per curiam, No. A-5132-05T5, 2007 N.J. Super. Unpub. LEXIS 964 (App.Div. March 23, 2007).

Merit System Board adopted the ALJ's ultimate conclusion to impose a fine equal to a 15-day suspension rather than demotion for a former Supervising Code Enforcement Officer's failure to perform his duties. However, in determining the penalty, the ALJ's decision not to consider certain previous minor disciplinary actions taken against the officer because they were imposed soon after a new assignment or were the subject of grievance arbitrations was not a correct application of the principles of progressive discipline. It was not the ALJ's role to determine that certain previous penalties were "harsh" or "inappropriately timed," as appeals of those penalties were not before him. Even assuming, *arguendo*, that these prior disciplinary actions not be considered for progressive disciplinary purposes, they appropriately serve as a notice that continuation of identified behavior or action could result in discipline. In re Simmons, OAL Dkt. No. CSV 9122-99, 2006 N.J. AGEN LEXIS 565, Final Decision (April 5, 2006).

Removal of a correction officer was appropriate because an individual in the officer's position was entrusted with the supervision of inmates in a secured facility and her sexual relationship with an inmate was surreptitious and defied any logical explanation; the inmate was in possession and receipt of extremely personal information regarding the officer to such an extent as to compromise her viability as a senior correction officer (adopting 2006 N.J. AGEN LEXIS 291). In re Hutchings, OAL Dkt. No. CSV 2703-04, 2006 N.J. AGEN LEXIS 530, Final Decision (April 5, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 235) adopted, which concluded that removal of a licensed practical nurse was the proper disciplinary action where ALJ found that the nurse's testimony was not credible and that the nurse failed to confirm and record patients' vital signs before administering medication in contravention of policy; removal was warranted especially in light of the nurse's previous 20-day suspension for failing to complete documents related to medication for patients. In re Tarver, OAL Dkt. No. CSV 2817-05, 2006 N.J. AGEN LEXIS 531, Final Decision (April 5, 2006).

Removal of a maintenance repairer on charges of conduct unbecoming a public employee for cursing, yelling, and pushing a tenant and cursing and yelling at other tenants and security guards was appropriate where the repairer's disciplinary record did not mitigate his offense; his five-year record included a similar infraction for conduct unbecoming (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 33). In re Hannibal, OAL Dkt. No. CSV 971-04, 2006 N.J. AGEN LEXIS 1135, Final Decision (March 8, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 37) adopted, which found that a Human Services Assistant was properly removed after she breached the most basic responsibility she had to her one-to-one patient when she fell asleep, not once but twice, and did not intervene to prevent harm to the patient; although this was the assistant's first infraction, she had been employed for less than five months when the incident occurred and was still in her working test period — her basic responsibility was clear and simple and her failure was egregious. In re Reed, OAL Dkt. No. CSV 2840-05, 2006 N.J. AGEN LEXIS 1108, Final Decision (March 8, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 40) adopted, which concluded removal was appropriate for the chronic and excessive lateness of a security guard employed by the Newark Housing Authority; the guard was late on all 15 dates that he worked in one month, and his tardiness was in excess of five minutes, with the exception of three days. The appointing authority had engaged in progressive discipline, the employee presented no credible explanation for his repeated disregard of his reporting obligation, and he was the sole security guard at the building, entrusted with the responsibility of protecting the property and the tenants. In re Witcher, OAL Dkt. No. CSV 07336-04, 2006 N.J. AGEN LEXIS 199, Final Decision (February 22, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 40) adopted, which explained that unlike certain actions that are so egregious that progressive discipline would not be warranted, chronic lateness is an offense that suggests and requires an appointing authority to engage in a course of progressive discipline before imposing a removal. In re Witcher, OAL Dkt. No. CSV 07336-04, 2006 N.J. AGEN LEXIS 199, Final Decision (February 22, 2006).

Thirty-day suspension was proper for a senior correction officer alleged to have stated that a fellow employee was lucky to be a woman or he would have slapped her and that she would be better off if she got a boyfriend; regardless of the fact that the officer made the statements to a third party as they were leaving the room and the threat was not realistic, the officer's behavior warranted a severe penalty, especially since law enforcement personnel are held to a high standard of conduct (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 649). In re Payton, OAL Dkt. No. CSV 697-05, 2006 N.J. AGEN LEXIS 1121, Final Decision (February 22, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 14) adopted, in which county laborer with an extensive history of disciplinary actions who refused an order to return to work while on an assignment and threw a metal hand truck near parked cars was terminated for insubordination, conduct unbecoming a public employee, and misuse of county property. In re Pagurek, OAL Dkt. No. CSV 09529-04, 2006 N.J. AGEN LEXIS 202, Final Decision (February 22, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 38) adopted, which concluded, based on credibility assessments of the lay witness testimony, that an employee was under the influence of marijuana when he had an accident in a state vehicle; the director of the state toxicology lab testified that it could not be determined from the positive test result when the employee had used marijuana. The employee, an Operating Engineer Heating and Air Conditioning with the Department of Transportation (DOT), was properly removed; DOT policies expressly stated that the penalty for getting into an accident while operating a state vehicle under the influence of an illegal drug was removal, and also listed removal as a possible penalty for accidental damage loss due to negligence. In re Sempkowski, OAL Dkt. No. CSV 04701-05, 2006 N.J. AGEN LEXIS 196, Final Decision (February 22, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 922) adopted, which found that a police officer's removal from his position was appropriate where a psychologist opined that he suffered from depression, anxiety, alcohol dependence, and delusional thinking and that he was unable to benefit from alcohol abuse therapy because of his declination to use medications. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final Decision (February 8, 2006), aff'd per curiam, No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 3) adopted, which concluded that jurisdiction did not lie in a deputy fire chief's appeal from disciplinary action where the record revealed that he was suspended for a period of less than five days. In re Crowder, OAL Dkt. No. CSV 654-04, 2006 N.J. AGEN LEXIS 215, Final Decision (February 8, 2006).

Psychiatric hospital food service worker suspended for six months for absences and tardiness. After accommodation of the worker's schedule by moving her to the late shift she had a continued record of absences and tardiness, albeit improved from her attendance on the early shift (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 955). In re Finney, OAL Dkt. No. CSV 12181-04, 2006 N.J. AGEN LEXIS 204, Merit System Board Decision (February 8, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 953) adopted, which concluded that a police officer was properly removed for conduct unbecoming a public employee and inability to perform duties after testing positive for cocaine; contrary to the officer's argument, the test was conducted with reasonable suspicion based on the officer's own bizarre conduct, his unusually numerous absences, as well as information from a reliable source that the officer was abusing drugs. In re Haynes, OAL Dkt. No. CSV 07778-04 and CSV 05038-05 (Consolidated), 2006 N.J. AGEN LEXIS 99, Final Decision (January 25, 2006).

Suspension of 120 working days, rather than 90 working days, was the appropriate penalty where the employee's decision to report to work while having a blood alcohol level above the prescribed amounts placed the employee and others in potential danger and could have led to more severe consequences had he been assigned to drive on the day in question; although the employee's disciplinary history did not evidence any formal discipline, the employee had three prior incidents involving alcohol and one incident involving marijuana since he began working for the county in 1997. In re Eastlack, OAL Dkt. No. CSV 270-05, 2006 N.J. AGEN LEXIS 206, Final Decision (January 25, 2006).

Based on the ALJ's assessment of witness credibility, the ALJ found that a Human Services Technician at the New Jersey Veterans' Memorial Home struck a resident twice on the upper right leg while attempting to change his diaper, and called him a "liar" and a "baby"; removal was not warranted as the employee did not "physically abuse a patient," but her conduct did constitute inappropriate physical contact and verbal abuse. Six-month suspension was appropriate for the 13-year employee, and further training ordered (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 703). In re Staton, OAL Dkt. No. CSV 5454-05, 2006 N.J. AGEN LEXIS 212, Merit System Board Decision (January 25, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 924) adopted, which emphasized that progressive discipline "was not intended to be a straitjacket" to prevent an appointing authority from taking appropriate disciplinary action and that case law suggests that courts do not adhere to rigid discipline guidelines in assessing penalties. In re Brant, OAL Dkt. No. CSV 07360-05, 2006 N.J. AGEN LEXIS 97, Final Decision (January 25, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 653) adopted, which concluded, on conflicting evidence, that an institutional trade instructor was properly suspended for six months on charges of conduct unbecoming a public employee after he inappropriately pushed an inmate with his chest without threat or provocation; even if the inmate instigated the confrontation by interfering with the instructor's questioning of another inmate and mockingly threw his hands up in the air as if surrendering, the inmate's actions did not call for a physical response on the part of the instructor. In re Dombrauskas, OAL Dkt. No. CSV 8554-04, 2006 N.J. AGEN LEXIS 132, Final Decision (January 11, 2006).

Credible evidence in the record supported the ALJ's conclusion that the appointing authority did not meet its burden of proof against a psychiatric hospital employee with regard to the charge of throwing a patient on the floor. With regard to the finding that the employee falsified patient records, a 30-day suspension, rather than an oral warning, was appropriate; despite the employee's clean disciplinary record, an oral warning is not discipline and a severe penalty is warranted in situations where a charge of falsification involving an injured patient is sustained. In re Johnson, OAL Dkt. No. CSV 10249-04, 2006 N.J. AGEN LEXIS 100, Merit System Board Decision (January 11, 2006).

Adopting Initial Decision's conclusion that violation of the confidentiality of taxpayer records constituted conduct unbecoming a public employee pursuant to N.J.A.C. 4A2-2.3(a)6, and misuse of public property pursuant to N.J.A.C. 4A2-2.3(a)8; employees of the New Jersey Department of Treasury were suspended for 10 days after they accessed tax accounts of their co-workers without permission and for personal use (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 682). In re Babij, OAL Dkt. No. CSV 6241-02, CSV 06241-02, CSV 06246-02, CSV 06253-02, CSV 06433-02, CSV 06767-02 (Consolidated), 2006 N.J. AGEN LEXIS 129, Final Decision (December 21, 2005).

Ten-day suspension of New Jersey Department of Treasury employee for accessing tax accounts of co-workers without permission and for personal use was not moot due to the employee's retirement; where an infraction occurs while an employee is still actively employed, the penalty can be reflected on the employee's permanent record despite a separation from employment. Additionally, the case was not moot since the employee actually served the suspension and had the right to challenge it and receive applicable remedies. In re Babij, OAL Dkt. No. CSV 06241-02, CSV 06246-02, CSV 06253-02, CSV 06433-02, CSV 06767-02 (Consolidated), 2006 N.J. AGEN LEXIS 129, Final Decision (December 21, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 613) adopted, which concluded that a 12-day suspension was appropriate for a correction officer who made inappropriate comments to a female officer who was his former girlfriend. In re Miller, OAL Dkt. No. CSV 8036-03, 2006 N.J. AGEN LEXIS 104, Final Decision (December 21, 2005).

Although a police officer drove a motor vehicle while his license had been revoked (for failure to appear on a traffic summons) and in direct violation of orders from his superior officers, a four-month suspension, rather than a six-month, suspension was warranted; the officer's disciplinary record mitigated a harsher penalty and, while the officer's actions in driving his vehicle were inappropriate, he did so only in an effort to get to work and after a full month of complying with the restriction (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 678). In re Revelli, OAL Dkt. No. CSV 399-03, 2006 N.J. AGEN LEXIS 103, Merit System Board Decision (December 21, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 652) adopted, which concluded that a public works laborer was properly removed where ALJ assessed testimony and found that while the laborer was on duty for the City, he solicited a businessman and offered to dispose of junked tires for his personal gain and that, while on duty for the City and using a City truck, the laborer removed and disposed of the junked tires, for which he accepted money from the businessman, which he did not turn over and did not intend to turn over to the City; the laborer had an extensive prior disciplinary record and, prior to engaging in this misconduct, he knew or should have known that additional misconduct would result in his termination. In re Washington, OAL Dkt. No. CSV 4211-03, 2005 N.J. AGEN LEXIS 1049, Final Decision (December 7, 2005).

Penalty of termination was appropriate for correction officer after he failed to notify Internal Affairs of court dates, even though criminal charges against him were dismissed, because the officer had an extensive history of disciplinary actions, including a 120 working-day fine and a six-month suspension (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 527). In re Morris, OAL Dkt. No. CSV 9530-04, 2005 N.J. AGEN LEXIS 1089, Final Decision (November 22, 2005).

Six-month suspension, rather than removal, was appropriate where the ALJ found, on conflicting evidence, that a city's construction project coordinator reported that he was working when, in fact, he was at home or at his side business; although the charges were serious, the coordinator had a 32-year employment history with the city and no prior discipline (adopting 2005 N.J. AGEN LEXIS 553). In re Cammisa, OAL Dkt. No. CSV 8558-04, 2005 N.J. AGEN LEXIS 1051, Merit System Board Decision (November 22, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 521) adopted, which found that a senior correction officer was properly removed where the ALJ found, on conflicting evidence, that the officer falsified various documents in applying for health, prescription, and dental benefits for a girlfriend and her child in representing that she was his wife and the child was his dependent stepchild; correction officers are held to a higher standard of conduct and the officer's willful falsification of the applications was conduct unbecoming a public employee. In re Warfield, OAL Dkt. No. CSV 2706-04, 2005 N.J. AGEN LEXIS 1252, Final Decision (November 3, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 526) adopted, which upheld a six-month suspension of a school district painter for attempting to take a camera from school property; although the painter had a 20-year employment history with the school district and had an unblemished past disciplinary record, his actions were sufficiently egregious to warrant the suspension. In re Joyce, OAL Dkt. No. CSV 9392-03, 2005 N.J. AGEN LEXIS 1222, Final Decision (October 19, 2005).

Ten-day suspension and demotion of a former crew supervisor was appropriate where ALJ found on conflicting evidence that he was verbally abusive, disrespectful, and inappropriate; the supervisor's racially derogatory remarks did not constitute a separate charge that had to be sustained on the departmental level before being presented before the ALJ, but were part of the abusive language and conduct exhibited by the supervisor (adopting 2005 N.J. AGEN LEXIS 517). In re Keynton, OAL Dkt. No. CSV 328-04, 2005 N.J. AGEN LEXIS 1255, Final Decision (October 9, 2005).

There was a sufficient basis to impose a 10-day suspension, a major disciplinary action, where a Truck Driver, Tandem Axle, negligently drove a state truck into a basketball pole; the employee admitted that at the time of the accident he was looking elsewhere instead of watching where he was driving, the employee had previously been warned about his driving, and the damage to state property in the instant matter was well over $6,000 (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 479). In re Johnson, OAL Dkt. No. CSV 4410-03, 2005 N.J. AGEN LEXIS 1194, Final Decision (October 5, 2005).

Senior correction officer's actions in leaving his post were clearly wrong, but mitigating factors existed that warranted a six-month suspension rather than removal, including the fact that there were informal agreements between officers regarding who would stay and await relief and the officer was the first of the three officers in the unit to leave and not the last; the officer's record did not include any prior major discipline. In re Oliveira, OAL Dkt. No. CSV 5943-04, 2005 N.J. AGEN LEXIS 1204 (On Remand), Merit System Board Decision (October 5, 2005).

Correction officer was properly removed for conduct unbecoming a public employee and insubordination after he disobeyed repeated requests to complete an identification form as per an identification policy and made a mockery of the form by writing "Y" for sex; the officer was employed in a position where immediate obedience to direct orders from superiors was of particular importance, and his repeated refusals to properly complete the identification form were inexcusable (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 401). In re McGinnis, OAL Dkt. No. CSV 950-02 and CSV 6231-02 (Consolidated), 2005 N.J. AGEN LEXIS 1223, Final Decision (October 5, 2005).

Correction officer properly received a 6-working day suspension for his admitted failure to ensure the safety and security of a prison kitchen by verifying that all of the kitchen padlocks were secured. However, a 5-working day suspension, rather than a 10-working day suspension, was appropriate where the officer violated an attendance verification policy by failing to remain available for contact during the hours of his normal shift; although the officer did not answer the phone at home when his supervisor attempted to reach him on two occasions, the officer did call in before the end of his shift (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 575). In re Penn, OAL Dkt. No. CSV 4871-04, 2005 N.J. AGEN LEXIS 1262, Final Decision (September 21, 2005), aff'd per curiam, No. A-1214-05T2, 2006 N.J. Super. Unpub. LEXIS 2736 (App.Div. September 28, 2006).

Attorney General Guidelines, which mandated the removal of law enforcement employees who tested positive for drug use, were inapplicable to a civilian employee who was a police aide; however, the aide was employed by a law enforcement agency and in a position with important public safety functions and the use of illegal controlled dangerous substances clearly constituted unbecoming conduct for which a six-month suspension was appropriate (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 581). In re Wilkins, OAL Dkt. No. CSV 9515-03, 2005 N.J. AGEN LEXIS 1131, Merit System Board Decision (September 21, 2005).

Six-month suspension, rather than removal, was the appropriate disciplinary action against a police officer who left the scene of an accident and failed to report the incident; the ALJ's credibility assessments and conclusion that the officer did not suffer from some medical condition that caused him to "lose awareness" were entitled to deference and were not in error, but the officer's preoccupation with his potentially frightening medical condition was a mitigating factor for the penalty to be imposed (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 371). In re Foti, OAL Dkt. No. CSV 3199-03, 2005 N.J. AGEN LEXIS 1463, Merit System Board Decision (September 21, 2005).

Credible evidence in the record supported the ALJ's conclusion that the employee, a data control clerk with the Newark School District, had notice of the e-mail policy when she forwarded sexually explicit, pornographic photos via e-mail to another employee, who then forwarded the e-mail to at least 5 other employees; a 4-month suspension was the appropriate penalty where the employee had been employed for 12 years, her disciplinary history revealed only a 3-day suspension for an attendance infraction, and she did not have any prior violations of the e-mail policy. Although the Merit System Board agreed that the e-mail was highly offensive, the Board did not find that the employee's conduct of forwarding the e-mail to a single fellow employee was sufficiently egregious to warrant removal or a 6-month suspension (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 577) . In re Copeland, OAL Dkt. No. CSV 05036-04, 2005 N.J. AGEN LEXIS 1239, Merit System Board Decision (September 7, 2005).

Removal from employment for falsification of records was not too harsh of a penalty because it was a very serious offense. Employees of the State and local government have access to information and documents that must be properly maintained and kept as accurate as possible; when a public employee falsifies a record, he or she erodes the trust that the general public places on the government to maintain

accurate records. In addition, many of the employee's previous disciplinary actions, although minor, were for related or similar conduct (adopting 2005 N.J. AGEN LEXIS 339). In re Gilfone, OAL Dkt. No. CSV 3637-03 (CSV 9662-02 On Remand), 2005 N.J. AGEN LEXIS 1191, Final Decision (September 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 408) adopted, which concluded that a police officer was properly removed after he failed to call in a motor vehicle stop, allowed the vehicle to get away without calling anyone, gave inconsistent versions of why he did not stop the vehicle, and told communications he was on the way to a priority one call that required two officers to be present for safety reasons, knowing that he could not be there because his vehicle was disabled. The officer was more concerned over the criticism he would receive from his coworkers for getting his vehicle stuck, than leaving a fellow police officer alone during a priority one call, which, in combination with his lack of candor during the investigation, demonstrated a lack of good judgment and disrespect for the law. In re Rivera, OAL Dkt. No. CSV 6112-04, 2005 N.J. AGEN LEXIS 1086, Final Decision (September 7, 2005), aff'd per curiam, No. A-0891-05T1, 2007 N.J. Super. Unpub. LEXIS 1695 (App.Div. January 17, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 404) adopted, which found that a senior maintenance repairer was properly removed for chronic and excessive absenteeism; the appointing authority's operations were significantly affected by his excessive absences in that it was forced to burden other employees and at times pay overtime in order to absorb his job duties. In re Rios, OAL Dkt. No. CSV 3009-02, 2005 N.J. AGEN LEXIS 1084, Final Decision (September 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 402) adopted, which emphasized that the concept of progressive discipline does not mean that all possible measures must be taken; instead, an examination of the frequency, number, and continuity of the employer's warnings, reprimands, counseling and other measures, without necessarily including suspensions, indicates the progression of discipline (chronic lateness case). In re Jackson, OAL Dkt. No. CSV 01869-04, 2005 N.J. AGEN LEXIS 1074, Final Decision (September 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 402) adopted, which found that language of a disciplinary settlement agreement, providing that the settlement would not be used as a precedent in any other matter, did not foreclose the use of the prior discipline to decide whether there had been progressive discipline. In re Jackson, OAL Dkt. No. CSV 01869-04, 2005 N.J. AGEN LEXIS 1074, Final Decision (September 7, 2005).

Employee suspended for 10 days from position as account clerk for failure to deposit money ($700,000) within 48-hour period required by N.J.S.A. 40A:5-15 and late deposit by mail of $355,000; 10-day suspension upheld and $500 fine imposed. Kennedy v. City of Burlington, 11 N.J.A.R. 20 (1988).

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1. Incompetency, inefficiency or failure to perform duties;

2. Insubordination;

3. Inability to perform duties;

4. Chronic or excessive absenteeism or lateness;

5. Conviction of a crime;

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).

Officer's behavior constituted a violation of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee. When he reported to Internal Affairs to provide a statement about his failure to wear his uniform to a municipal hearing, he refused to cooperate, refused to answer any questions, refused to sit so that he could be interviewed, and spoke loudly over the interviewing sergeant. There was no evidence of a link between his lawsuit against the Mercer County Sheriff's Office that was settled and dismissed and the matter at hand. In re Dywon Kelsey, Mercer Cnty. Sheriff's Dep't., OAL DKT. No. CSV 16708-12, 2014 N.J. AGEN LEXIS 512, Initial Decision (August 26, 2014).

Correction officer who, despite being twice ordered by his supervisor, a sergeant, to relieve another officer, instead called the shift commander because he believed that he was not properly tasked to relieve that officer and only complied with the order when the shift commander reiterated it was properly suspended from work for ten days without pay because his conduct in refusing to comply with his supervisor's orders was conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 and insubordination that constituted "other sufficient cause" within the meaning of N.J.A.C. 4A:2-2.3(a)12. In re Johnson, Mercer Cnty. Dep't of Public Safety, OAL DKT. NO. CSV16283-13, AGENCY DKT. NO. 2014-1214, 2014 N.J. AGEN LEXIS 482, Initial Decision (August 18, 2014).

Senior corrections officer violated N.J.A.C. 4A:2-2.3(a)12 when, as the responsible security officer, a contraband cell phone owned by a social worker passed through the security check. He failed to follow the required procedures for a situation such as presented by the social worker's multiple failures to pass successfully through the scanner. He did not conduct any hand search of her bags, did not immediately bar the entry of an unauthorized bag (by size and lack of transparency), did not call the Shift Commander, and did not properly utilize the Failure to Clear Entry form procedure. In re Martha Hicks and Antonia Price, Garden State Youth Corr. Facility, Dep't. of Corr., OAL DKT. NOS. CSV 11379-13 and CSV 11494-13 (Consolidated), 2014 N.J. AGEN LEXIS 469, Initial Decision (August 11, 2014).

Because the conduct of a maintenance repairer in taking a camera that belonged to the public who left it there for safekeeping was conduct that had a tendency to destroy public trust and respect in the delivery of governmental services, he engaged in conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6. His job did not encompass straightening a drawer at the front desk, the contents of which were not visible to the public. If he had been looking for hand sanitizer, his time at the front desk should have ended when he looked in the drawer and did not see any. It should not have resulted in his taking a camera that did not belong to him, which constituted neglect of duty pursuant to N.J.A.C. 4A:2-2.3(a(7. In re Frank J. Russo, Ocean Cnty., Dep't. of Bldg. and Grounds, OAL DKT. NO. CSV 7619-13, 2014 N.J. AGEN LEXIS 462, Initial Decision (August 11, 2014).

Human Services Technician who, on three occasions within a few minutes, kicked the wheelchair of a resident of a veterans home with enough force to propel it backwards was properly removed from her position on a finding that she had engaged in conduct unbecoming a public employee and was guilty of neglect of duty in violation of N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3(a). The technician expressed apparent impatience with the resident's repeated attempts to leave the T.V. room despite the absence of any directive or instruction that prohibited the resident from freely moving around the unit in which she resided. The technician's conduct in kicking the resident's wheelchair repeatedly as the resident tried to exercise her privilege of departing the T.V. room constituted an unacceptable restraint on the resident's freedom. Although the resident suffered from some confusion, she was alert and aware of her surroundings, and the technician's actions were humiliating and resulted in mental anguish to the resident. Notwithstanding the lack of physical injury to the resident, the technician's conduct, nevertheless, strayed mightily from the standards expected of a certified nursing assistant and provided adequate grounds for her removal from her position. In re Brownwest-Dunbar, N.J. Veterans Memorial Home Menlo Park, Dep't of Military & Veterans Affairs, OAL DKT. NO. CSV 00318-14, 2014 N.J. AGEN LEXIS 477, Initial Decision (August 6, 2014).

The failure by a senior investigator at a correctional institution to advise a corrections officer who was selected for random drug-testing of his rights, including that he could provide a second urine sample at the same time, which sample could be retested in the event that the sample tested by the department tested positive for illegal substances, at most deprived the officer of potentially exculpatory evidence but not actual exculpatory evidence. That being so, that procedural error did not afford grounds for relief from the correctional institution's action, based on the fact that cocaine metabolites were found in his urine sample, in removing him from his position for conduct unbecoming and other sufficient case within the meaning of N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3. In re Schwaner, Mountainview Youth Corr. Facility, OAL DKT. NO. CSR 02835-14, 2014 N.J. AGEN LEXIS 442, Initial Decision (August 1, 2014).

Though a corrections officer was properly disciplined for committing conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a) on account of his involvement in a fist fight with a co-worker, the county corrections department did not establish that the officer either neglected his duty or violated a departmental policy dealing with workplace violence. The officer's conduct was unbecoming because he did not display discretion, decorum or professionalism when he exchanged words with his co-worker in the parking lot when he knew or certainly should have known at that point that the co-worker, who had initiated the conflict, was waiting for him and looking for a fight. Though the violation committed by the officer was serious, the facts and circumstances of the violation, taken with the officer's disciplinary history, were such that termination of his employment was unnecessarily harsh and a six-month suspension was properly imposed. In re Lewis, Burlington Cnty., Corrs. Dep't, OAL DKT. NO. CSR 2922-14, 2014 N.J. AGEN LEXIS 441, Initial Decision (July 30, 2014).

A school district established by the required quantum of evidence that a teacher's aide was properly removed from her employment with the district on account of her conduct on February 8, 2013 and February 11, 2013. On each such occasion, the aide left the school building without permission, thereby endangering the safety of children in the classroom in which she was assigned and causing a violation of the requirement in N.J.A.C. 6A:13A-4.3 that a certified teacher and a teacher's aide be present in each preschool classroom in which 15 children were present. This conduct constituted conduct unbecoming a public employee, neglect of duty and insubordination within the meaning of N.J.A.C. 4A:2-2.3(a). Given her significant disciplinary history, she was properly removed from her employment. In re Vanessa Shavers-Johnson, Newark Pub. Sch. Dist., OAL DKT. NO. CSV 10838-13, 2014 N.J. AGEN LEXIS 439, Initial Decision (July 30, 2014).

Charge of neglect of duty under N.J.A.C. 4A:2-2.3(a)7 against a human services specialist (employee) was affirmed. She appeared during work hours for a Department of Labor and Workforce Development Appeal Tribunal telephone hearing, arising from the Middlesex County Board of Social Services' appeal of her receipt of unemployment insurance benefits. She was a participant at the hearing due to her status as an employee, which made the hearing more closely "job-related" than "work-related." She neglected her duty to make reasonable inquiry of her supervisor and management as to the appropriate course of action to take so that she could appear at the hearing during work hours. However, she did not engage in conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6 or other sufficient cause by committing a theft of time under N.J.A.C. 4A:2-2.3(a)12. In re Naima Mayers, Middlesex Cnty. Bd. of Social Serv., OAL DKT. No. CSV 3497-13, Initial Decision (July 22, 2014).

Telecommunications operator (employee) engaged in neglect of duty under N.J.A.C. 4A:2-2.3(a)7 when he failed to return to work at the end of the approved leave period, which was taken because his son was born with a brain abnormality. The initial three month approved leave was a reasonable necessity, but when his child improved he did not return to employment, but collected unemployment benefits and waited 20 months to appeal a resignation not in good standing. Regarding abandonment of job under N.J.A.C. 4A:2-6.2(b), even though both the employee and the Town of West New York Department of Public Safety procrastinated in resolving the concern about the employee's extended leave and return to work, the employee did not return for 20 months. Given the employee's clean disciplinary history and the situation where both parties deviated from regulatory disciplinary action procedures, the administrative law judge concluded that the penalty of resignation not in good standing was unreasonable and unwarranted and recommended that it should be modified to resignation in good standing. Manuel Suarez v. Town of West New York Dep't. of Public Safety, OAL DKT. No. 2013-2438, 2014 N.J. AGEN LEXIS 416, Initial Decision (July 22, 2014).

Police officer violated policies of the Newark Police Department and N.J.A.C. 4A:2.3(4) and was guilty of chronic or excessive absenteeism or lateness. Even after he was counseled, after being placed on Medical Certification twice, and being suspended after being charged with official inefficiency for violating the sick leave policy, he did not change his behavior in order to comport with the rules and regulations of the Department. No medical documentation supported his belief that his asthma condition worsened when he went into the jail area. In re Colby Adams, City of Newark Police Dep't., OAL Dkt. No. CSV 09458-13, 2014 N.J. AGEN LEXIS 430, Initial Decision (July 18, 2014).

Employee was absent from duty for five or more consecutive business days without approval of his supervisor in violation of N.J.A.C. 4A:2-6.2 and he breached the terms of a Conditional Letter of employment, resulting in his resignation not in good standing and supporting other related charges against him under N.J.A.C. 4A:2-2.2, N.J.A.C. 4A:2-2.3(a)6; N.J.A.C. 4A:2-2.3(a)7; and N.J.A.C. 4A:2-2.3(a)11. There was no debate that he failed to report to work following his arrest and incarceration and that he failed to contact his supervisors to determine his date of return or to explain his non-appearance. Although he asserted that he called his supervisor, he offered no proof of this call. In re Ravin Morrison, City of Newark Dep't. of Eng'g., OAL Dkt. No. CSV 00844-14, 2014 N.J. AGEN LEXIS 359, Initial Decision (July 17, 2014).

Milford Township Municipal Utilities Authority (MUA) properly terminated an employee after he failed to report to his supervisor that he would not be returning to work on a scheduled date in violation of the MUA policy and N.J.A.C. 4A:2-2.3(a)1, 2, 3, and 12. He yelled and screamed at his superior, physically intimidated her, and implied that he was having her followed, which was harassment and insubordination in violation of the MUA policy and N.J.A.C. 4A:2-2.3(a)2 and 12. In re Christopher Gros, Twp. of West Milford, OAL Dkt. No. CSV 13296-11, 2014 N.J. AGEN LEXIS 354, Initial Decision (July 15, 2014).

After a determination by the New Jersey State Department of Corrections (DOC) to remove an employee from his position as a senior correction officer on charges of conduct unbecoming a public employee and other sufficient causes, in violation of N.J.A.C. 4A:2-2.3(a)6 and 12, and Human Resource Bulletin 84-17 (as amended), an administrative law judge reversed that disciplinary action and ordered that no penalty be imposed. The employee's alleged misconduct of cursing and using foul language was not proven, but had there been proof an outburst, the evidence presented failed to prove there was an act so egregious to

warrant termination of employment. In re Laquan Bush, New Jersey Dep't. of Corr., East Jersey State Prison, OAL Dkt. No. CSR 14630-13, 2014 N.J. AGEN LEXIS 358, Initial Decision (July 10, 2014).

Sanitary supervisor (employee) failed to properly supervise his laborers and neglected his prescribed duties in violation of N.J.A.C. 4A:2-2.3(a)6) by working from a private residence in what proved to be an on-call or "stand by" capacity. Although this conduct was serious in nature, the administrative law judge (ALJ) reduced the penalty from a 180-day suspension and a two-step demotion to a 30 day suspension and a demotion to equipment operator. The employee was never reprimanded prior to the Preliminary Notice of Disciplinary Action. He acted with the implicit knowledge of his supervisor, who, when directed to reprimand the employee, never did so. The ALJ concluded that the employee should not bear the full responsibility of ineffective management. In re Melvin Jones, City of Atlantic City Pub. Works Dep't., OAL Dkt. Nos. CSV 5770-12 and CSV 0778-14, 2014 N.J. AGEN LEXIS 375, Initial Decision (June 30, 2014).

Correction officer was properly removed from his position as a county correction officer on account of her involvement with an inmate housed in the facility where she was assigned. Though the officer insisted that her involvement with the inmate was not contrary to regulations because she had met the inmate prior to his incarceration, the relationship continued after he was incarcerated and included dozens of telephone calls that contained conversations of an intimate and sexual nature as well as discussions regarding bail for the inmate. All of that conduct violated the department's anti-fraternization policy and constituted conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6. Moreover, the officer took no responsibility for her actions and her credibility was properly suspect. Given these facts, removal of the officer from her position was appropriate. In re Simpson, Hudson Cnty. Dep't of Corr., OAL DKT. NO. CSR 00391-14, 2014 N.J. AGEN LEXIS 400, Initial Decision (June 17, 2014).

When a county correctional officer falsified a switch request form after her co-worker denied a request to switch shifts and she was subsequently absent without leave, she violated N.J.A.C. 4A:2-2.3(a)6, Conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)7, Neglect of duty. The administrative law judge recommended termination. In re Kidhada Russ, Camden Cnty. Corr. Facility, OAL Dkt. No. 334-14, 2014 N.J. AGEN LEXIS 301, Initial Decision (June 4, 2014).

An Administrative Law Judge (ALJ) concluded that a city police department had failed to comply with its own sick leave policy in connection with its imposition of a 30-day suspension on a communications clerk who the department charged with incompetency or inefficiency within the meaning of N.J.A.C. 4A:2-2.3(a)1 based on the department's conclusion that she had abused her sick leave. The department had based its discipline on its conclusion that the clerk had consistently called in sick on days that were either immediately prior to or after days on which she was not scheduled to work. The department's own written policies required the department to "personally counsel" an employee who was believed to be abusing sick time, but the employee was never counseled about her use of sick leave. That being so, the ALJ recommended that the suspension be reversed in its entirety and that the employee be awarded back pay. In re McDalton, City of Newark Police Department, OAL DKT. NO. CSV 14904-13, AGENCY REF. NO. 2014-991, 2014 N.J. AGEN LEXIS 240, Initial Decision (May 30, 2014).

Behavior of a correction officer in refusing to accept and sign a receipt indicating that he had received a package containing a copy of new disciplinary rules as adopted by the appointing authority and his cognate refusal to submit a report documenting his refusal to sign for the package was conduct unbecoming a public employee, insubordination, and "other sufficient cause" within the meaning of N.J.A.C. 4A:2-2.3(a). Given the officer's 20-year tenure as a correction officer, he certainly should have understood the necessity of following orders and corrections center procedures, and he was properly disciplined for refusing to do so. In re Davis, Mercer Cnty. Dep't of Public Safety, OAL DKT. NO. CSV 11636-10, AGENCY DKT. NO. 2011-1462, 2014 N.J. AGEN LEXIS 246, Initial Decision (May 28, 2014).

An Administrative Law Judge (ALJ) concluded that an individual employed by a county as an EMT was not properly disciplined for misuse of public property per N.J.A.C. 4A:2-2.3 as a result of an accident that occurred by reason of the EMT's having made an illegal U-turn while driving an ambulance carrying an injured person to a hospital. The EMT had not activated the ambulance's siren though the ambulance's emergency lights were activated. Though the EMT's operation of the ambulance was the cause of the accident, his decision to proceed in emergency mode was not unreasonable. Moreover, while the EMT's operation of the ambulance may have been negligent, his conduct did not fit within the scope of misuse of public property within the meaning of N.J.A.C. 4A:2.2.3(a)8 because there was no claim – nor evidence – that he was using the ambulance for an improper purpose or for his own private gain. In re Gray, Gloucester Cnty. Dep't of Emergency Response, OAL DKT. NO. CSV 6389-13, AGENCY DKT. NO. 2013-2693, 2014 N.J. AGEN LEXIS 241, Initial Decision (May 27, 2014).

Administrative law judge upheld the dismissal of a trainee by the Passaic County Police Academy under N.J.A.C. 13:1-7.2(a)19ii after the trainee tested positive for benzoylecgonine. The police academy produced more than a residuum of legally competent evidence in the form of the testimony of its assistant director and a forensic toxicologist and exhibits that fell within the exception to the hearsay rule for records of regularly conducted activity. The only failure to comply with the Attorney General's Guidelines related to the number of days to complete the test and report the results to the submitting agency, which did not affect the test results or vitiate the trainee's consent to the drug testing. The City of Clifton properly removed the trainee for inability to perform duties under N.J.A.C. 4A:2-2.3(a) because, without completion of the mandatory basic training course and receipt of the appropriate certification, the trainee would be unable to work as a police officer. In re Douglas Miller, City of Clifton Dep't. of Public Safety. Douglas Miller v. Passaic Cnty. Police Academy, OAL Dkt. No. CSV 01484-09 and OAL Dkt. No. PTC 09013-09 (Consolidated), 2014 N.J. AGEN LEXIS 230, Initial Decision (May 22, 2014).

Charges of failure to perform duties under N.J.A.C. 4A:2-2.3(a)1 and neglect of duty under N.J.A.C. 4A:2-2.3(a)7 against a maintenance worker were dismissed. An emergency in the men's bathroom necessitated actions on worker's part that took him away from his regular duties, which included cleaning the women's restroom. To charge him with failure to perform his duties would be to ignore the work he did that morning to make the men's restroom useable. However, the worker was insubordinate in violation of N.J.A.C. 4A:2-2.3(a)2. Even if the worker arguably had good reason for not cleaning the women's restroom, given the multitude of problems that morning, he did not accept his supervisor's authority over him and did not respect his orders. In re David. W. Vibbert, New Jersey Dep't. of Env't. Prot., OAL Dkt. No. CSV 5764-12, 2014 N.J. AGEN LEXIS 285, Initial Decision (May 21, 2014).

Action of the Administrative Office of the Courts, Monmouth Vicinage, in terminating an employee working as a judiciary clerk for inability to perform duties pursuant to N.J.A.C. 4A:2-2.3(a)3 was appropriate under N.J.A.C. 13:13-2.5(b) when she could not work at the courthouse due to allergies and asthma and the essential requirements of her job required her presence at the courthouse. The Administrative Office looked at ways to accommodate the employee but there were none. Because the employee was medically unfit and was not guilty of wrongdoing, her termination status was changed to a resignation in good standing in order to avoid the harsh consequences of removal. In re Sophie Exarchakis, Superior Court of New Jersey, Monmouth Vicinage, OAL Dkt. No. CSV 4455-13, 2014 N.J. AGEN LEXIS 284, Initial Decision (May 19, 2014).

Appointing authority's determination that a judiciary clerk who was employed in a county courthouse could not perform the essential duties of her position was supported by the evidence which established that the clerk's preexisting asthma and allergies were aggravated by environmental factors that were present in the courthouse and that her physicians determined that she could not render services at that location. Though the appointing authority had temporarily accommodated her condition by assigning her to a different position in a different facility

and although she was able to perform certain aspects of her position from the second location, there remained essential responsibilities that could only be performed at the courthouse. Because she could not return to the courthouse, she was properly removed from her position because she was unable to perform her job duties from a different location. Moreover, the facts established that the appointing authority had sought to accommodate the clerk's disability, as it was required to do by N.J.A.C. 13:13-2.5(b), there was no reasonable accommodation that would make it possible for the clerk to remain in her position. While termination of the clerk's employment thus was proper, that termination was not properly accomplished under N.J.A.C. 4A:2-2.3(a)3, which was a disciplinary provision, because there was no claim of wrongdoing on the clerk's part. Her termination thus was properly converted into a resignation in good standing. In re Exarchakis, Superior Court of New Jersey, Monmouth Vicinage, OAL DKT. NO. CSV 4455-13, AGENCY DKT. NO. 2013-2357, 2014 N.J. AGEN LEXIS 284, Initial Decision (May 19, 2014).

Mercer County Correction Center met its burden of proving that a correction officer violated N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)11 and (c)4, for chronic and excessive absenteeism from work. His excessive absences were not covered by any leaves, and during his call-outs, other officers had to be called in and paid overtime to cover the absent officer's shifts. His false statements in the log book as well as on the inmate control sheets was conduct that adversely affected the morale of governmental employees or the efficiency of a public entity. In re Gary MacDonald, Mercer Cnty. Corr. Ctr., OAL Dkt. No. CSR 9803-13, 2014 N.J. AGEN LEXIS 236, Initial Decision (May 19, 2014).

An Administrative Law Judge (ALJ) concluded that a county board of social services had acted lawfully in removing two employees from their positions on findings that each had made numerous personal telephone calls to the Dominican Republic during their work hours using the agency's telephones, causing the agency to incur telephone expenses in excess of $22,426.28 and $6,496.67, respectively, for these calls. Specifically, the employees failed to perform their assigned duties by using their work time to engage in personal business, and while the quantum of the work performed by each may have been average, and the quality good, it would have been greater had they devoted their work time to their official duties, and not to their personal business. The employees' conduct was unbecoming to public employees as it showed a blatant disregard for the agency's mission of service to its needy applicants and clients, which was demonstrated by the employees' conduct in focusing on personal matters rather than those of the clients. By devoting so much work time to their telephone calls, the employees neglected their duty to maximize their work effort to get their work done efficiently and effectively. Given the facts and circumstances, the agency established violations of N.J.A.C. 4A:2-2.3, including incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; misuse of public property; and other sufficient cause. In re Werfy Fernandez, Camden County Board of Social Services; In re Wanda Fernandez, Camden County Board of Social Services, OAL DKT. NO. CSV 652-12, OAL DKT. NO. CSV 653-12 (Consolidated), AGENCY DKT. NOS. 2012-1932 and 2012-1931, 2014 N.J. AGEN LEXIS 229, Initial Decision (May 8, 2014).

Hudson County Department of Corrections failed to prove by a preponderance of the evidence that an officer-in-charge's (OIC's) alteration of line-ups despite prior instruction not to do so constituted conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6, incompetency, inefficiency, or failure to perform duties under N.J.A.C. 4A:2-2.3(a)1, insubordination under N.J.A.C. 4A:2-2.3(a)2, neglect of duty under N.J.A.C. 4A:2-2.3(a)7, or other sufficient cause for discipline under N.J.A.C. 4A:2-2.3(a)12. The reassignments by the OIC were consistent with a supervisor's previous instruction that the OIC could make necessary operational reassignments to fill vacancies. However, the OIC's failure to provide the supervisor with a report justifying the reassignments constituted conduct unbecoming a public employee, failure to perform duties, insubordination, neglect of duty, and other sufficient cause for discipline. In re Omar Ortiz, Hudson Cnty. Dep't. of Corr., OAL Dkt. No. CSV 05727-12, 2014 N.J. AGEN LEXIS 257, initial Decision (May 7, 2014).

Charges against three police officers were dismissed. The lack of evidence to substantiate that anyone advised the officers responding to an incident location that a weapon was allegedly involved precluded a conclusion that any fact was omitted by one officer in his incident report in violation of N.J.A.C. 4A:2-2.3(a)(7). A second officer did not engage in conduct unbecoming an public employee under N.J.A.C. 4A:2-2.3(a)6 because there was no evidence to indicate any interference of the investigation or violation of a standard of good behavior. The third officer did not neglect his duty in violation of N.J.A.C. 4A:2-2.3(a)7 when there was no evidence of a report of a weapon. In re Lorenzo Valentin, City of Newark Police Dep't., In re Darnell Henry, City of Newark Police Dep't., In re Lousis Turco, City of Newark Police Dep't., OAL DKT. No. CSV 06746-12, CSV 08595-12, CSV 08818-12 (Consolidated), 2014 N.J. AGEN LEXIS 207, Initial Decision (April 29, 2014).

Employee who worked as a municipal court administrator was incompetent and inefficient under N.J.A.C. 4A:2-2.3(a)1 when she was unable to manage her department's overtime, which was one of her prescribed duties, three years in a row. However, she did not engage in insubordination under N.J.A.C. 4A:1-1.3 when she tried to reasonably find a solution to the overtime problem, which solution was ultimately followed by the Municipal Court. However, she neglected her duties in violation of N.J.A.C. 4A:2-2.3(a)7 by failing to know or understand the policies she was charged with administrating. She failed to submit doctor's notes for all absences after the tenth absence and did not record all bad checks, overpayments, and bail reinstatements on a daily basis and deposit all monies within forty-eight hours according to the Financial Procedures Manual. In re Lynn Ciuppa, Borough of Bergenfield, Dep't. of Mun. Ct., OAL DKT. NO. CSV 04702-11, 2014 N.J. AGEN LEXIS 206, Initial Decision (April 24, 2014).

An Administrative Law Judge (ALJ) concluded that a county correction officer was guilty of conduct unbecoming a public employee, neglect of duty and failure to perform duties, all of which violated various subsections in N.J.A.C. 4A:2-2.3(a) as well as facility rules because the evidence established that the officer had witnessed a physical altercation between a male and female inmate resulting in injury to one of the inmates and that the officer had failed to notify his supervisor or document the incident, as required. The officer's testimony that an event rising to the level of a reportable altercation had occurred was contradicted by a video recording of the event. Because the officer's failure to report the altercation exposed the facility to liability and placed staff and other inmates in jeopardy, the 45 day suspension administratively imposed by the facility was appropriate. In re Crossan, Camden Cnty. Dep't of Corr., OAL Dkt. No. CSV 11814-12, AGENCY Dkt. No. 2013-442, 2014 N.J. AGEN LEXIS 216, Initial Decision (April 22, 2014).

An Administrative Law Judge (ALJ) concluded that a county employee serving in the position of Tree Trimmer was guilty of conduct unbecoming a public employee and insubordination within the meaning of N.J.A.C. 4A:2-2.3(a) but that the county had failed to establish charges that the employee had neglected his duties or had been negligent or that there was other sufficient cause for discipline. The underlying incident involved the employee's wilful refusal to comply with a supervisor's order that he remove a Bluetooth ear piece that he was wearing while performing his duties. Though N.J.A.C. 4A:1-1.3 did not define the term "insubordination," it was generally understood to mean a refusal to obey an order of a supervisor and the employee's conduct was insubordinate. However, given the employee's overall disciplinary record, the imposition of a 30 day suspension was overly harsh, and the ALJ concluded that a seven-day suspension was more in keeping with the facts as found here. In re Mumford, Cnty. of Hudson Dep't of Parks, Engineering & Planning, OAL Dkt. No. CSV 12851-12, AGENCY REF. No. 2013-526, 2014 N.J. AGEN LEXIS 215, Initial Decision (April 17, 2014).

An Administrative Law Judge (ALJ) concluded that the employment of a correction officer recruit was properly terminated under N.J.A.C. 4A:2-2.3(a) because the evidence showed that the recruit had failed to conduct a complete or adequate search of a cell after being ordered to do so and also showed that the recruit refused to follow a direct order to correct the deficiency by undertaking a thorough search, which search

was called for after a live round of ammunition was discovered in the cell block. Because the recruit's conduct was both neglectful and insubordinate, a violation of N.J.A.C. 4A:2-2.3(a) justifying termination of employment was made out. In re Ruby Saunders, N.J. State Prison, OAL Dkt. No. CSR 15250-13, 2014 N.J. AGEN LEXIS 167, Initial Decision (April 14, 2014).

An Administrative Law Judge concluded that a county board of social services was justified in removing an employee from his position of Clerk 1 at the agency for conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a) and other sufficient cause, i.e., making comments and posting materials of a racist and denigrating nature. The employee did not deny having made many of the comments attributed to him but insisted that he had been joking. In re Kenneth J. Czarnecki, Middlesex Cnty. Bd. of Soc. Servs., OAL Dkt. No. CSV 15010-13, AGENCY Dkt. No. 2014-969, 2014 N.J. AGEN LEXIS 179, Initial Decision (April 8, 2014).

An Administrative Law Judge concluded that a senior correction officer (SCO) was properly removed from her position at a youth correctional facility for having engaged in conduct unbecoming an employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 by engaging in conduct indicating undue familiarity of a romantic nature with a male inmate. Specifically, the SCO, using an alias, did send and receive from the inmate letters of a romantic nature and planned with the inmate to continue their relationship once the inmate was released from custody. Even if photocopies of erotic photographs recovered from the inmate's cell were excluded from evidence per N.J.A.C. 1:1-15.1(c)2 on a finding that they were unreliable and unduly prejudicial, there remained ample evidence on which to find that the SCO's conduct violated both civil service rules and departmental regulations and imperiled public safety and good order in the facility, and removal from her position thus was proper. In re Dana S. Register, Mountainview Youth Corr. Facility, OAL Dkt. No. CSR 17778-13, 2014 N.J. AGEN LEXIS 161, Initial Decision (April 7, 2014).

Removal from his position was the appropriate penalty when a youth work supervisor at a county youth detention center engaged in conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6. He violated procedures and policies of the center by being alone with a juvenile female resident with no female staff member present, and he did so at odd times when other residents were sleeping. In re Ronald Matlock, Mercer County. Dep't. of Human Serv., OAL DKT. No. CSV 5341-11, 2014 N.J. AGEN LEXIS 180, Initial Decision (April 4, 2014).

Administrative law judge (ALJ) recommended the affirmation of the removal of a custodian due to chronic or excessive absenteeism and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a). He was absent without authorization for thirty-one days, during which time he was incarcerated for failure to pay child support. He used his sick time but did not provide medical documentation and was not approved for sick leave. His absences caused him to neglect his duty and negatively impacted the custodial staff, and the ALJ concluded that the custodian did not avail himself of the proper avenues for obtaining leave. The charge of resignation not in good standing under N.J.A.C. 4A:2-6.2 was also sustained because his unauthorized absences were for five or more consecutive days. In re Jackie Lovett, State-Operated Sch. Dist. of the City of Newark, OAL Dkt. No. CSV 15460-13, 2014 N.J. AGEN LEXIS 89, Initial Decision (March 6, 2014).

When a senior corrections officer knowingly submitted to the Department of Corrections a falsified doctor's note written by her former fiancé and when interviewed about the note, made numerous false denials and statements to investigators, that conduct was unbecoming a public employee and sufficient cause for discipline under N.J.A.C. 4A:2-2.3(a)6. In re Tamesha Lang, East Jersey State Prison, OAL Dkt. No. CSR 13264-13, 2014 N.J. AGEN LEXIS 86, Initial Decision (February 28, 2014).

Although a correction officer recruit failed to report a prior relationship with an inmate during the orientation period and failed to fully disclose the contact that she had with the inmate on the job, there was no evidence that she was unable to perform her duties pursuant to N.J.A.C. 4A:2-2.3(a)3. Thus, the administrative law recommended that the charge be dismissed. In re Shanika McNair, N. State Prison, Dep't. of Corr., OAL DKT. No. CSV 09600-13, 2014 N.J. AGEN LEXIS 30, Initial Decision (February 24, 2014).

Administrative law judge ordered the removal of a dispatcher with the city of Passaic Police Department. The charge of incompetency, inefficiency, or failure to perform duties pursuant to N.J.A.C. 4A:2-2.3(a)1 was sustained because the dispatcher exhibited inefficiency by failing to instruct a 9-1-1 caller to perform CPR until four minutes into the call and failed to perform her duty of reading word for word from the medical guide card. The failure to adhere to the emergency medical dispatch guide was sufficient to sustain the charge of conduct unbecoming a public employee under N.J.A.C. 4A:2-3.3(a)6. In re Vivian Delgado, City of Passaic Police Dep't., OAL DKT. No. CSV 10083-12, 2014 N.J. AGEN LEXIS 75, Initial Decision (February 18, 2014).

Civil Service Commission reduced the penalty imposed on a police lieutenant from a 21 working day suspension to a 10 working day suspension pursuant to N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) after an administrative law judge concluded that the lieutenant failed to report an incident in which an intoxicated off-duty officer disrupted roll call with repeated acts of lewd behavior, which was a violation of the Police Department's rules on accountability and performance and a neglect of duty as reflected in N.J.A.C. 4A:2-2.3(a)7. The penalty was reduced due to the lieutenant's lack of significant disciplinary history. In re Jaime Colon, Police Dep't., City of Elizabeth, OAL Dkt. No. CSB 00894-13, 2014 N.J. CSC LEXIS 1, Final Decision (February 14, 2014).

An Administrative Law Judge concluded that the Burlington County Board of Social Services had acted lawfully in removing a human services specialist from her position for violations of N.J.A.C. 4A:2-2.3(a) on findings of incompetency, inefficiency or failure to perform duties; chronic or excessive absenteeism or lateness; and other sufficient cause including a failure to follow agency policy with regard to certain work absences. The testimony of the employee's coworkers and supervisors left no doubt that in spite of the fact that the employee had been in her position for more than ten years, she managed to complete only 50% of the number of cases regularly completed by her coworkers and that the existence of numerous errors in cases she did complete resulted in the work having to be redone. Though the employee had been offered various corrective action plans designed to improve and increase her work product, her work output did not increase or improve. Moreover, she made excuses and blamed others for her failings. Moreover, her absenteeism and lateness, the effect of which was exacerbated by her failure to follow agency policy with respect to attendance, afforded additional grounds for her removal. In re Zina Huger, Burlington Cnty. Bd. of Soc. Servs., OAL Dkt. No. CSV 578-13, AGENCY Dkt. No. 2013-1721, 2014 N.J. AGEN LEXIS 69, Initial Decision (February 3, 2014).

An Administrative Law Judge concluded that the Mountainview Youth Correctional Facility (MYCF) acted lawfully in determining that a correction officer (CO) had violated N.J.A.C. 4A:2-2.3(a) in his treatment of an inmate and that the CO was properly removed from his position by reason thereof. A video of the confrontation supported MYCF's claim that the CO, though provoked by the inmate, used force to punish, retaliate against or discipline the inmate and that the CO's action was unlawful because it was not done in defense of an attacking or combative inmate. That is, the inmate never struck the CO nor did the inmate make any aggressive moves toward the CO and in fact appeared to be following the CO's orders when the CO assaulted him. Moreover, the CO failed to exhaust all reasonable means before resorting to the use of force. Such conduct constituted unbecoming conduct within the meaning of N.J.A.C. 4A:2-2.3(a)6 and afforded grounds for a finding of sufficient cause within the meaning of N.J.A.C. 4A:2-2.3(a)12. Given the evidence, removal of the CO from his position was necessary to maintain the diligence and integrity of the appointing authority staff. In re Francys Fernandez, Mountainview Youth Corr. Facility, OAL Dkt. No. CSR 13860-13, 2014 N.J. AGEN LEXIS 68, Initial Decision (January 30, 2014).

An Administrative Law Judge concluded that a county department of public safety had adequately established that a correction officer (CO)

had engaged in conduct unbecoming an officer within the meaning of N.J.A.C. 4A:2-2.3(a)6 and that other sufficient cause existed for the department's determination that the CO was properly suspended from duty for ten days. The underlying conduct involved the CO's entry into the facility by a sallyport door, which was prohibited, and her subsequent refusal to comply with the order of a superior officer that she re-enter the facility through the Master Control entry as required by facility procedures, to which order the CO responded in an argumentative and disrespectful manner. Such insubordinate conduct adversely affected the morale and efficiency of the department and was properly sanctioned by imposition of a 10-day suspension without pay. In re Dawn Dean, Mercer Cnty. Dep't of Pub. Safety, OAL Dkt. No. CSV 04856-12, AGENCY Dkt. 2012-2912, 2014 N.J. AGEN LEXIS 73, Initial Decision (January 29, 2014).

Officer in a county sheriff's department was properly removed from his position for conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a) after a random drug test revealed the presence of a cocaine metabolite called benzoyl ecgonine in his urine. Even if there was merit to the officer's claim that any such substance was a result of his having ingested an herbal tea called "cocoa tea" which his sister had purchased in Peru, his action in ingesting an unknown substance purchased in a foreign country as an analgesic was inappropriate. In re Michael Rios, Passaic Cnty. Sheriff's Dep't, OAL Dkt. No. CSR 02013-13, (OAL Dkt. No. CSR 10456-12 On Remand), 2014 N.J. AGEN LEXIS 67, Remand Decision (January 24, 2014).

An Administrative Law Judge concluded that although a county housing authority had proven that a housing inspector either failed to perform or neglected his duties and engaged in some conduct unbecoming to a public employee, all of which constituted violations of N.J.A.C. 4A:2-2.3(a), other claimed violations were not proven and the facts and circumstances of the case were such that the penalty of removal imposed by the authority was not in proportion to the violations and/or omissions and that an appropriate penalty was a 90-day suspension. In re Robert Rivera, Passaic Cnty. Dep't of Planning, OAL Dkt. No. CSV 06927-11, AGENCY Ref. No. 2011-2798, 2014 N.J. AGEN LEXIS 74, Initial Decision (January 23, 2014).

An Administrative Law Judge (ALJ) concluded that a township did not establish that a GIS specialist that was employed by the township had engaged in conduct that demonstrated that he was inefficient or incompetent or had neglected to perform his duties within the meaning of N.J.A.C. 4A:2-2.3(a)1 or otherwise had engaged in conduct that was "unbecoming" within the meaning of N.J.A.C. 4A:2-2.3(a)6 when he made certain alterations to the legends on geographical maps that he had created in the course of his duties. Not only were the maps at issue not "government documents" within the meaning of New Jersey law but none of the alterations made by the employee, which were of a type that were frequently made, posed a risk to public safety nor interfered with permitting and approval processes of agencies such as the N.J. Department of Environmental Protection. Because the township failed to establish any violation by the employee, he should not have been removed from his position. In re Robert Sparkes, Twp. of West Milford, OAL Dkt. No. CSV 01333-11, AGENCY Dkt. No. 2011-2974, 2014 N.J. AGEN LEXIS 71, Initial Decision (January 23, 2014).

Administrative law judge ordered the suspension of a corrections officer after concluding that the officer had no justifiable reason for the nature of the force employed against an inmate, thereby engaging in misconduct and neglect of duty under N.J.A.C. 4A:2-2.3(a)6 and (7). While the officer might have perceived that the inmate was uncooperative and resistant as they approached a turn, nothing that was evident from a videotape of the area or from the officer's testimony supported any need for her to have grabbed the inmate's neck and applied what was, for all intents and purposes, a choke-hold, although not necessarily applying it to the extent, and certainly not for the purpose, that such a hold might be applied in a life and death situation where that extreme use of force might be a necessary element of protection for the officer and others. In re Deitra Sydnor, Camden Cnty. Dept. of Corr., OAL Dkt. Nos. CSV 15873-12 and CSV 939-13, 2014 N.J. AGEN LEXIS 5, Initial Decision (January 2, 2014).

Employee was properly suspended from her position as a Senior Clerk Typist for 60 days on charges of insubordination in violation of N.J.A.C. 4A:2-2.3(a)2; conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6; neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)7; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)11. She exhibited and vocalized an unreasonable and unwarranted level of frustration toward her colleagues in response to a minor social moment, demonstrating hyper-sensitivity in both an auditory and psychological sense to some light-hearted fun between her colleagues. There were no safety concerns in the workplace that would have justified the employee's outburst. In re Ann Pearl, Hudson Cnty. Sheriff's Office, OAL Dkt. No. CSV 16043-12, 2013 N.J. AGEN LEXIS 361, Initial Decision (December 30, 2013).

Off-duty police officers were guilty of conduct unbecoming and neglect pursuant to N.J.A.C. 4A:2-2.3 (1) and (2). They hindered the police investigation of an altercation that occurred inside a bar by leaving the vicinity of the bar without either awaiting the arrival of officers or, at the very least, contacting the Police Department before departing to ascertain if officers were on the way to the bar, or, if truly feeling threatened, immediately contacting the Department once they had departed their parking location. In re Michael Biazzo, Douglas Foster, William Hertline, III, Michael Hutnan, Vito Moles, and Michael Killion, Pennsauken Twp., Dep't. of Public Safety, OAL DKT. NOS. CSV 14645-12, 14649-12, 14651-12, 14654-12, 14657-12 and 14658-12, 2013 N.J. AGEN LEXIS 362, Initial Decision (December 27, 2013).

Civil Service Commission modified the removal of a Recreation Leader (employee) from a 30-day working day suspension as recommended by the administrative law judge to a 60-day working day suspension. Regardless of the employee's prior disciplinary record, the charges that were upheld were serious. He acknowledged that he had not received approval from a supervisor prior to his taking leave in violation of N.J.A.C. 4A:2-2.3(a)4, and he failed to provide an adequate reason for failing to perform his duties in training an employee as instructed. In re Wendell Ball, City of Orange Twp., OAL Dkt. No. CSV 09124-13, 2013 N.J. CSC LEXIS 1149, Final Decision (December 18, 2013).

Civil Service Commission adopted the recommendation of an administrative law judge (ALJ) that an appointing authority failed to sustain its burden of proof with regard to charges of other sufficient cause, unauthorized use of force pursuant to N.J.A.C. 4A:2-2.3(a)11 and conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6 filed against a County Correction Officer. The officer was justified in his use of force because an inmate was acting in a violent manner and had to be subdued. However, the Commission did not agree with the ALJ's determination that the officer did not file a use-of-force report and reversed the removal. Because the charges were dismissed, the officer was entitled to mitigated back pay, benefits, seniority, and reasonable counsel feels pursuant to N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Joseph Graffagnino, Middlesex Cnty., OAL Dkt. No. CSR 9216-13, 2013 N.J. CSC LEXIS 1147, Final Decision (December 18, 2013).

A county employee who failed a drug test and thereafter failed to follow the prescribed rehabilitation program to the satisfaction of the county's substance abuse professional was properly removed from his position performing functions related to the operation of commercial motor vehicles and requiring him to hold a commercial drivers' license on findings that he was guilty of excessive absenteeism and conduct unbecoming a public employee per N.J.A.C. 4A:2-2.3(a). Not only did his drug test indicate cocaine usage but his frequent absences evidenced an attitude of indifference amounting to a neglect of duty. Moreover, the employee's conduct was also in violation of applicable federal regulations, which violations also justified termination of his employment. In re Feyko, Ocean Cnty., Dep't of Solid Waste Mgmt., CSC DKT. NO. 2013-617, OAL DKT. NO. CSV 13683-12, 2013 N.J. CSC LEXIS 1077, Final Administrative Action (December 18, 2013).

Action by an appointing authority in removing an employee from her position as a Judiciary Account Clerk, Judiciary was unwarranted because the employer failed to prove that the employee falsified her time reports for January 18, 2012, which was a day on which she was called for jury duty but thereafter released when it was determined that her

service was not needed. While she gave imprecise information to her superior regarding the length of time she spent was at the courthouse after jury duty, which if knowing and willful, could have constituted insubordination or conduct unbecoming within the meaning of N.J.A.C. 4A:2-2.2-2.3, she was not charged as having done so, and the totality of the record showed that the decision to remove her was arbitrary, capricious, and unreasonable as well as not supported by substantial evidence on the record. Moreover, not only was the employee entitled to be reinstated into her position with back pay, benefits and seniority but the appointing authority was also responsible for reasonable counsel fees per N.J.A.C. 4A:2-2.12. In re Wang, Judiciary, Union Vicinage, CSC DKT. NO. 2013-211, OAL DKT. NO. CSV 11707-12, 2013 N.J. CSC LEXIS 1072, Final Administrative Action (December 18, 2013).

A police officer who accessed confidential police records without authorization was properly found, per N.J.A.C. 4A:2-2.3, to have engaged in conduct unbecoming a police officer and/or public employee, to have committed insubordination, and to have conducted personal business while on duty was properly disciplined for those violations. However, the township's action in suspending the officer for ten days was not justified, nor was the recommendation of the Administrative Law Judge (ALJ) that the officer receive an oral reprimand proper because an oral reprimand was not a form of minor discipline specified in N.J.A.C. 4A:2-3.1(a). The Civil Service Commission thereupon modified the suspension to a formal written reprimand. In re Kafton, Jackson Twp. Police Dep't, CSC DKT. NO. 2012-184, OAL DKT. NO. CSV 8824-11, 2013 N.J. CSC LEXIS 1068, Final Administrative Action (December 18, 2013).

Appointing authority was justified in removing a sheriff's officer on charges of insubordination, pursuant to N.J.A.C. 4A:2-2.3(a)2, and other sufficient cause, pursuant to N.J.A.C. 4A:2-2.3(a)12. She willfully flaunted the rules and regulations and disobeyed the orders of her superior officers as they pertained to the wearing of false eyelashes. She was guilty of the violation of "Other Sufficient Cause," as she acknowledged that she took personal leave of absence without proper approval. In re Heather Boehm Cumberland Cnty. Sheriff's Dep't., OAL Dkt. No. CSR 9055-13, 2013 N.J. CSC LEXIS 1044, Final Decision (December 18, 2013).

Action of appointing authority in removing a police officer on charges of incompetency, inefficiency or failure to perform duties under N.J.A.C. 4A:2-2.3(a)1; conduct unbecoming an employee under N.J.A.C. 4A:2-2.3(a)6; and neglect of duty under N.J.A.C. 4A:2-2.3(a)7, was justified. The officer was aware that a passenger in the car she was driving either engaged in the use of drugs or had in his possession illegal drugs. Despite this knowledge she failed to take proper action against this individual. In re Tishona Chaplin City of Newark Police Dep't., OAL Dkt. No. CSR 16652-12, 2013 N.J. CSC LEXIS 1010, Final Decision (December 18, 2013).

An Administrative Law Judge concluded that there was no valid basis for a claim that a correction officer assigned to a juvenile facility was properly disciplined for having been "insubordinate" within the meaning of N.J.A.C. 4A:2-2.3(a)2 and/or N.J.A.C. 4A:2-2.3(a)11 or that her conduct with respect to the making of a requested report otherwise subjected her to discipline for cause because the superior who had requested the report was not even sure that the officer had heard him request it and acknowledged that one might reasonably believe that he in fact had not actually given the officer an "order." In re Tahisha Collins, Juvenile Justice Comm'n, Dep't of Law & Pub. Safety, OAL Dkt. Nos. CSR 6024-13 and CSV 6485-13 (consolidated), AGENCY Dkt. No. 2013-2729, 2013 N.J. AGEN LEXIS 348, Initial Decision (December 18, 2013).

Administrative law judge recommended that an employee be reinstated to his position as an animal control officer/animal cruelty investigator and that the charges against him be dismissed. The Township did not meet its burden of proving by a preponderance of the credible evidence the charges of inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)3. It was not possible to determine in advance whether the employee would be a credible witness in every case in which he might potentially need to provide testimony because the issue of whether his criminal background could be admitted into evidence must be determined on a case-by-case basis. The Township also did not prove the charge of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6. The employee acted upon the approval of his supervisor to provide a dog from the shelter to a Township employee on a trial basis and then memorialized his action in the daily activity log which he submitted to his supervisor. No subsequent action or discipline from his supervisors occurred. In re James Kielwasser, Twp. of Union Dep't. of Health, OAL Dkt. Nos. CSV 14314-11, CSV 04800-12, 2013 N.J. AGEN LEXIS 333, Initial Decision (December 16, 2013).

Administrative law judge recommended the dismissal of charges against a police captain. The complaint, which alleged incompetency under N.J.A.C. 4A:2-2.3(a)1, insubordination under N.J.A.C. 4A:2-2.3(a)2, conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6, and other sufficient cause under N.J.A.C. 4A:2-2.3(a)12, was frivolously filed by a sergeant to deter his estranged wife from having a consensual relationship with the captain. The case represented a bizarre culmination of events resulting in the misuse of police resources to investigate a private relationship between two consenting adults. In re Scott Seliga, City of Pleasantville, OAL DKT. No. CSR 9410-13, 2013 N.J. AGEN LEXIS 366, Initial Decision (December 11, 2013).

After a police officer clearly violated N.J.A.C. 4A:2-2.3(a)6 and N.J.A.C. 4A:2-2.3(a)12 when he shouted an ethnic slur on the scene of the arrest of an African-American suspect, mitigating circumstances precluded termination as a penalty. The officer's conduct was plainly aberrational and at variance with his work history, and the hearing testimony from the officer's partners produced persuasive and believable testimony that the officer was a competent and caring police officer who engaged the city's citizens politely, with respect, and without bias. In re William Roberts, Camden City Police Dep't., OAL Dkt. No. CSR 4388-13, 2013 N.J. AGEN LEXIS 344, Initial Decision (December 10, 2013).

Administrative law judge recommended the reversal of the termination of an employee by a youth correctional facility for abandonment of position as a result of her absence from work for five consecutive days in violation of N.J.A.C. 4A:2-6.2(c). In the presence of medical evidence of the employee's disability, it was incumbent on the Department of Corrections to document the reasonableness of its determination to deny leave. The denial of the requested leave based solely upon the unavailability of Family and Medical Leave Act time was an unreasonable denial. In re Marcia Davis, Mountainview Juvenile Corr. Facility, Dep't. of Corr., OAL Dkt. No. CSV 12849-13, 2013 N.J. AGEN LEXIS 338, Initial Decision (December 9, 2013).

Employee who was a building maintenance worker at a state hospital was properly removed from his position on findings that his conduct on at least two separate occasions, which included leaving an assigned work area without permission; neglect of duty, loafing or wilful failure to attend to tasks that could result in danger to persons or property; his falsification of official records; his insubordination, intentional disobedience or refusal to accept and comply with a reasonable order, constituted conduct unbecoming a public employee and other sufficient cause within the meaning of N.J.A.C. 4A:2-2.3(a). Given the employee's pervasive and patent lack of respect for his supervisors, his coworkers, and the patients of the hospital, and his ongoing failure and refusal to carry out tasks that were properly assigned to him, the appointing authority properly removed him from his position. In re Jones, Trenton Psychiatric Hosp. Dep't of Human Servs., CSC DKT. NO. 2012-2596, 2012-1590, OAL DKT. NO. CSV 6963-12, 6964-19, 2013 N.J. CSC LEXIS 1201, Final Administrative Action (December 4, 2013).

In determining the proper discipline to be imposed on a police officer for his violation of N.J.A.C. 4A:2-2.3(a)5 based on his municipal court conviction for harassment after he engaged in an unwanted touching and kissing of a 14 year old female neighbor, An Administrative Law Judge (ALJ) properly considered what other discipline had been imposed upon the officer in connection with the events surrounding that conviction. However, on a de novo review of the penalty, the Civil Service Commission rejected the ALJ's recommendation, which had rejected the penalty of removal as imposed by the appointing authority in favor of a six month suspension. Given the facts here, including the officer's disciplinary history and the policy of progressive discipline, the officer was properly removed from his position. In re Gonzalez, City of

Newark, CSC Docket No. 2008-2804, OAL Docket No. CSV 3286-08, 2013 N.J. CSC LEXIS 1191, Final Administrative Action (December 4, 2013).

Ninety day suspension imposed on an electrician at a health care center on findings of incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3, was upheld because the employee had been trained on the mandatory lock out/tag out procedure for hazardous equipment at the center as required by N.J.A.C. 34:6A-34, and improperly restored power through a main breaker while it was being serviced. In re Gordon, Morris Cnty., Dep't of Human Servs., CSC Dkt. No. 2012-2927, 2013 NJ CSC LEXIS 1187, Final Administrative Determination (December 4, 2013).

Correction officer's conduct in continuing to bring his personal cell phone into areas of the facility where possession of a cell phone was prohibited even though he had recently been suspended for similar violations, taken with his untruthful statements that he thought that cell phones were permitted in those areas and his conduct in trying to hide the cell phone when he believed that a supervisor had seen him using it, constituted conduct unbecoming a public employee, neglect of duty, incompetency, inefficiency and failure to perform his duties within the meaning of N.J.A.C. 4A:2-2.3(a). Given those findings and other conduct by the officer, which included spending an inordinate amount of time using the facility's landlines to engage in "small talk" with his wife, the Department's action in removing the officer from his position, which had been upheld by an administrative law judge, was appropriate. In re Chin, Cape May Cnty. Sheriff's Dep't, CSC DKT. NO.,2013-1839, 2013 N.J. CSC LEXIS 1180, Final Decision (December 4, 2013).

An employee was not properly deemed to have resigned her position as a Building Maintenance Worker not in good standing per N.J.A.C. 4A:2-6.2(b). Though the employee was absent from duty for five or more consecutive days without the approval of her supervisor and though the employee had been disciplined in the past for chronic and excessive absenteeism within the meaning of N.J.A.C. 4A:2-2.3(a)4, the employee made an adequate showing that the absences at issue were necessitated by the employee's documented medical condition and that her supervisors were aware of that medical condition and of the employee's inability to work by reason thereof. Moreover, because the appointing authority mailed a leave of absence packet intended to be completed by the employee to the wrong address, the supervisor's insistence that she complete and return the packet to her supervisor within two days of her receipt thereof was unreasonable. Under these facts, the penalty of removal not in good standing based on the employee's inability to submit confirmation of her medical condition and disability time within two days of the appointing authority's request was unwarranted, and the employee was entitled to have her separation from her position recorded as a resignation in good standing. In re Lumford, Hudson Cnty., Dep't of Roads & Public Prop., CSC DKT. NO. 2013-2694, OAL DKT. NO. CSV 05761-13, 2013 N.J. CSC LEXIS 1169, Final Administrative Action (December 4, 2013).

Employee who was serving as a Personnel Assistant 2, Department of Military and Veterans Affairs was properly disciplined per N.J.A.C. 4A:2-2.3(a) for insubordination, conduct unbecoming a public employee and creating a disturbance on state property, all of which violations arose out of a confrontation between the employee and his immediate supervisor which occurred during a meeting in which the supervisor was addressing what she had concluded to be the employee's improper use of time and was advising him that he was required to produce a doctor's note for any absences in accord with N.J.A.C. 4A:6-1.4(d). The record amply supported the supervisor's claim that the employee had conducted himself in an insubordinate and inappropriate manner. That said, given the record here, the sanction of removal was too severe and a 180 day suspension was more appropriate. That finding meant that the employee was entitled to back pay, benefits and related benefits, but no award of counsel fees was appropriate under N.J.A.C. 4A:2-2.12(a) because the Commission had upheld the merits of the charges. In re Serdiuk, Dep't of Military & Veterans Affairs, CSC DKT. NO. 2013-739, OAL DKT. NO. CSV 7323-12, 2013 N.J. CSC LEXIS 1164, Final Administrative Action (December 4, 2013).

Administrative law judge ordered the reversal of the removal of a cottage training technician from employment by the Department of Human Services based upon charges of failure to perform duties, N.J.A.C. 4A:2-2.3(a)1; conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)6; and other sufficient cause, N.J.A.C. 4A:2-2.3(a)12, arising from the technician's alleged abuse of a patient. The testimony of the Department's primary witness, a food service worker, was not credible because that witness, who appeared to have memory issues, made no contemporaneous record or report of the alleged incident and could not specifically remember even the month when it allegedly occurred. In re Jeffrey Lutz, Dep't. of Human Serv., OAL Dkt. No. CSV 00487-13, 2013 N.J. AGEN LEXIS 332, Initial Decision (December 2, 2013).

Police officer failed to establish that he was entitled to interim relief from the action of the appointing authority suspending him as unfit for duty within the meaning of N.J.A.C. 4A:2-2.5(a)1, which suspension was based on the department's charges that the office falsified a police report relating to a burglary of the officer's vehicle in which a semi-automatic handgun was stolen. Specifically, claiming that the officer had falsely stated in that report that he did not know who had stolen the gun when in fact the officer knew that it had been taken by a drug dealer, the department had charged the officer with neglect of duty, incompetence, conduct unbecoming a public employee, and inability to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a). The nature and seriousness of the charges supported the necessity for an immediate suspension. Moreover, the officer did not establish that he had satisfied the criteria for interim relief in N.J.A.C. 4A:2-1.2. In re Johnson, City of Long Branch, CSC Docket No. 2013-1912, 2013 N.J. CSC LEXIS 1155, Decision on Request for Interim Relief (November 26, 2013).

Civil Service Commission concluded, based on an independent review of the record, that a corrections officer had not committed conduct unbecoming a public employee, had not filed a false police report, and had not been negligent in the performance of his duties within the meaning of N.J.A.C. 4A:2-2.3(a)6, 7 and 11. The report that the officer filed was consistent with uncontroverted testimony about the underlying incident. Further, the officer's conduct did not rise to the level of conduct unbecoming a public employee or negligence when the uncontroverted testimony established that: an inmate's cell door had popped open, that the inmate had become aggressive and had charged toward other officers, and that the corrections officer had hit the inmate's head with his fist in an effort to restrain him and protect a fellow officer. In re Reedinger, Middlesex Cnty., Dep't. of Adult Corr., CSC Dkt. No. 2013-3155, 2013 N.J. CSC LEXIS 1146, Decision of the Civil Serv. Comm'n. (November 20, 2013).

The Civil Service Commission (CSC) concluded, based on a de novo review of the record, that suspension of a police officer for 180 days on a charge of chronic or excessive absenteeism was appropriate pursuant to N.J.A.C. 4A:2.2.3(a)4 because there was no definitive evidence of the officer's illness or need for medical care for the 42.75 sick days taken during a calendar year. Although the officer testified that he was hospitalized several times, was seen by a cardiologist, and had suffered a "near heart attack," the administrative law judge properly found the officer's testimony and evidence to be less persuasive than the evidence presented from the cardiologist indicating that the officer did not have significant heart disease and was not incapacitated on all the days he claimed for sick leave. The so-called "45 day rule" set forth in N.J.S.A. 40A:14-147 did not preclude the police department from taking disciplinary action because it was not applicable to proceedings under N.J.A.C. 4A:2.2.3. The CSC further concluded that the 180 day penalty was appropriate based on progressive discipline principles and the officer's record of excessive absenteeism in recent years. In re Dias, City of E. Orange, CSC Dkt. No. 2012-3126, 2013 N.J. CSC LEXIS 1074, Final Admin. Action (November 20, 2013).

Administrative law judge sustained a charge of excess absenteeism against a senior recycling operator under N.J.A.C. 4A:2-2.3(a)4. The record reflected that the employee had been disciplined at least eight times for excessive/chronic absenteeism and had a pattern of no call — no show events in his history. While he testified to the existence of medical conditions that might have given cause to some consideration, no proof or documentation of such was offered at hearing. The charge of conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6

was also sustained. A drug test indicating cocaine use by one who held a commercial driver's license in the course of his work clearly violated the implicit standard of good behavior expected of one employed in service of the public. Edward D. Feyko v. Ocean Cnty. Dep't. of Solid Waste Mgmt., OAL DKT. No. CSV 13683-12, 2013 N.J. AGEN LEXIS 304, Initial Decision (November 18, 2013).

Senior correction officer engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6. Her denial that she allowed an inmate to touch an intimate part of her body and adjust the Velcro straps of her vest was overborne not only by the testimony of another correction officer but by the corroborating statement of the inmate. Although the inmate's statement to an investigator was clearly hearsay, it was admissible under the residuum rule, N.J.A.C. 1:1-15.5, solely for the purpose of corroborating other competent evidence. In re Edwina Washington, East Jersey State Prison, Dep't. of Corr., OAL DKT. NO. CSR 09975-13, 2013 N.J. AGEN LEXIS 299, Initial Decision (November 18, 2013).

Administrative law judge sustained the charges of incompetency, inefficiency or failure to perform duties under N.J.A.C. 4A:2-2.3(a)1, conduct unbecoming an employee under N.J.A.C. 4A:2-2.3(a)6, and neglect of duty under N.J.A.C. 4A:2-2.3(a)7 against a police officer. Credible evidence established that the officer was aware that the individual passenger in the car she was driving either engaged in the use of drugs or had in his possession illegal drugs. Despite this knowledge she failed to take proper action against this individual. The record clearly established that the individual had in his possession at least one marijuana cigarette, the smell of which was without a doubt noticeable to a law enforcement officer. In re Tishona Chaplin, city of Newark Police Dep't., OAL DKT. NO. CSR 16652-12, 2013 N.J. AGEN LEXIS 298, Initial Decision (November 18, 2013).

Administrative law judge affirmed a county's decision terminating a sheriff's officer for insubordination pursuant to N.J.A.C. 4A:2-2.3(a)2 and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)12. She failed to comply with a direct order from her superior to remove her false eyelashes, and she took personal leave of absence without proper approval. Heather Boehm v. Cumberland Cnty., OAL DKT. No. CSR 9055-13, 2013 N.J. AGEN LEXIS 293, Initial Decision (November 12, 2013).

Lieutenant neglected his duty and provided other sufficient cause for discipline arising out of the Elizabeth Police Department's Rules and Regulations and General Orders in violation of N.J.A.C. 4A:2-2.3(a)7 and 12. His failure to report an incident involving an intoxicated off-duty officer who disrupted a roll call with repeated acts of lewd behavior constituted a violation of the "Accountability" section of the Rules of Conduct. However, the failure to report did not violate the "Cooperation" section. Although he exercised poor judgment in not treating the officer's conduct more comprehensively, such fell short of constituting a "deliberate" effort to withhold information. In re Jaime Colon, The City of Elizabeth Police Dep't., OAL DKT. NO. CSV 00894-13, 2013 N.J. AGEN LEXIS 288, Initial Decision (November. 12, 2013).

Civil Service Commission agreed with an administrative law judge's reversal of an appointing authority's removal of a county corrections officer but made that reversal contingent upon the officer's successful completion of a new psychological fitness for duty examination. Although the appointing authority asserted that the officer was evaluated as psychologically unfit for duty and that he failed to submit medical documentation, the officer had no knowledge of the evaluation reports or conclusions and had no opportunity to complete an alcohol treatment program. Thus, it was the appointing authority's unwritten policy that prevented the officer from returning to work and not his violation of N.J.A.C. 4A:2-2.3(a)1, incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)2, insubordination; N.J.A.C. 4A:2-2.3(a)3, inability to perform duties; N.J.A.C. 4A:2-2.3(a)4, excessive absenteeism; N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)7, neglect of duty; N.J.A.C. 4A:2-2.3(a)12, other sufficient cause. In re David Arguello, Hudson Cnty., OAL Dkt. No. CSR 490-13, 2013 N.J. CSC LEXIS 870, Provisional Order (November 8, 2013).

Removal was the appropriate penalty after a police officer engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a) by sleeping in his uniform while working a Jobs-In-Blue assignment. The fact that he fell asleep in a public place, with a potentially exposed weapon, presented a danger to himself and to the public. Even if he suffered from a condition that caused eye irritation, he consciously decided to close his eyes for temporary relief, which might have caused him to fall asleep. In re Lawrence Reynolds, Twp. of Irvington, OAL Dkt. No. CSR 7509-12, 2013 N.J. CSC LEXIS 805, Final Decision (November 8, 2013).

Charges of conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2-3 against a cottage training technician were sustained, and removal of the technician from her position at a state developmental center was found to be justified, because three independent witnesses testified that the technician had been verbally and physically abusive to clients with significant cognitive and physical disabilities. The testimony showed that the technician had sworn at the clients, dumped their food, pulled clients up by their bibs, and hit them. The employee's testimony contesting the charges was unworthy of belief, and she also lied under oath when she claimed that a statement signed by her in connection with the proceeding had been altered. Although the technician had never been disciplined previously, removal was the appropriate remedy, pursuant to N.J.A.C. 11A:1-2k, because the technician did not show the patience and forbearance required in her position, and her abusive behavior would not be tolerated. In re Hinton, Hunterdon Developmental Ctr., Dep't. of Human Servs., CSC Dkt. NO. 2011-4449, 2013 N.J. CSC LEXIS 1082, Final Administrative Action (November 7, 2013).

Finding of an administrative law judge (ALJ) that there was a verbal altercation between a judiciary clerk and a manager and that the clerk's conduct was unbecoming to a public employee within the meaning of N.J.A.C. 4A:2-2.3 was upheld based in part on testimony that established that the clerk was loud, angry, and dismissive with the manager for a brief period after the manager had requested work print outs. However, the 10-day suspension that was imposed by the appointing authority for the incident was excessive under N.J.A.C. 4A:2-2.2 in light of the short duration of the incident, the fact that no profanity was expressed during the incident, and the work requested was otherwise completed in a timely manner. Further the clerk's prior history of discipline had been minimal. A five-day suspension was imposed by the ALJ and was upheld by the Civil Service Commission on appeal because the shorter suspension period more appropriately balanced management's need to maintain proper decorum with the clerk's right to be forewarned of management's expectations. In re Moran, Superior Court of New Jersey, Union Vicinage, CSC Dkt. NO. 2012-3435, 2013 N.J. CSC LEXIS 1075, Final Administrative Action (November 7, 2013).

Action of appointing authority in suspending an employee from her position as an institutional attendant for incompetency and failing to perform duties related to resident care under N.J.A.C. 4A:2-2.3(a)1 was justified. According to her own testimony, the employee understood her job and the priorities each duty entailed, and credible witnesses testified that that she failed to answer call bells, diaper residents in a timely manner, and ensure patient safety by lowering their beds to the lowest position. The 60-day suspension was appropriate because the employee had previously received a 30-day suspension for similar acts of inefficiency, incompetency, and violation of policies and procedures. In re Catherine Kalipetis-Stone Cape May Cnty., Crest Haven Nursing and Rehab. Ctr., OAL DKT. NO. CSV 50-13, 2013 N.J. CSC LEXIS 1016, Final Decision (November 7, 2013).

Employee was properly removed from her position as a senior payroll clerk when she engaged in conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6. She failed to report significant income from a second job and child support income when she applied for benefits under the Disaster Food Stamp Program. In re Michelle Moran Cumberland Cnty. Bd. of Social Serv., OAL DKT. No. CSV 3492-13, 2013 N.J. CSC LEXIS 1013, Final Decision (November 7, 2013).

Action of appointing authority in removing a police officer was justified. She was guilty of neglect of duty under N.J.A.C. 4A:2-2.3(7)

when she remained out of work on a long-term sick leave despite the fact that she did not have a disabling heart condition and she failed to meet her obligation not to have contact with known criminals. She also engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6 when she knowingly associated with known criminals. In re D'Shashowna Boykins, City of Newark Police Dep't., OAL Dkt. No. CSR 15307-12, 2013 N.J. CSC LEXIS 997, Final Decision (November 7, 2013).

Correction officer's driving while intoxicated, attempt to intimidate a police officer, and attempt to use the fact that he was a correction officer to evade being arrested evinced neglect of duty, was conduct unbecoming an officer, and other sufficient cause under N.J.A.C. 4A:2-2.3. However, because there was no willful disregard of instructions or act of disobedience, by the correction officer to a proper county authority, the administrative law judge declined to sustain the charge of insubordination. In re Marco Seminario, Hudson Cnty. Corr. Dep't., OAL DKT. No. CSR 10224-13, 2013 N.J. AGEN LEXIS 292, Initial Decision (Nov. 6, 2013).

When a personal assistant refused to obey the director of human resources to remain in a conference room and continue their meeting and when, after returning to the room, he spoke in a tone that was above conversational level, that behavior constituted insubordination and conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)2. In re Paul Serduik, Dep't. of Military and Veterans Affairs, OAL DKT. No. CSV 7323-12, 2013 N.J. AGEN LEXIS 294, Initial Decision (Oct. 30, 2013).

Recreation leader's failure to follow a directive to train a temporary employee, claiming that training was not his job, was insubordination pursuant to N.J.A.C. 4A:2-2.3. In addition, the City proved the charge of chronic or excessive absenteeism. Although he submitted leave-request forms to a co-worker and did not receive a denial or acceptance, he should have been familiar with the vacation leave policy requiring approval from a supervisor. Slamming a deputy director's office door and talking about the administration in the hallway and outside was not conduct unbecoming a public employee when the City offered no proof as to what, if anything, the recreation leader said. I re Wendell N. Ball, City of Orange Twp., Dep't. of Community Servs., OAL DKT. No. CSV 09124-13, 2013 N.J. AGEN LEXIS 285, Initial Decision (Oct. 30, 2013).

Police officer was insubordinate and conducted himself in an unbecoming manner under N.J.A.C. 4A:2-2.3(a) when he failed to follow an order in the timing that he was directed and when he demonstrated frustration at the chief of police and ultimately laughed at him. In re Benjamin Ortega, Twp. of North Bergen, OAL DKT. No. CSR 8216-12, 2013 N.J. AGEN LEXIS 302, Initial Decision (Oct. 24, 2013).

Civil Service Commission adopted an administrative law judge's (ALJ's) recommendation that increased a custodial worker's working day suspension on charges of chronic or excessive absenteeism or lateness, neglect of duty, and other sufficient cause under N.J.A.C. 4A:2-2.3. There was no evidence that the ALJ inappropriately considered charges that were dismissed at the departmental hearing. Even if the charges regarding his actual days absent were not considered, the other sustained charges warranted the increase in penalty based on the scope of his lateness and his prior disciplinary record. In re Barry Ashford, OAL Dkt. No. CSV 02884-13, 2013 N.J. CSC LEXIS 987, Final Decision (October 16, 2013).

Action of appointing authority in removing a Senior Correction Officer from her position was justified after she engaged in an unduly familiar relationship with a known inmate in violation of N.J.A.C. 4A:2-2.3(a)6. The depth of their conversations during two phone calls, the level of familiarity, and the topics discussed showed a romantic, closely personal relationship between the officer and the inmate. In re Venus Naylor, Adult Diagnostic and Treatment Ctr., Dep't. of Corr., OAL Dkt. No. CSR 06023-13, 2013 N.J. CSC LEXIS 740, Final Decision (October 16, 2013).

An Administrative Law Judge concluded, based on conflicting testimony, that an employee serving as a Judiciary Clerk in fact committed misconduct in relation to his confrontation with his supervisor and that such misconduct was conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6. However, though the penalty proposed by the appointing authority, which was a 10-day suspension without pay, was authorized by law including N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.4, it was unduly harsh given these facts. The Administrative Law Judge thereupon concluded that an unpaid five day suspension was more appropriate and represented a proper response where, as here, proper workplace decorum had not been maintained. In re Moran, Superior Court of New Jersey — Union Vicinage, OAL Dkt. No. CSV 08100-12, Initial Decision (October 4, 2013).

Action of appointing authority in suspending a correction sergeant was justified. The sergeant made verbal and obscene comments to another employee with the purpose or effect of unreasonably interfering with her work performance, and that conduct created an intimidating, hostile, or offensive working environment. This conduct constituted sexual harassment and was conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6. In re Scott Curtis Mountainview Youth Corr. facility, Dep't. of Corr., OAL Dkt. No. CSV 13672-12, 2013 N.J. CSC LEXIS 988, Final Decision (October 2, 2013).

Action of appointing authority in removing an employee from the position of court services supervisor of probation officers was justified. Her behavior and conduct in purposefully and knowingly misrepresenting to her supervisors the time she arrived for work and her whereabouts amounted to insubordination, conduct unbecoming a public employee, and neglect of duty in violation of N.J.A.C. 4A:2-2.3(a). She made multiple material misrepresentations to her superiors and failed to follow policies for reporting absences and reporting late and taking subordinate employees out of the premises. In re Jennifer Boyer Superior Court of New Jersey Essex Vicinage, OAL Dkt. No. CSV 06846-12, 2013 N.J. CSC LEXIS 942, Final Decision (October 2, 2013).

Action of appointing authority in removing an employee from the position of Substance Abuse Evaluator (SAE) was justified. She neglected her duty and acted in an unbecoming manner in violation of N.J.A.C. 4A:2-2.3(a) by giving false testimony and failing to discharge her duties in a competent manner. The preponderance of the undisputed evidence demonstrated that the employee knew that she had not destroyed certain notes, yet gave testimony in a sworn proceeding that those notes had been destroyed. She also gave sworn testimony at a Drug Court appeal hearing that misrepresented her access to the criminal history of a Drug Court applicant. While the employee's record demonstrated that she was a competent SAE prior to this incident, given the gravity of the attendant circumstances, her removal was warranted. In re Tatyana Vaynshteyn, Superior Court of New Jersey, Middlesex Vicinage, OAL Dkt. No. CSV 6850-12, 2013 N.J. CSC LEXIS 929, Final Decision (October 2, 2013).

Civil Service Commission found that an appointing authority's action in removing an employee working as a Police Aide for incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)1 was justified. The administrative law judge (ALJ) found that the employee's sick leave revealed a history of single-day absences for various illnesses and that she was previously disciplined for excessive use of sick time. There was no testimony that the employee's supervisors were provided with medical documentation regarding her absences. Contrary to the opinion of the ALJ, the Commission concluded that removal, not suspension, was the appropriate penalty. In re Karin Haynes, OAL Dkt. No. CSV 4165-11, 2013 N.J. CSC LEXIS 821, Final Decision (October 2, 2013).

An Administrative Law Judge concluded that a transportation operations manager who was responsible for certain functions in a county transportation department was properly removed from her position for conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a) on findings that the manager had failed to timely address the department's disregard of county call-out policy despite have been directed to do so; tacitly assented to a widespread "sick-out" of union members and, by giving deceptive answers to her supervisors in the early stages of an investigation into that "sick-out," in fact participated in a cover-up of the occurrence; behaved improperly in

suspension hearings involving union members who had participated in the "sick-out;" and otherwise acted in a wholly inappropriate manner in connection with the "sick-out" and its aftermath, including by using vulgar and similarly inappropriate language in the workplace. That conduct constituted unbecoming conduct and neglect of duty and afforded sufficient cause for the manager's removal. In re Meroni, Monmouth Cty. Dep't of Transp., OAL Dkt. No. CSV 14124-11, Initial Decision (October 1, 2013).

An Administrative Law Judge found no merit to an appeal filed by an employee who had been removed from her position as a caregiver at a county facility that provided residential care to individuals with significant cognitive and physical disabilities in which the employee challenged her removal from that position. The evidence established that the employee was verbally abusive to the residents, used derogatory language like "retards" when interacting with them, yelled at them to eat faster and dumped their food if they did not comply, physically abused them by striking them with her fist or a hair brush, and engaged in other wholly inappropriate and abusive conduct. Not only was the employee's testimony contesting the charges unworthy of belief but she also lied under oath when she claimed that a statement signed by her in connection with the proceeding had been altered. Such behavior was conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 for which removal was a proper sanction. In re Sandra Hinton, Hunterdon County Developmental Center, OAL Dkt. No. CSV 6292-11, 2013 N.J. AGEN LEXIS 254, Initial Decision (September 30, 2013).

An Administrative Law Judge concluded, on conflicting testimony, that the weight of the evidence was that an employee who had been removed from her position as a senior cottage training technician at a county facility providing residential care to individuals with significant cognitive and physical disabilities had not neglected her duties as a one-to-one supervisor of a disabled resident by reason of the fact that the employee could not intervene to prevent that resident from ingesting a piece of meat that another resident had dropped on the floor. To the contrary, the employee did all she could to assist in caring for the resident after the food became lodged in the resident's throat. Moreover, though the appointing authority claimed that the employee was properly removed from her position for violating various rules and regulations, for interfering with the post-incident investigation and for conduct unbecoming a public employee per N.J.A.C. 4A:2-2.3, the appointing authority failed to disclose, offer, or present an example of any allegedly unbecoming conduct. That being so, the order removing the employee was properly reversed and the employee was entitled to back pay, benefits, seniority and attorney fees. In re Marguerite Verne Cheramy, North Jersey Developmental Center, OAL Dkt. No. CSV 16364-12, Initial Decision (September 26, 2013).

An Administrative Law Judge concluded that a police officer was properly removed from her position by the appointing authority on grounds, inter alia, that she had engaged in conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 when she developed and maintained personal friendships with two individuals who had criminal records involving possession and distribution of heroin, cocaine and marijuana. Even if the officer did not know of their criminal records at the commencement of the relationship, the evidence was undisputed that she continued in the relationship, even to the extent of giving them a signed FOP card, after learning about their criminal records. Moreover, the evidence supported the department's claim that the officer had repeatedly abused her sick leave, conduct which constituted neglect of duty and other sufficient cause for removal from employment. In re D'Shashowna Boykins, City Of Newark, OAL Dkt No. CSR 15307-12, 2013 N.J. AGEN LEXIS 261, Initial Decision (September 25, 2013).

An Administrative Law Judge concluded that N.J.A.C. 4A:2-2.3 afforded grounds for the action of a police department in suspending a police officer for 180 days for chronic or excessive absenteeism based on a record showing that he had used 42.75 sick days in 2010, which was more than twice the 20-day allowance. The officer had utilized sick leave beginning August 1 and returned to work on or about September 13. However, the officer's file indicated that he was seen by a doctor on August 6 and was cleared to return to work immediately notwithstanding the officer's claim that he was experiencing heart palpitations, and the officer never provided any documentation such as a doctor's note to justify his claim to have been medically unable to return to work. In re Dias, City of East Orange Police Dep't, OAL Dkt. No. CSV 07078-12, 2013 N.J. AGEN LEXIS 257, Initial Decision (September 23, 2013).

An Administrative Law Judge (ALJ) concluded that a township police department had properly terminated the employment of a uniformed police officer who had fallen asleep while providing security services to a fast food restaurant participating in the Job in Blue program. The officer acknowledged that he was wearing his uniform at the time and that he had fallen asleep in a public place but claimed that it was because he had closed his eyes to obtain relief from an ocular ailment known as "dry eye syndrome." Even if the officer was suffering from this ailment, his conduct constituted a failure to perform duties, a neglect of duty, and conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a). Given the officer's extensive disciplinary record, removal of the officer from his position was warranted. In re Reynolds, Twp. of Irvington, OAL Dkt. No. CSR 07509-12, 2013 N.J. AGEN LEXIS 250, Initial Decision (September 19, 2013).

A human services assistant employed at a state psychiatric hospital was properly removed from his position by the appointing authority on its determination that he was guilty of conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 and "other sufficient cause" within the meaning of N.J.A.C. 4A:2-2.3(a)11, the latter being his violation of administrative rules prohibiting physical or mental abuse of a patient and/or inappropriate physical contact or mistreatment of a patient. Though the administrative law judge had concluded that the assistant was guilty of unbecoming conduct, had dismissed the claim of "other sufficient cause" and had recommended a reduction in the penalty from removal to a 6 month suspension, the Civil Service Commission concluded that the assistant in fact was subject to removal on both grounds cited by the appointing authority because a video of the confrontation showed the assistant physically and mentally abusing and mistreating the patient by displaying intimidating gestures such as throwing his coat and keys on the floor and approaching the patient in a threatening manner, thereby provoking a physical altercation. Because such conduct was clearly improper, the appointing authority was entitled to remove the assistant from his employment. In re Theoway, Dep't of Human Servs., CSC Docket No. 2013-1248, OAL Docket No. CSV 53-13, 2013 N.J. CSC LEXIS 864, Final Decision (September 18, 2013).

The Civil Service Commission affirmed the action of an appointing authority in imposing a 10 working day suspension upon a correction department lieutenant for "other sufficient cause" within the meaning of N.J.A.C. 4A:2-2.3(a)12. That discipline had been imposed on account of the lieutenant's conduct in either failing to undertake the required inventory of facility keys or by conducting an inadequate inventory that failed to reveal that keys in fact were missing. By reason thereof, numerous locks had to be replaced. The nature of her carelessness was such that the safety and security of inmates and staff was compromised. Given the seriousness of the misconduct, imposition of a ten-day suspension was authorized by N.J.A.C. 4A:2-2.2. In re Sherry Leaks. Mid-State Correctional Facility, Department of Corrections, CSC DKT. NO. 2013-2419, OAL DKT. NO. CSV 03913-13, 2013 N.J. CSC LEXIS 844, Final Administrative Decision (September 18, 2013).

The Civil Service Commission affirmed the action of an appointing authority in removing a female employee from her position as a data entry operator at a county correction center for misconduct including neglect of duty and conduct unbecoming a public employee. That removal had been effected in part in reliance on the testimony of several other employees of the center to the effect that the female had hugged, kissed and bit the neck of a male correction officer who not only did not consent to the conduct but in fact was embarrassed and distressed by it. Such testimony had been found to have been credible and consistent and to have established grounds sufficient under N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3 for the female employee to be removed from her employment for misconduct. In re Naomi Rivera, Hudson County Department of Corrections, CSC DKT. NO. 2013-2374, OAL DKT. NO. CSV 04359-13, 2013 N.J. CSC LEXIS 842, Final Administrative Decision (September 18, 2013).

Appointing authority for a county juvenile detention center acted lawfully in removing a juvenile detention officer from employment at the center after the Director of the Juvenile Justice Commission Basic Officer Training Academy expelled him from the Academy as required by N.J.A.C. 13:1-7.2(a) after the officer tested positive for drug use, considered to be misconduct within the meaning of N.J.A.C. 4A:2-2.3(a). Because completion of the Academy program was a prerequisite to permanent status in the position held by the officer, any dismissal from the Academy foreclosed the officer from continuing in his position, for which completion of the Academy training program was a prerequisite. Any claim by the officer that the drug test had been improperly administered had to be asserted in a proceeding before the Police Training Commission, not the Civil Service Commission, and such a claim could not be considered by or afford grounds for relief in this proceeding. In re Brandon Tolbert, Burlington Cnty. Juvenile Det. Ctr., OAL Dkt. No. CSV 5673-2011, 2013 N.J. AGEN LEXIS 246, Initial Decision (September 16, 2013).

A videotape depicting the conduct of a human services technician (HST) provided compelling grounds supporting the action of a state psychiatric hospital in removing the HST from her employment because it substantiated the hospital's claim that the HST had mentally and physically abused the patient by, inter alia, taunting the patient, who was complaining that she was hungry, by throwing food away in front of her and by entering the patient's room and having physical contact with her, both of which acts were contrary to applicable procedures. The HST's conduct was "unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 and provided sufficient cause for termination of the HST's employment. In re Esther S. Peters, Dep't of Human Servs., Trenton Psychiatric Hosp., OAL Dkt. No. CSV 1745-11, 2013 N.J. AGEN LEXIS 242, Initial Decision (September 16, 2013).

Department of Corrections properly removed a corrections officer from her position after finding that the officer engaged in an unduly familiar relationship with an inmate in violation of N.J.A.C. 4A:2-2.3(a)6. The depth of reviewed phone conversations, the level of familiarity, and the topics discussed showed a romantic, closely personal relationship between the inmate and the officer, which created a major security risk within the New Jersey State Prison system. In re Venus Naylor, Adult Diagnostic and Treatment Center, OAL Dkt. No. CSR 06023-13, 2013 N.J. AGEN LEXIS 237, Initial Decision (September 5, 2013).

The Civil Service Commission approved an initial decision by an Administrative Law Judge that a township was justified in removing an employee, who held the position of Truck Driver for the township, from his position on the ground that he no longer held either a personal driver's license or a Commercial Driver's License (CDL). Both licenses had been suspended as a result of the employee's having pleaded guilty to a DWI offense in connection with his having been involved in a motor vehicle accident. The position that the employee held required him to hold a valid driver's license and CDL, and the suspension of both licenses meant that the employee was unable to fulfill the job specifications of a truck driver for the township. Because incompetence, inefficiency or failure to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a)1 resulted where, as here, an employee is unable to adequately perform, removal from the position held by the employee was proper. In re Williams, Twp. of Sparta, Dep't of Pub. Works, CSC DKT. NO. 2012-3093, OAL DKT. NO. CSV 06178-12, 2013 N.J. CSC LEXIS 945, Final Administrative Determination (September 4, 2013).

The Civil Service Commission concluded, based on an independent review of the record, that the conduct of a corrections officer in fraternizing with an inmate and in providing false statements relative thereto during a related investigation was "conduct unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 because it clearly violated the policy of the Department of Corrections, which policy recognized that such a prohibition was crucial to maintaining the safety and security of the prison system. Given the officer's prior disciplinary record and the institution's grave concern that the officer's conduct had made it possible for contraband to be introduced into the facility, major discipline including removal, as authorized by N.J.A.C. 4A:2-2.2, was appropriately imposed by the DOC. In re Lewis, CSC Docket No. 2013-1252, OAL Docket No. CSR 346-13, 2013 N.J. CSC LEXIS 879, Final Administrative Action (September 4, 2013).

The Civil Service Commission concluded, based on an independent review of the record, that conduct on the part of an employee of the Human Resources office in a facility managed by the Department of Corrections (DOC) in falling asleep while on duty and in failing to assist another member of the staff on a matter within the scope of the employee's responsibility constituted neglect of duty within the meaning of departmental regulations and constituted "other sufficient cause" for discipline within the meaning of N.J.A.C. 4A:2-2.3(a)12. Because the employee had been disciplined five times in the preceding five years and had been suspended before for sleeping on duty, the DOC was within its rights to impose a 45-day suspension. In re Arrington, Dep't of Corr., CSC DKT. NO. 2013-2166, OAL DKT. NO. CSV 02768-130, 2013 N.J. CSC LEXIS 837, Final Administrative Action (September 4, 2013).

Determination by an Administrative Law Judge (ALJ) that an employee's behavior in a confrontation with her supervisor after the employee's request for compensatory time was rejected was insubordinate and constituted conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3 was approved by the Civil Service Commission. As the exchange between the employee and the supervisor became heated, the employee ignored the supervisor's request to keep her voice down, accused the supervisor of denying the request for compensatory time due to the employee's race, alluded to confidential information about the supervisor's son that the employee had by reason of her position as a medical records clerk, and used inappropriate language. Based on the record, the Commission concluded that the action of the appointing authority in suspending the employee for ten working days was in accord with N.J.A.C. 4A:2-2.2 and approved the same. In re Sharpe, Newark Sch. Dist., CSC DKT. NO. 2012-2930, OAL DKT. NO. CSV 05147-12, 2013 N.J. CSC LEXIS 823, Final Administrative Action (September 4, 2013).

The Civil Service Commission approved of an initial decision by an Administrative Law Judge (ALJ) that a county, as the appointing authority for an employee who was a Senior Carpenter in the Department of Public Works and Engineering, had established that the employee was guilty of incompetency, inefficiency or failure to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a)1 as well as conduct that was "unbecoming a public employee" within the meaning of N.J.A.C. 4A:2-2.3(a)6 as a result of his having fallen asleep in his county-owned vehicle when it was parked in a public parking lot. However, given the employee's decent employment and disciplinary record, the 90 day suspension recommended by the ALJ was too severe and it was properly reduced to a 45-day suspension. While the employee thus was entitled to recover 45 calendar days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10, the employee was not entitled to counsel fees because N.J.A.C. 4A:2-2.12(a) provided for such an award only where an employee prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action, and the primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. In re Pedulla, Monmouth Cnty., CSC Docket No. 2011-5039, OAL Docket No. CSV 9154-11, 2013 N.J. CSC LEXIS 820, Final Administrative Determination (September 4, 2013).

It was proper to consider, in determining the proper discipline to be imposed on a police officer for his violation of N.J.A.C. 4A:2-2.3(a)5 based on his municipal court conviction for harassment after he engaged in an unwanted touching and kissing of a 14 year old female neighbor, what other discipline had been imposed upon him in connection with the events surrounding that conviction. Here, because the police officer had already been suspended for six months on account of certain related conduct involving the minor neighbor's father, that suspension was properly taken into consideration in a determination of the proper discipline, and an additional six-month suspension was recommended by an administrative law judge. In re Eddie Gonzalez, City of Newark, OAL Dkt. No. CSV 03286-08, 2013 N.J. AGEN LEXIS 219, Initial Decision (August 22, 2013).

Initial decision by an administrative law judge (ALJ) that the action of the Department of Public Works in removing a custodian worker who

was assigned to a township high school from his position on a determination that he had engaged in conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 was affirmed by the Civil Service Commission. The record established that the worker was insubordinate and conducted himself in a manner that was unbecoming of a public employee when he stated that he would kill someone if he did not obtain the shift that he desired. Uttering the words "I am going to kill someone" is totally unacceptable in a professional environment and is reasonably likely to invoke fear in those who hear the comments. Moreover, the penalty of removal was appropriate given the gravity of the worker's comments. Given the prevalence and tragedy of workplace violence incidents throughout the world, it is axiomatic that such a threat uttered in an educational environment cannot be tolerated. Absent any evidence to mitigate the impact, meaning or focus of the comment, it was sufficiently egregious to warrant the most extreme discipline, which was removal from his position. Moreover, although it was not relied upon by the ALJ, the Commission also concluded that the record evidence established the separate offense of sleeping on duty. In re Singer, Twp. of Woodbridge, Dep't of Public Works, CSC DKT. NO. 2013-1631, OAL DKT. NO. CSV 0543-13, 2013 N.J. CSC LEXIS 875, Final Administrative Determination (August 15, 2013).

Determination by an Administrative Law Judge that the Department of Transportation had acted lawfully in removing an Emergency Service Patrol Operator from his position on a charge that his use of an agency-issued fuel card to obtain 370.2 gallons of gasoline for unauthorized purposes had been proven and constituted "other sufficient cause" for his dismissal within the meaning of N.J.A.C. 4A:2-2.3(a)12 became the final decision of the Civil Service Commission. Though the record below did not support the conclusion that the operator took gasoline for his own personal use, it did establish that a significant amount of gasoline was pumped using his cards without authorization or documentation. The operator admitted that he used those cards to provide gasoline to other State employees lacking the credentials required to access to the fuel pumps on their own. Though it remained unclear what happened to this gasoline, a significant amount of gasoline pumped using his cards remained unaccounted for and he was in no position to determine whether those individuals were authorized to utilize the fuel or how they utilized the fuel he provided to them. By providing fuel to other employees without documenting the distribution, the operator's conduct meant that the state was unable to track fuel pump usage or ensure that state resources were utilized properly. As "other sufficient cause" was shown, the imposition of major discipline under N.J.A.C. 4A:2-2.3(a)12 in the form of removal from his position was appropriate. In re Danizik, Dep't of Transp., CSC DKT. NO. 2012-2782, OAL DKT. NO. CSV 04577-12, 2013 N.J. CSC LEXIS 819, Final Administrative Decision (August 15, 2013).

Testimony of several other employees of a county correction center to the effect that a female employed as a data entry operator had hugged, kissed and bit the neck of a male correction officer who not only did not consent to the conduct but in fact was embarrassed and distressed by it was credible and consistent and established grounds sufficient under N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3 for the female employee to be removed from her employment based on misconduct including neglect of duty and conduct unbecoming a public employee. Naomi Rivera v. Hudson Cnty. Dep't of Corr., OAL Dkt. No. CSV 04359-13, Initial Decision (August 2, 2013).

Failure on the part of a senior correction officer (SCO) assigned to New Jersey State Prison to officially report an inmate's unauthorized presence and contact with a non-congregate inmate and the SCO's action in simply admonishing the responsible parties to prevent the inmate from returning to the location fell short of his required responsibility and impeded the prison's law-enforcement objective of addressing security concerns as promptly as possible. However unintentional, the SCO's conduct constituted "failure," "neglect" and "unbecoming conduct" within the scope of N.J.A.C. 4A:2-2.3(a) and justified major discipline, but the administrative law judge, on remand, rejected the sanction of removal proposed by the prison and instead recommended a six-month suspension. In re Wickham, New Jersey State Prison, OAL Dkt. No. CSR 09423-12 (CSR 15572-12 on remand), 2013 N.J. AGEN LEXIS 235, Initial Decision (August 1, 2013).

Determination of an Administrative Law Judge (ALJ) that a police officer was properly disciplined for incompetency, inefficiency, or failure to perform her duties in violation of N.J.A.C. 4A:2-2.3(a)4 as well as chronic inefficiency or incompetency in violation of departmental rules was approved by the Civil Service Commission on findings that chronic or excessive absenteeism was shown by the department. The penalty imposed by the department, which was two consecutive thirty-day suspensions, was also deemed appropriate given the burden that the officer's conduct had placed on the department. The ALJ's recommendation that the penalty be reduced thus was rejected. In re Patricia Kines, City of Newark, CSC Dkt. No. 2012-1355, OAL Docket Nos. CSV 13333-11 and CSV 13989-11, 2013 N.J. CSC LEXIS 507, Final Decision (July 31, 2013).

County's imposition of a 20-day suspension on a correction officer who, contrary to institution rules and policies, had allowed an armed parole officer to enter the secure perimeter of a county correction center was sustained on review by the Civil Service Commission despite the officer's claims that the conduct, while improper, did not rise to the level of conduct unbecoming a public employee nor involve intentional or willful misconduct. The record below supported the Administrative Law Judge's conclusion that the officer had engaged in conduct unbecoming a public employee and that there was other sufficient cause, within the meaning of N.J.A.C. 4A:2-2.3(6) and N.J.A.C. 4A:2-2.3 (11), for the discipline imposed by the county. In re Arthur Ahr, Mercer Cnty., CSC Dkt. No. 2013-446, OAL Dkt. No. CSV 11816-12, 2013 N.J. CSC LEXIS 504, Final Decision (July 31, 2013).

Civil Service Commission found that the removal of a building maintenance worker for other sufficient cause was justified pursuant to N.J.A.C. 4A:2-2.3(12) after he used a laptop computer that he knew was not his. With access to the campus and its facilities as well as access to the areas where students lived, studied, or spent their leisure time, honesty and integrity could not be compromised. In re Robin Bowman, Montclair State Univ., OAL Dkt. No. CSV 01703-12, 2013 N.J. CSC LEXIS 473, Final Decision (July 31, 2013).

Conduct on the part of an employee of the Human Resources office in a facility managed by the Department of Corrections (DOC) in falling asleep while on duty and in failing to assist another member of the staff on a matter within the scope of the employee's responsibility constituted neglect of duty within the meaning of departmental regulations and constituted "other sufficient cause" for discipline within the meaning of N.J.A.C. 4A:2-2.3(a)12. Given her disciplinary history, which included five actions within the prior 5½ years, including a prior suspension for sleeping on duty, the discipline proposed by the DOC, which was a 45-day suspension, was appropriate. In re Cynthia Arrington, Dep't of Corr., OAL Dkt. No. CSV 02768-13, 2013 N.J. AGEN LEXIS 231, Initial Decision (July 29, 2013).

After a truck driver pled guilty to a driving while intoxicated, his personal and commercial driver's licenses (CDL) were suspended for a period of time. Because a those licenses were required to perform the essential duties of a truck driver, an employee was properly terminated due to his lack of a valid driver's license under N.J.A.C. 4A:2-2.3(a)3. As an employee working for the Township of Sparta, the employee had full knowledge that a CDL and a personal driver's license was required by Sparta to work as a Truck Driver for the Township. In re Craig D. Williams, Twp. of Sparta, Dep't. of Public Works, OAL Dkt. No. CSV 06178-12, 2013 N.J. AGEN LEXIS 205, Initial Decision (July 29, 2013).

Charge of conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6 was affirmed and the penalty of removal was upheld after a senior payroll clerk knowingly withheld relevant income information when she applied for benefits within her own office under the Disaster Food Stamp Program. Although she had no other disciplinary actions and was a good employee with ten years of admirable performance, removal was appropriate because her conduct undoubtedly diminished the reputation of the local agency and caused a loss of confidence of management and her co-workers. In re Michelle Moran, Cumberland Cnty. Bd. of Social Services, OAL Dkt. No. CSV 3492-13, 2013 N.J. AGEN LEXIS 209, Initial Decision (July 24, 2013).

Police department's action in terminating the employment of an officer who refused to cooperate in a fitness-for-duty examination, failed to communicate with the department regarding his absences, avoided answering telephone calls made to him or returning messages left for him regarding his absences, failed to answer his door when department personnel came to his home to determine his status, and failed to provide timely medical documentation supporting his claims that he was ill was sustained on findings that the officer's conduct was proven by a preponderance of the evidence and that such conduct constituted sufficient cause to discipline him per N.J.A.C. 4A:2-2.3(a)11. In re John Batiuk, Woodbridge Twp. Police Dep't, CSC Dkt. Nos. 2013-1323 and 2013-1322, OAL Dkt. Nos. CSR 16072-12 and 16073-12 (Consolidated), 2013 N.J. CSC LEXIS 509, Final Decision (July 22, 2013).

Civil Service Commission agreed with administrative law judge's (ALJ's) finding that an employee's action of throwing water on a patient, despite the fact that the employee might have been provoked, was physical abuse and therefore violated N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee. The Commission also found that the ALJ properly modified the penalty to a 180-day suspension after taking into consideration the fact that the employee had no prior disciplinary actions and that the patient was very difficult. In re Clarice Katty, Dep't. of Human Servs., OAL CSV Dkt. No. 16385-12, 2013 N.J. CSC LEXIS 577, Civil Service Comm'n Decision (July 17, 2013).

Showing by a county, as the appointing authority for an employee who was a Senior Carpenter in the Department of Public Works and Engineering, that the employee was asleep in his county-owned vehicle, then parked in a public parking lot, afforded a sufficient basis for the county's charge that the employee was properly suspended without pay for three months because the employee's conduct constituted incompetency, inefficiency or failure to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a)1 as well as conduct that was "unbecoming a public employee" within the meaning of N.J.A.C. 4A:2-2.3(a)6. In re Vincent J. Pedulla, County of Monmouth, OAL Dkt. No. CSV 09154-11, AGENCY Dkt. No. 2011-5039, 2013 N.J. AGEN LEXIS 210, Initial Decision (July 15, 2013).

Youth correctional facility acted unlawfully when it terminated the employment of an individual who worked as a communications operator on the ground that she had abandoned her position within the meaning of N.J.A.C. 4A:2-2.3(a) and thus was deemed to have resigned "not in good standing" within the meaning of N.J.A.C. 4A:2-6.2(c). The undisputed facts established that the employee was suffering from a medical disability and that she had requested time off without pay, not leave under the federal Family and Medical Leave Act (FMLA). Because the employee was not asking for FMLA leave, it was improper for the facility to deny the request on the sole ground that the employee had used up any available FMLA leave. Moreover, given the medical evidence, it was incumbent on the facility to document the reasonableness of its determination to deny leave, and denial of the requested leave based solely upon the unavailability of FMLA time was an unreasonable denial. In re Marcia Davis, Mountainview Juvenile Correction Facility, Department of Corrections, OAL Dkt. No. CSV 07672-12, Agency Dkt. No. 2012-3257, 2013 N.J. AGEN LEXIS 188, Initial Decision (July 2, 2013).

Notwithstanding the specificity of rules that apply to police officers and civilian employees of the Newark Police Department, the conduct of a department communications employee in associating with a known felon, including allowing the felon to live with her in a residence that belonged to her, and failing to completely sever her association with that felon once the seriousness of his conduct was revealed constituted sufficient grounds for a determination that the employee had engaged in "conduct unbecoming" an officer or employee of the department within the meaning of N.J.A.C. 4A:2-2.3(a)6 sufficient to justify termination of her employment. In re Grayson, City of Newark Police Dept, OAL Dkt. No. CSV 07947-12, AGENCY Dkt. No. 2012-3397, 2013 N.J. AGEN LEXIS 189, Initial Decision (July 1, 2013).

Correction officer's conduct in continuing to bring his personal cell phone into areas of the facility where possession of a cell phone was prohibited even though he had recently been suspended for similar violations, taken with his untruthful statements that he thought that cell phones were permitted in those areas and his conduct in trying to hide the cell phone when he believed that a supervisor had seen him using it, constituted conduct unbecoming a public employee, neglect of duty, incompetency, inefficiency and failure to perform his duties within the meaning of N.J.A.C. 4A:2-2.3(a). Given those findings and other conduct by the officer, which included spending an inordinate amount of time using the facility's landlines to engage in "small talk" with his wife, the Department's action in removing the officer from his position was appropriate. In re Christopher Chin, Cape May Cnty. Sheriff's Dep't, OAL Dkt. No. CSR 1209-13, 2013 N.J. AGEN LEXIS 181, Initial Decision (July 1, 2013).

Finding by an administrative law judge that a 20-day suspension imposed on a 17-year employee based on her handling of a particular client who needed a Spanish-speaking interpreter was unreasonable and unwarranted was approved and adopted by the Civil Service Commission. The weight of the evidence did not support the appointing authority's claim, per N.J.A.C. 4A:2-2.3(a), that the employee had failed to perform her duties or that she was insubordinate, engaged in conduct that was unbecoming a public employee, neglected her duties or other violated any application rule or regulation. Moreover, the authority's inability to adduce any evidence on some of the charges brought against the employee supported a finding that the institution of formal disciplinary proceedings was unreasonable, by reason of which the employee was entitled to an award of counsel fees per N.J.A.C. 4A:2-2.12, reinstatement with back pay, seniority and all other affected benefits. In re Sandra Matthews, Essex Cnty., Dep't of Citizen Servs., CSC Dkt. No. 2012-1627, OAL Dkt. No. CSV 15052-11, 2013 N.J. CSC LEXIS 656, Final Decision (June 26, 2013).

Civil Service Commission, while accepting and adopting the findings of fact made by the Administrative Law Judge (ALJ) to the effect that a code enforcement officer was properly charged with incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, and other sufficient cause within the meaning of N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3(a) by reason of conduct that included failure to submit timely inspection reports, failure to report back to work after lunch, refusal to participate in team projects, conduct in threatening to throw a senior officer out a window, and failure to answer a city-issued cell phone during regular work hours. The Commission, however, rejected the ALJ's recommendation that the officer be suspended for four months and instead imposed a six-month suspension, concluding that the lengthier suspension was proper given the officer's disciplinary record, which included ten significant disciplinary infractions in the prior ten years. In re Elmore Gaines, CSC Dkt. No. 2012-2931, OAL Dkt. No. CSV 7694-12, 2013 N.J. CSC LEXIS 592, Final Decision (June 26, 2013).

Corrections officer did not violate agency policies on the use of force in dealing with either of two inmates who were being extracted from their cells by a team including the officer. Nor did the officer commit physical or mental abuse of either inmate or have inappropriate physical contact with either inmate. To the contrary, the evidence showed that both inmates were acting in a continuously violent and aggressive manner towards the extraction team, and that such conduct justified the officer's use of continuous physical force against them. Moreover, as soon as the inmates were subdued and cuffed, the officer immediately ceased using force against the inmates. That being so, the Department of Corrections did not carry its burden to prove that the officer's conduct was either "conduct unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 or that there was other "sufficient cause" for discipline within the meaning of N.J.A.C. 4A:2-2.3(a)12. In re Francis McHale, New Jersey State Prison, Dep't of Corr., CSC Dkt. No. 2013-967, OAL Dkt. No. CSR 14420-12, 2013 N.J. CSC LEXIS 578, Final Decision (June 26, 2013).

Conduct on the part of an employee of a state psychiatric hospital in using a profanity to refer to a patient with whom she had just interacted was "conduct unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6, and it did not matter that the employee did not intend that the patient would hear her refer to him in such a way because the governing provisions did not require a certain quantum of intent. This violation, taken with the employee's overall record and history of transgressions over the prior ten year period, afforded adequate grounds

for the employee's termination. In re Jacqueline Byrd, Trenton Psychiatric Hosp. Dep't of Human Servs., CSC Dkt. No. 2013-1043, OAL Dkt. No. CSV 14922-12, 2013 N.J. CSC LEXIS 576, Final Decision (June 26, 2013).

Court services supervisor who had purposefully and knowingly made multiple material misrepresentations to her supervisors in connection with an inquiry into whether she had failed to report to work at the scheduled time and who had failed to comply with settled procedures for requesting time off thereby neglected her duty as a night report supervisor and was properly removed for conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3. The supervisor was both uncooperative and untruthful and her misrepresentations amounted to a theft of time from her employer. Such offenses cut at the core of what was expected of an officer of the court and a team leader in the judiciary because a probation officer who is willing to misrepresent facts to her supervisor loses all value to the judiciary and renders her ineffective. In re Boyer, Judiciary – the Superior Court of New Jersey – Essex Vicinage, OAL Dkt. No. CSV 06846-12, AGENCY NO. 2012-2937, 2013 N.J. AGEN LEXIS 197, Initial Decision (June 20, 2013).

Officer's failure to be at his residence to receive "sick leave" calls from his employer constituted a violation of department rules and policies justifying imposition of a 30-day suspension. The officer's claim that he was staying at his mother's home due to domestic problems with his wife, who remained at their residence, but that he did not advise the department accordingly because he did not want to discuss his personal life with department personnel afforded insufficient grounds for a finding that he had not violated N.J.A.C. 4A:2-2.3(a)11. In re Purvis Ricks, Burlington Cnty. Jail, OAL Dkt. No. CSV 133-11, AGENCY Dkt. No. 2011-2684, 2013 N.J. AGEN LEXIS 199, Initial Decision (June 17, 2013).

Conduct of a corrections officer in fraternizing with an inmate and in providing false statements relative thereto during a related investigation was "conduct unbecoming" a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6 because it clearly violated the policy of the Department of Corrections, which policy recognized that such a prohibition was crucial to maintaining the safety and security of the prison system. Given the officer's prior disciplinary record and the institution's grave concern that the officer's conduct had made it possible for contraband to be introduced into the facility, major discipline including removal, as authorized by N.J.A.C. 4A:2-2.2, was appropriately imposed. In re Lewis, OAL Dkt. No. CSR 00346-13, 2013 N.J. AGEN LEXIS 159, Initial Decision (June 14, 2013).

Initial decision that affirmed the termination of a probationary firefighter was adopted by the Civil Service Commission. His conviction of a fourth-degree crime involving drugs established that he was in violation of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee. In re Peter Muniz City of Newark Fire Dep't., CSC Dkt. No. 2012-2857, 2013 N.J. CSC LEXIS 590, Final Decision (June 5, 2013).

Worker at a developmental center was properly terminated pursuant to N.J.A.C. 4A:2-2.3(a)6 and N.J.A.C. 4A:2-2.3(a)12. After the worker took a prohibited snack from a resident and the resident hit him, the worker improperly reacted with anger and violence to the challenging behavior of the resident by hitting him with at least one kick, which left a visible red mark. In re Alexander Zoeduah, New Lisbon Devtl. Ctr., OAL Dkt. No. CSV 13766-12, 2013 N.J. AGEN LEXIS 123, Initial Decision (May 28, 2013).

Corrections officer was properly disciplined under N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.3 for conduct unbecoming resulting from an allegation of simple assault against his girlfriend. While the imposed suspension of 132 work days or six calendar months was a significant jump in penalty from the previous five-day suspension for the conduct relating to another attack, it was not so disproportionate to the alleged incident as to warrant a reduction. In re Ah'Kaleem Ford, Hudson Cnty. Dep't. of Corr., OAL Dkt. Nos. CSV 07692-12, CSR 15066-12, 2013 N.J. AGEN LEXIS 99, Initial Decision (May 22, 2013).

A city failed to prove that an employee who worked in its IT office was guilty of any wrongdoing in connection with a security breach that resulted in emails sent by the mayor and other senior officials being provided to unauthorized third parties, the alleged conduct underlying the city's determination that the employee had violated N.J.A.C. 4A:2-2.3(a) by engaging in conduct unbecoming a public employee and by misusing public property. The city presented no actual evidence that the employee was responsible for the email leaks or any writing or recording which corroborated the claim that the employee had confessed to the charged conduct when initially questioned by city personnel. The sole evidence that the employee had confessed was the testimony of the two officials who had questioned them but the lack of any corroboration, including any explanation why the officials did not tape record the interview, afforded grounds for finding that the officials' testimony was unworthy of belief. In re Cummins, City of Hoboken, Dep't of Admin., AGENCY Dkt. Nos. 2012-1458 and 2013-122, OAL Dkt. Nos. CSV 14319-11 and CSV 10784-12; 2013 N.J. CSC LEXIS 941, Initial Decision (May 20, 2013).

The Department of Public Safety was justified in suspending a correction officer (CO) for 15 days based on the CO's conduct in failing to attend certain mandatory training on the basis that the CO had engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6. The CO had been employed since 1989, had previously attended many mandatory training sessions, was well aware of her responsibility to attend the training session at issue here, had a three month period to schedule the training and two months within which to complete it. Moreover, the CO never contacted the appropriate office to reschedule the training. Such conduct could adversely affect the morale or efficiency of the Department; because a prison is a demanding environment and the safety of officers depended on proper training, the CO's failure to attend the mandatory training was unbecoming conduct within the meaning of N.J.A.C. 4A:2-2.3(a)6. In re Sandra Singleton, Mercer Cnty. Dep't of Pub. Safety, CSC DKT. NO. 2012-3536, OAL DKT. NO. CSV 8134-12, 2013 N.J. CSC LEXIS 616, Final Decision (May 16, 2013).

The Department of Corrections was justified in suspending a senior correction officer (SCO) for 60 days based on the SCO's conduct in engaging in a "sit-down" demonstration for the purpose of publicizing her grievances relating to facility management, which grievances apparently related to the aftermath of an inmate's assault on another female officer. As the SCO engaged in the conduct while in uniform and in full view of the inmate population and in a manner that was disruptive of the operations of the facility, it was properly treated as "conduct unbecoming" a public employee in violation of relevant rules and regulations for which discipline was rightly imposed. Moreover, her conduct in refusing several direct orders to stand up and to cease her demonstration constituted insubordination. That being so, discipline for conduct violative of N.J.A.C. 4A:2-2.3(a) was justified. In re Janeen Christian-Taylor, Mountainview Youth Corr. Facility, Dep't of Corr., CSC Dkt. No. 2012-3359, OAL Dkt. No. CSV 7674-12, 2013 N.J. CSC LEXIS 613, Final Decision (May 16, 2013).

When a food service worker at a state psychiatric hospital called a patient a vulgar name after the patient threw food at her, she was properly removed for cause. Although the worker did not intend for the patient to hear the comment, the patient heard it, and it triggered a major disturbance. The worker's use of profanity was a verbal assault under hospital's policy requiring the treatment of patients with respect and dignity and was conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6. In re Jacqueline Byrd, Trenton Psychiatric Hosp., OAL Dkt. No. CSV 14922-12, 2013 N.J. AGEN LEXIS 113, Initial Decision (May 15, 2013).

Police Department failed to prove by a preponderance of the evidence that an officer engaged in conduct unbecoming a public employee, neglect of duty, or other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)6, 7, or 12. Although the Department alleged that the officer, while on duty, witnessed an off-duty police officer assault a citizen, failed to take the appropriate police action, and provided false information about the incident, the administrative law judge found that the officer attempted to pull the parties apart when the conversation became heated but at no time did he witness the off-duty officer strike the citizen or otherwise cause him harm. The tape taken from the security cameras did not show the off-duty officer striking the citizen. In re Brandis Puryear,

City of Irvington Police Dep't., OAL Dkt. No. CSV 11114-12, 2013 N.J. AGEN LEXIS 102, Initial Decision (May 13, 2013).

Code enforcement officer's threatening behavior toward another employee, his admitted refusal to do work assigned to him, and his taking sick leave when given certain assignments fell below the standard of conduct expected from a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6. In re Elmore Gaines, City of Newark, OAL Dkt. No. CSV 07694-12, 2013 N.J. AGEN LEXIS 105, Initial Decision (May 6, 2013).

Filing of an accident report by a county senior maintenance repairman was not conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)6 and workers compensation fraud under N.J.A.C. 4A:2-2.3(a)12. The accident report, although worded poorly, was filed in good faith in accord with the employer's policy and was not falsified. The repairman should have stated that the slipped off the steps of the ladder and banged his knee, but he was in a hurry to get home and did not think that this incident was a significant event at the time he filled out the report. In re John D. Kohler, Cnty. of Cape May, Dep't. of Facilities and Services, OAL Dkt. No. CSV 4754-12, 2013 N.J. AGEN LEXIS 95, Initial Decision (April 23, 2013).

Conduct of a Bayonne Housing Authority employee supported the charge of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6. Based on a video, it was irrefutable that the employee's actions in a community room precipitated the physical altercation that resulted in the employee throwing a senior citizen tenant to the ground, forcefully punching him in the head, dragging him by his leg, and pulling and twisting his leg. In re John McCarthy, Bayonne Housing Authority, OAL Dkt. No. CSV 00540-13, 2013 N.J. AGEN LEXIS 100, Initial Decision (April 19, 2013).

Firefighter was improperly terminated for violating N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee. The City of Asbury Park did not meet its burden of proof under N.J.A.C. 4A:2-1.4 when it failed to prove that the firefighter actually committed an act of domestic violence. The allegation was dismissed by the municipal court judge for lack of prosecution; the firefighter did not admit to the allegation; and the victim did not testify. In Re O'Gara, OAL Dkt. No. CSR 15573-12, 2013 N.J. AGEN LEXIS 76, Initial Decision (April 8, 2013).

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).

Appointing authority's action in removing a senior correction officer for conduct unbecoming a public employee per N.J.A.C. 4A:2-3(a)6 on account of the officer's conduct in exchanging gifts with the family of an inmate was ordered notwithstanding an administrative law judge's determination that the charge was properly dismissed. Such conduct constituted unauthorized contact with the inmate's family and violated the appointing authority's rules against exchanging gifts with the family members of an inmate, both of which created a clear security risk to the prison. Moreover, the officer's conduct in signing another officer's name to a birthday card that accompanied one of the gifts was clearly improper and afforded an additional basis for the appointing authority's determination that the officer was properly removed. In re Dawn Linthicum, CSC Docket No. 2013-429, OAL Docket No. CSR 11195-12, 2013 N.J. CSC LEXIS 95, Final Decision (February 20, 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 interviewed by a superior officer who was investigating the claimed offenses were not substantiated by the evidence. The ALJ found that the lieutenant who took the lead in the investigation manipulated his superiors, colleagues and subordinates so as to manufacture an incident that was overblown and exaggerated and that his testimony on the issue was not credible while, by contrast, the officer's testimony was not only credible but was consistent with the testimony elicited from all of the other witnesses. In re Paiz, OAL Dkt. No. CSV 1738-12, 2013 N.J. AGEN LEXIS 10, Initial Decision (January 16, 2013).

Evidence adduced by a police department to support its claim that a police officer made certain false statements in connection with an incident involving a collision between a tractor trailer and a bridge was insufficient to establish the charge because a video recording that reflected some of the events following the incident did not contain any statements of the type claimed by the department and because the department did not present the dispatcher, a recording of the dispatches, or the lieutenant on whose version of salient events the charges were based. Because the department thus failed to prove by a preponderance of the credible evidence that the officer had engaged in conduct unbecoming a public employee, neglect of duty, or other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)6, 7, or 12, the 30-day suspension imposed by the department was properly reversed and back pay was ordered. In re Caetano, OAL Dkt. No. CSV 13338-11, 2013 N.J. AGEN LEXIS 15, Initial Decision (January 14, 2013).

County correction department had a valid basis for determining that a corrections officer had violated departmental policies and procedures requiring any officer who is unable to report for a scheduled shift due to an emergency to provide documentation thereof upon return to duty, that the officer's violation of that policy and procedure constituted "sufficient cause" under N.J.A.C. 4A:2-2.3(a)11 (since recodified as N.J.A.C. 4A:2-2.3(a)12 effective March 5, 2012) for discipline, and that the seven-day suspension imposed by the department was an appropriate sanction given the facts of this particular incident and the officer's disciplinary history. In re West, OAL Dkt. No. CSV 3236-12, 2013 N.J. AGEN LEXIS 20, Initial Decision (January 10, 2013).

An employee was properly separated from his employment as a youth worker at a residential treatment center for inability to perform duties per N.J.A.C. 4A: 2-2.3(a)3 given that the employee was seeking an additional five months of personal leave on top of a two-month period of leave occasioned by a medical condition. However, on these facts, the penalty of removal as recommended by an Administrative Law Judge was not properly imposed. Rather, the employee instead was properly shown to have resigned in good standing. In re Williams, OAL Dkt. No. CSV 15-10, 2013 N.J. CSC LEXIS 132, Agency Final Action (January 9, 2013).

Conduct by a cottage training technician in forcefully pushing a developmentally disabled adult's head against a wardrobe after the resident disturbed the technician's eyeglasses and poked her in the eye not only constituted "conduct unbecoming a public employee" within the meaning of N.J.A.C. 4A:2-2.3(a)6 but also provided other grounds for removal of the technician because the residents in the facility at which the technician was employed were defenseless and relied on the training, patience and restraint of the staff to care for them in a manner that preserved their dignity. The defenseless nature of the population required facility management to have zero tolerance for any physical abuse of residents. In re Akinola, OAL Dkt. No. CSV 09388-12, 2013 N.J. CSC LEXIS 126, Final Agency Decision (January 9, 2013).

Conduct of an animal shelter employee in informing a coworker who had recently been hired as an emergency temporary employee that he would not be able to retain his position beyond a one-year period because civil service regulations foreclosed such an employee from continuing in that status for more than one year was neither insubordination nor conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a). The employee's conduct in making a truthful statement was neither contrary to any legitimate order of animal shelter management nor did it interfere in the hiring relationship between the shelter and the coworker. In re Thompson, CSC Dkt. No. 2012-3181, 2013 N.J. CSC LEXIS 125, Final Agency Decision (January 9, 2013).

Police sergeant's conduct in failing to properly secure or store evidence, in failing to correct errors made therein by officers under his supervision, in failing to obtain proper prior approval for elective surgery, and in failing to provide medical substantiation as required in connection with his use of sick leave provided sufficient grounds for a finding that he had engaged in conduct unbecoming a public employee and was properly subjected to major discipline per N.J.A.C. 4a:2-2.3(a) in the form of a demotion, a 30-day suspension and a written reprimand. In re Batiuk, CSC Dkt. No. 2012-1652, 2013 N.J. CSC LEXIS 124, Final Agency Decision (January 9, 2013).

Initial Decision (2011 N.J. AGEN LEXIS 482) adopted, which found that a county correction officer engaged in conduct unbecoming of a public employee and neglected her duty when she bailed her girlfriend out of the jail where the officer was employed. The officer's conduct became more egregious when she gave false statements during an internal investigation in order to conceal her actions; while the officer feared losing her job and disclosing her sexual orientation, those excuses were merely self-serving and neither negated nor mitigated the gravity of her conduct. In re Ramos, OAL Dkt. No. CSR 1346-11, 2011 N.J. AGEN LEXIS 674, Final Decision (October 19, 2011).

Sheriff's officer's intent and his fellow employee's state of mind were irrelevant in determining whether the officer's conduct constituted harassment. Even though the complainant failed to appear at the officer's disciplinary hearing, the ALJ properly concluded that a reasonable woman would clearly regard the note as sexual harassment. In re Castillo, OAL Dkt. No. CSR 9396-10, 2011 N.J. CSC LEXIS 759, Final Decision (July 27, 2011).

County correction officer violated the prisoner intake process by not having another officer with him on his second trip to the changing room; there was no relaxation of the process simply because the prisoner was previously searched and the officer had to temporarily leave the room prior to completing the process due to an emergency. However, because the officer was unaware he was in violation of policy and there was no proof that the officer lied about what happened, the imposition of a seven-day suspension was unreasonable and was modified to a four-day suspension. In re Ugrina, OAL Dkt. No. CSV 01480-09, 2011 N.J. CSC LEXIS 872, Final Decision (June 15, 2011).

Assistant district parole supervisor was properly removed where he had offensive items in his office, was heard making inappropriate comments, inappropriately used a State vehicle for personal use, failed to document his mileage correctly, and transported juveniles without another officer. The "45-day rule" did not apply to the supervisor (adopting as modified 2011 N.J. AGEN LEXIS 77). In re Dones, OAL Dkt. No. CSV 697-10 and CSR 9392-10, 2011 N.J. CSC LEXIS 391, Final Decision (April 6, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 30) adopted, which found that, although there was no evidence that a senior correction officer knew of or facilitated a relationship between an inmate and another officer, the officer's negligence in leaving a social worker's office unlocked allowed the inmate to have access to a telephone. Such negligence warranted a six-month suspension. In re Harkcom, OAL Dkt.

No. CSR 7980-10, 2011 N.J. CSC LEXIS 343, Civil Service Comm'n Decision (March 18, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 63) adopted, which found that while a county correction officer's testimony regarding his lack of drug use was credible, the fact remained that he tested positive for oxycodone and did not have a prescription for the drug. He was therefore properly removed. In re Debow, OAL Dkt. No. CSR 9077-10, 2011 N.J. CSC LEXIS 341, Final Decision (March 18, 2011).

County correction officer was properly removed after he failed to report a previous relationship with an inmate and engaged in personal contact and established a personal relationship with her, as an ex-inmate during the time of her parole supervision. Notwithstanding that the parolee was a long-time friend who was attempting to become a productive member of society, the officer's conduct could not be tolerated and was worthy of severe sanction (adopting 2010 N.J. AGEN LEXIS 499). In re Gliottone, OAL Dkt. No. CSR 2406-10, 2011 N.J. CSC LEXIS 9, Final Decision (February 17, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 405) adopted, which found that a senior correction officer was properly removed based on the extensive nature of her relationship with an inmate, the number of telephone calls exchanged with the inmate, the officer's lack of truthfulness with respect to the still-current nature of the relationship, and the officer's prior disciplinary record. Although the officer attempted to make a distinction based on the fact that the inmate was a county inmate and not under the jurisdiction of the Department of Corrections (DOC), the critical determination of the DOC's jurisdiction was the length of sentence, and the inmate, who received a sentence greater than one year, was under the jurisdiction of the DOC without regard to whether he was housed in a county facility or a state prison. In re Johnson, OAL Dkt. No. CSR 03938-10, 2010 N.J. CSC LEXIS 1034, Final Decision (September 21, 2010).

An Administrative Law Judge (ALJ) concluded that a communications officer in a correctional facility had used abusive language and shown disrespect to her sergeant when he modified her assignment so that she could fill a vacancy that had been caused by another officer's absence and that there thus was "sufficient cause" within the meaning of N.J.A.C. 4A:2-2.3(a)12 for discipline in the form of the minimum penalty, which was a five-day suspension. Although she had complained about and used profanity when informed of the change in assignment, the evidence showed that she reported to the new assignment as required and performed the required tasks over the entirety of her shift. In re Lee, South Woods State Prison, OAL Dkt. No. CSV14038-09, AGENCY Dkt. No. 2010-1182, 2010 N.J. AGEN LEXIS 1026, Initial Decision (August 13, 2010).

Initial Decision (2010 N.J. AGEN LEXIS 444) adopted, which found that a senior correction officer was properly removed as a result of an incident occurring at a bar where the officer was charged with stealing a purse, failed to report the charges to his employer in a timely fashion and, when he did file the report, made false statements concerning the events by stating he thought it was his girlfriend's purse. Removal was also appropriate as a result of a separate incident in which the officer allegedly altered a prescription for a controlled dangerous substance. In re Poole, OAL Dkt. No. CSR 6625-09 and CSR 2006-10 (Consolidated), 2010 N.J. CSC LEXIS 927, Final Decision (August 9, 2010).

Initial Decision (2010 N.J. AGEN LEXIS 537) adopted, which found that although a senior correction officer was properly removed for conduct unbecoming after she shoplifted on two occasions, the charge of criminal matters under N.J.A.C. 4A:2-2.7 was dismissed because there was no criminal conviction as of the date of the disciplinary proceedings. N.J.A.C. 4A:2-2.7 involved pre-conviction procedural actions including an indefinite suspension pending the disposition criminal case; the municipal court shoplifting charges were dismissed or downgraded to a municipal ordinance. In re Noseworthy, OAL Dkt. No. CSR 12158-09 and CSR 12159-09 (Consolidated), 2010 N.J. AGEN LEXIS 691, Final Decision (April 28, 2010).

Contrary to an Administrative Law Judge's findings, a senior correction officer subjected the correctional facility and the public to possible harm by bringing a cell phone into a secured facility and her failure to adhere to policy undermined her position, affecting the public's respect for public entities and public employees as a whole; therefore, the officer's conduct was unbecoming and the charge of conduct unbecoming a public employee was sustained (adopting in part and rejecting in part 2010 N.J. AGEN LEXIS 109). In re Griffin, OAL Dkt. No. CSR 6681-09, 2010 N.J. AGEN LEXIS 694, Final Decision (April 28, 2010).

Initial Decision (2010 N.J. AGEN LEXIS 71) adopted, which found that a mechanical equipment specialist was properly disciplined to a 10-day suspension after he failed to follow procedures in bleeding the air out of the radiation system, which caused significant damage. In re Kandic, OAL Dkt. No. CSV 330-08, 2010 N.J. CSC LEXIS 585, Final Decision (March 10, 2010).

Six-month suspension, rather than removal, was appropriate based on a county correction officer's reaction and behavior during a meeting in which he was presented with a preliminary notice of disciplinary action (PNDA) because, although the appointing authority was under no obligation to end the meeting upon the officer's request for counsel and was also under no obligation to provide the officer with prior notice that he would be presented with a PNDA, the officer felt misled by the meeting. He expected simply to be advised of the outcome of a complaint he filed regarding the assignment of overtime and his reaction to being served with a PNDA and having the charges read to him after being advised of the outcome of the investigation, while completely inappropriate, stemmed from his perception that the charges were "repercussions" for filing his complaint. In re Wolff, OAL Dkt. No. CSR 6228-09, 2010 N.J. AGEN LEXIS 693, Civil Service Comm'n Decision (February 24, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1099) adopted, which found that a police officer who was injured in the line of duty and later determined no longer mentally fit for duty should not have been subjected to disciplinary action because there was no evidence that the officer engaged in any behavior that adversely reflected upon the department or reflected negatively on the city. The appropriate remedy was a resignation in good standing. In re Leonard, OAL Dkt. No. CSV 11651-07, 2010 N.J. CSC LEXIS 501, Final Decision (January 27, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1068) adopted, which found that a cottage training technician was disqualified from employment as a matter of law because he was convicted in Pennsylvania of engaging in conduct that constituted simple assault in New Jersey. He pleaded guilty to disorderly conduct, including engaging in fighting and public drunkenness. In re Buscemi, OAL Dkt. No. CSV 04008-09, 2010 N.J. CSC LEXIS 619, Civil Service Comm'n Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1074) adopted, which found that a boiler operator was properly suspended for 10 days after he abandoned his work location and, as a result, there was no heat at City Hall while the temperature outside was 14 degrees, placing inmates, staff, and the building in danger. The operator was also absent without leave on numerous prior dates. In re Thomas, OAL Dkt. No. CSV 9702-09, 2010 N.J. CSC LEXIS 617, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1033) adopted, which found that a police officer was properly suspended for 20 days after the officer and his partner were rude and discourteous when approached by victims of a crime, ignoring them and treating them with indifference and refusing to take a report, and also submitting a false report as to their location. In re Casalinho, OAL Dkt. No. CSV 01890-08, 2009 N.J. CSC LEXIS 1390, Final Decision (December 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 830) adopted, which found that a police officer properly received a 10-day suspension when the officer, while acting in his capacity as a Jersey City police officer, while off duty, wrote a ticket in Bloomfield for a traffic offense that allegedly occurred in West Orange, in which the officer, as the driver in his own personal vehicle, was involved. Following the other vehicle, detaining the driver, and causing a traffic tie-up at the toll booth demonstrated shockingly poor judgment and an abuse of his position as a police

officer. In re Russell, OAL Dkt. No. CSV 03529-05, 2009 N.J. CSC LEXIS 1490, Final Decision (December 2, 2009).

Americans with Disabilities Act did not require any further action by an appointing authority before removing a firefighter from his position following his second drunk-driving arrest. Pursuant to 42 U.S.C.A. § 14114(c)4 the appointing authority was entitled to hold an employee who was an alcoholic to the same qualification standards for job performance and behavior that it held other employees, even if any unsatisfactory performance or behavior was related to the alcoholism of the employee. In re Walden, OAL Dkt. No. CSV 3394-09, 2009 N.J. CSC LEXIS 1559, Final Decision (November 18, 2009).

Firefighter was properly removed following his second drunk driving arrest; the lack of a formal policy for removal did not demonstrate that he was treated in an arbitrary and capricious manner. In re Walden, OAL Dkt. No. CSV 3394-09, 2009 N.J. CSC LEXIS 1559, Final Decision (November 18, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 526) adopted, which found that a correction officer recruit was properly removed after she failed to report to work on her first day of work, claiming to have been overcome by the news that her grandmother or great-grandmother was going to be removed from life support. The officer's testimony was not credible; rather, the sergeant to whom the officer reported gave credible testimony that the officer called and simply declared that she could not accept her assignment at New Jersey State Prison. In re Kinzer, OAL Dkt. No. CSV 930-09, 2009 N.J. CSC LEXIS 1557, Final Decision (November 18, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 717) adopted, which found that a human services technician was properly removed for patient abuse after a fellow worker testified that the technician scuffled with a patient and punched the patient several times, corroborating the patient's allegations. The technician's testimony that she was using a patient restraint technique was not credible. In re Berry, OAL Dkt. No. CSV 935-09, 2009 N.J. CSC LEXIS 1554, Final Decision (November 18, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 544) adopted, which found that two hospital attendants were properly removed after violating the hospital's policies and procedures regarding assaultive patients by failing to retreat from an obviously agitated patient and send for appropriate assistance to deal with the situation. In fact, they voluntarily entered into the patient's room when it was not even necessary and knowing that the patient was agitated, thereby placing themselves in a position of direct physical and psychological conflict with him. In re Okafor, OAL Dkt. No. CSV 1154-09 and CSV 1155-09, 2009 N.J. CSC LEXIS 1548, Final Decision (October 21, 2009).

Senior correction officer should not have received a 45-day suspension where the appointing authority failed to prove that the officer improperly handled and disposed of contraband, failed to secure gates, and failed to conduct tours of his unit. In the absence of evidence to the contrary, the officer's conduct in leaving gates unlocked during periods of inmate movement in and out of the unit was an acceptable practice, and his performing two to three tours during his shift satisfied the requirements set forth in his post orders. In re Smith, OAL Dkt. No. CSV 10108-07, 2009 N.J. CSC LEXIS 1439, Civil Service Comm'n Decision (October 7, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 537) adopted, which found that a 10-day, rather than 30-day, suspension was warranted where a preponderance of the evidence showed that a communications system technician accepted a "dare" or "encouragement" and exposed her breasts to co-workers and then was dishonest about the incident. While the age of the incident, the lack of intent, and the lack of anyone actually being offended by the conduct did not serve as defenses to the charge, those factors were appropriately taken into account in determining the penalty. In re Tomes, OAL Dkt. No. CSV 10082-08, 2009 N.J. CSC LEXIS 289, Final Decision (September 16, 2009).

Where a county correction officer failed to effectively "pat search" an inmate, allowing the inmate to proceed to another floor with a wooden shank hidden in his waist band and thereby placing staff and inmates in mortal danger, serious discipline in the form of a 20 working day suspension was warranted (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 599). In re Dona, OAL Dkt. No. CSV 10782-08, 2009 N.J. CSC LEXIS 286, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 496) adopted, which found that a firefighter was properly removed after he repeatedly violated the motor vehicle laws by driving under the influence of alcohol and failed to report his violations to his employer; a firefighter who drove through public streets in a state of intoxication did not merit the trust and confidence of the community he served and his pattern of conduct reflected badly upon the reputation of the Department for employing someone with so little regard for the safety of the public. In re Alala, OAL Dkt. No. CSV 3399-09, 2009 N.J. AGEN LEXIS 978, Final Decision (August 19, 2009).

Although a correction officer claimed to have been injured on the job and suffering from emotional distress as the result of an inmate's attempted suicide, she was properly disciplined for chronic or excessive absenteeism. The officer exhausted all of her sick days before calling out sick four additional days without following proper procedures despite being well aware of such procedures (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 231). In re Baldwin, OAL Dkt. No. CSV 2838-08, 2009 N.J. CSC LEXIS 405, Final Decision (August 19, 2009), reconsideration denied, OAL Dkt. No. CSV 2010-1124, 2010 N.J. CSC LEXIS 570 (Civil Service Comm'n January 15, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 325) adopted, which found that a city housing inspector was improperly removed after his driver's license had been suspended because, contrary to the appointing authority's contention, a driver's license was not necessary to perform a housing inspector's essential duties where the city was only 1.1 miles long and 3/4 mile wide and could have been traveled by foot, bicycle or otherwise. In re Fleming, OAL Dkt. No. CSV 53-09, 2009 N.J. AGEN LEXIS 989, Civil Service Comm'n Decision (July 22, 2009).

Where the evidence against a correction lieutenant consisted solely of a videotape and reports containing hearsay statements of various witnesses, the appointing authority failed in its burden of proving that the lieutenant mistreated or struck a resident; the video did not clearly reveal what happened and, notwithstanding the appointing authority's argument that the residents who claimed to have seen the incident were consistent with their interviews, their inconsistencies regarding such things as what hand was used to strike the alleged victim and what was said during the altercation were significant enough to undermine the admissibility of those statements (adopting 2009 N.J. AGEN LEXIS 250). In re Parker, OAL Dkt. No. CSV 2994-08, 2009 N.J. AGEN LEXIS 814, Civil Service Comm'n Decision (July 8, 2009).

Police officer's failure to report to his superiors that a threat was made against a fellow officer which may have resulted in harm to the officer and his family was so egregious and intolerable as to warrant the penalty of removal (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 286). In re Collins, OAL Dkt. No. CSV 3776-08 and CSV 5239-08, 2009 N.J. AGEN LEXIS 980, Final Decision (July 8, 2009).

In a disciplinary action against a police officer in which the appointing authority charged the officer with inability to perform duties and violation of departmental rules and regulations regarding mental and physical capability, the record did not evidence a sufficient basis to conclusively discredit the ALJ's determination that a police officer's psychologist was more persuasive than the appointing authority's psychologist (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 286). In re Collins, OAL Dkt. No. CSV 3776-08 and CSV 5239-08, 2009 N.J. AGEN LEXIS 980, Final Decision (July 8, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 320) adopted, which found that an institutional trade instructor was improperly suspended for 10 days upon charges that he failed to properly supervise the preparation of certain dietary foods for distribution to inmates where the delay in transporting the special meals was due, in part, to staffing shortages and prisoner intake demands; there was no evidence of disruption of the food service as a result of the short delay and the instructor was working to get all of the tasks properly completed, going above and beyond his

normal duties. In re Bennett, OAL Dkt. No. CSV 8830-08, 2009 N.J. AGEN LEXIS 1000, Civil Service Comm'n Decision (July 8, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 292) adopted, which found that a supervisor with the city streets department was properly removed after he tested positive for cocaine where there was nothing that exempted a supervisor from being subjected to random drug screening; the supervisor was not only required to hold a commercial driver's license as a condition of his employment, but he also drove commercial motor vehicles in the course of that employment and was, therefore, subject to the random drug testing under the City's Impaired Employee Policy. In re Nazario, OAL Dkt. No. CSV 08815-08, 2009 N.J. AGEN LEXIS 966, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 291) adopted, which found that a former correction officer sergeant was properly suspended for 15 days after she needlessly placed two of her officers in harm's way in order to collect Styrofoam serving trays from an inmate's cell without first handcuffing or restraining the inmate; the sergeant had other means of accomplishing the task other than sending the officers into the cell of an inmate who was known to be aggressive and was on a psychiatric watch. In re Martin, OAL Dkt. No. CSV 6729-08, 2009 N.J. AGEN LEXIS 911, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 291) adopted, which found that a former correction officer sergeant was properly suspended for 20 days after she failed to immediately report an inmate's verbal abuse of a fellow officer and immediately transport the inmate to a pre-hearing detention facility; as a superior officer, she was held to a higher standard and her actions would only have emboldened the other inmates to similarly abuse the other officer or otherwise have served to undermine his authority as the officer running the tier. In re Martin, OAL Dkt. No. CSV 6729-08, 2009 N.J. AGEN LEXIS 911, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 291) adopted, which found that a former correction officer sergeant was properly suspended for 30 days after she accidentally locked two officers under her command in a weapons room; the sergeant should have stayed with the officers until the weapon exchange had been completed and then followed them out of the room to not only ensure that the room was secure, but also that the correct officer had the weapon and that both officers were reporting to their assigned duties. In re Martin, OAL Dkt. No. CSV 6729-08, 2009 N.J. AGEN LEXIS 911, Final Decision (June 24, 2009).

Although the appointing authority failed to show that a cottage training technician physically abused a client, it did demonstrate that the technician had inappropriate physical contact with the client, warranting a 60 working day suspension; even accepting the technician's testimony as credible that he had no intent to harm the client and that he had not been advised what specific prompts to use with the client, the technician's actions were clearly inappropriate where tapping or slapping a client was not taught as an approved physical prompt (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 251). In re Patel, OAL Dkt. No. CSV 10618-08, 2009 N.J. AGEN LEXIS 903, Civil Service Comm'n Decision (June 10, 2009).

Fire officer was improperly disciplined for neglect of duty where the department leave policy as to sick or injured employees was amended such that the officer was not required to notify the appointing authority whenever he left his residence, but was only required to remain in his residence on duty days; however, the officer misused his leave time when he was observed driving despite his physician's restrictions on doing so while being out on paid sick leave, warranting a five-day suspension (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 161). In re Woltmann, OAL Dkt. No. CSV 11286-07, 2009 N.J. AGEN LEXIS 794, Civil Service Comm'n Decision (June 10, 2009).

Failure of the Internal Affairs Unit to supply a police sergeant with an advisement form was a procedural defect cured by a de novo hearing; it was clear that the charges against the sergeant did not stem from his failure to answer questions during an internal affairs investigation, but, rather, they were the result of his misconduct in filing a knowingly false Operations Report with respect to his outside employment that was exacerbated when he gave false testimony at his departmental hearing. In re Eisenhauer, OAL Dkt. No. CSV 5665-98; 5809-99; 9976-00, 2009 N.J. AGEN LEXIS 822, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 164) adopted, which held that a police officer was properly terminated from his conditional appointment after a medical exam determined that he was not medically fit to participate in the PTC Physical Conditioning Training program. In re Cordero, OAL Dkt. No. CSV 11944-08, 2009 N.J. AGEN LEXIS 802, Final Decision (May 13, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a county correction officer was properly suspended for 10 days after the officer was observed at a construction site at his mother-in-law's home while on "no-activity" status and receiving full pay for an on-the-job injury; however, the fact that the officer signed his mother-in-law's building permit as the contractor did not warrant a conclusion that the officer was engaged in outside employment. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a county correction officer should not have been disciplined for failing to appear at Internal Affairs meeting to discuss a matter involving another individual, who was then the subject of an IA investigation; the officer was on unpaid suspension at the time he was summoned and declined to appear because of the pending charges against him and it would have been incongruous to require an officer on unpaid suspension to appear for department business. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a correction officer was properly removed after he revealed both the existence and the nature of an Internal Affairs investigation to a fellow officer; the officer had a duty to "adhere strictly" to the Attorney General Guidelines of not disclosing confidential information and his conduct went to the heart of his ability to be trusted to function appropriately in his position. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Twenty-day suspension was warranted upon a finding that an off-duty police lieutenant pushed and cursed security personnel following an altercation at a concert; contrary to the lieutenant's argument, his position in law enforcement required that he act with dignity, even while off duty (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 119). In re Slack, OAL Dkt. No. CSV 10263-07, 2009 N.J. AGEN LEXIS 901, Civil Service Commission Decision (April 15, 2009).

Police officer's 60-day suspension was appropriate upon a finding that the officer used excessive profanity towards a civilian during an arrest out of frustration or emotion and not for the purpose of compelling cooperation through a "good cop-bad cop" scenario (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 37). In re DeMarzo, OAL Dkt. No. CSV 4930-07, 2009 N.J. AGEN LEXIS 821, Final Decision (March 11, 2009).

ALJ erred in finding that a police officer's failure to timely complete his reports should have been dismissed due to the absence of a written policy where the procedures for completing arrest or investigation reports in a timely fashion were communicated to all officers at roll call; moreover, the absence of a specific rule or procedure regarding the completion of reports did not absolve the officer of his responsibility to complete a basic and necessary duty of a police officer (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 37). In re DeMarzo, OAL Dkt. No. CSV 4930-07, 2009 N.J. AGEN LEXIS 821, Final Decision (March 11, 2009).

Administrative Law Judge did not err in reversing a senior correction officer's removal where the ALJ found, on conflicting evidence, that the

officer acted appropriately and exercised reasonable judgment in using physical force against an inmate. The inmate had acted aggressively towards the officer and, although an investigator testified that he did not believe that the officer was engaged in self-defense upon reviewing the videotape of the incident, the investigator was not present at the time of the incident. In re Cumberlander, OAL Dkt. No. CSV 3710-08 and CSV 704-07 (On Remand), 2009 N.J. AGEN LEXIS 817, Civil Service Comm'n Decision (January 14, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 873) adopted, which concluded that 12-year senior juvenile detention officer used excessive force against a 12-year-old juvenile detainee and was guilty of conduct unbecoming a public employee justifying removal from his position. It was readily apparent from viewing a surveillance video that the officer became angry and intended to enact some type of retribution against the juvenile for hitting him on the nose; the officer knew the floor of the "day room" was concrete yet he dangled the juvenile over it risking serious harm to him if he fell and hit his head, and he knew the juvenile suffered from ADHD and was "excitable" and yet persisted with his conduct that contributed to further agitation and fear. In re Heigler, OAL Dkt. No. CSV 4448-06, 2008 N.J. AGEN LEXIS 1057, Final Decision (December 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 796) adopted, which found that a correction lieutenant was properly removed from his position after testing positive for marijuana; there was no evidence that his urine sample had been tampered with or that the reading was flawed in any way, and the lieutenant's explanations for why the test was positive, including his mother's use of hemp seed oil in her cooking, was mere speculation. In re Glass, OAL Dkt. No. CSV 08807-07, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 613) adopted, which concluded on conflicting testimony that a township police officer was properly removed on charges that he unnecessarily engaged in a physical altercation in a bar, which he instigated, and subsequently engaged in conduct aimed at preventing his identification in the incident, such as shielding his license plate from view, leaving the premises before the authorities arrived, and ignoring a message from a superior officer regarding the incident. Moreover, it could not be ignored that the police officer was a relatively short-term employee, having been employed for approximately four years at the time of the incident. In re Hawkins, OAL Dkt. No. CSV 4469-05, 2008 N.J. AGEN LEXIS 1222, Final Decision (December 3, 2008).

An Administrative Law Judge (ALJ) concluded that a township fire captain was properly suspended for 45 days for having engaged in conduct unbecoming a public employee as defined by N.J.A.C. 4A:2-2.3(a)6 by reason of comments he made to a volunteer firefighter. The captain had told the volunteer that the volunteer was "volunteering himself out of a paid firefighter job by responding to calls at night." Concerned about this and related statements, the volunteer discussed them with a fire commissioner. When the captain discovered that the volunteer had done so, the captain called the volunteer in, berated him, called him a derogatory name, and made veiled threats of retaliation. Because the statements were reasonably understood to be discouraging volunteer response to certain calls and also violated the department's rules, the captain was properly disciplined. In re Lenhardt, Hamilton Twp. Fire Distr. No. 2, OAL DKT. NO. CSV8935-07, AGENCY DKT. NO. 2008-1267-I, 2008 N.J. AGEN LEXIS 1515, Initial Decision (December 1, 2008).

City of Newark failed to satisfy its burden of proof that a police officer neglected his duty or left his post in violation of N.J.A.C. 4A:2-2.3(a)7. There was no competent evidence admitted that the police officer had a duty to request permission to leave at the end of his shift or to await a replacement. He worked his entire shift and followed the orders of those officers who were more senior or more experienced than he. In this particular unit, the officer was untrained and of limited utility to the operations of the unit, as he was serving a light-duty assignment. In re Derrick Dunson, City of Newark, OAL Dkt. No. CSV 05412-08, 2008 N.J. AGEN LEXIS 1506, Initial Decision (November 28, 2008).

There was sufficient evidence to sustain a charge of inefficiency and other sufficient cause under N.J.A.C. 4A:2-2.3(a)1 against emergency medical technicians (EMTs) when they failed to respond to a 911 call involving an unknown medical emergency. A senior EMT contacted the EMTs in accordance with policy. They were clearly the ambulance in a better position to respond since they were mobile. Moreover, one of the EMTs did not clearly and efficiently communicate with senior EMT on the issue of refueling the vehicle. In re Richard Jacobsen, City of Vineland and In re Joseph T. Cain, City of Vineland, OAL Dkt. No. CSV6268-07, OAL Dkt. No. CSV6592-07 (Consolidated), 2008 N.J. AGEN LEXIS 1509, Initial Decision (November 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 842) adopted, which concluded on conflicting testimony that conduct of an employee in forcefully grabbing patient around her neck and walking her down the hallway while striking her on her back was so egregious and unacceptable that the employee should be removed from her position as a human services assistant at a developmental center. In re Dempster, OAL Dkt. No. CSV 2356-08 (CSV 2944-07 On Remand), 2008 N.J. AGEN LEXIS 1211, Final Decision (November 6, 2008).

Correction sergeant at youth correctional facility was properly removed from office on charges that on three occasions, sergeant attended his township's council or board of education meetings while he reported on his timesheet and in the log books that he was at work for the entire shift, and he received compensation for the entire shift. Although the sergeant attempted to justify this egregious and dishonest behavior by suggesting that other employees were "covering for" him, the log books showed that the sergeant was on duty and, in the event of an emergency or unusual incident, superior officers would have had inaccurate information as to who was on duty; moreover, there was no evidence that the sergeant received any supervisory approval for these reciprocal arrangements on the dates in question. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Correction sergeant at youth correctional facility was suspended from office for six months on charges that he was elected to his township's board of education, but he failed to notify his employer of his outside activity, as required by the appointing authority's code of ethics. Despite sergeant's contention that an April 2003 note from him to a personnel officer advised that he had been so elected, the sergeant did not testify as to the authenticity of this document, and there was no evidence presented to demonstrate that the document was actually created in 2003 and submitted to the appointing authority; without such testimony or evidence, this document was essentially meaningless, as it just as likely could have been created by the sergeant immediately in advance of the hearing. Moreover, even if genuine, such brief correspondence, on a one-time basis, did not fulfill the sergeant's obligations under the appointing authority's code of ethics or its policy regarding political activity. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Correction sergeant at youth correctional facility was suspended from office for six months on charges that sergeant during his shift observed an abandoned vehicle in the staff parking area, and he failed to report this observation to the ranking correction lieutenant, the shift commander, or the correction sergeant who relieved him at the end of his shift. Although the sergeant's offense touched upon the security of the facility, and it should have been promptly reported and addressed, in light of his prior minor disciplinary record, a six-month suspension was sufficient. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 797) adopted, which concluded that a 10-day suspension was warranted when a police officer spoke to his captain in a contentious, hostile, and disrespectful manner at an informal meeting; there was nothing in the ground rules for the meeting that would have allowed insubordinate or disrespectful conduct and the manner in which the officer spoke tended to undermine the captain's authority from the perspective of the other officers and generally brought discredit to the department. In re Danoys, OAL Dkt. No. CSV 11121-07, 2008 N.J. AGEN LEXIS 1086, Final Decision (October 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 820) adopted, which concluded that, even if a senior correction officer had time available under the Family and Medical Leave Act, the officer bore the responsibility of informing his supervisor and personnel officer of the reasons for his absence within two days of taking the time; removal was appropriate because there was nothing in the record to indicate that the officer met this obligation and his disciplinary record consisted solely of charges of chronic or excessive absence, demonstrating his failure to recognize the serious risks and effects his behavior caused within the facility. In re Mitchell, OAL Dkt. No. CSV 11727-07 and CSV 5416-08 (Consolidated), 2008 N.J. AGEN LEXIS 1087, Final Decision (October 22, 2008).

On remand, an administrative law judge ordered the reinstatement of an employee as a senior correction officer after charges of violating N.J.A.C. 4A:2-2.3(a)1, failure to perform duties and N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee resulted in termination. The added testimony of senior correction officers referencing what transpired between the charged officer and an inmate only minimally added to case facts on the issues of whether the inmate demonstrated aggressive behavior and whether the officer yelled code. Alonzo Cumberlander v. Northern State Prison, On Remand OAL Dkt. No. CSV03710-08, 2008 N.J. AGEN LEXIS 1546, Initial Decision (October 8, 2008).

Forty-five-day time limitation contained in N.J.S.A. 40A:9-117.6a only applied to charges related to violations of departmental rules and regulations; where two sheriff's officers were also charged with conduct unbecoming a public employee, neglect of duty, misuse of public property, and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a), the statutory 45-day time limitation was inapplicable. In re Leach, OAL Dkt. No. CSV 6373-07 and CSV 6745-07 (Consolidated), 2008 N.J. AGEN LEXIS 1230, Civil Service Comm'n Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 1255) adopted, which found that a housing inspector was properly disciplined to a 10-day suspension after he used his position to obtain housing, threatened to call for an inspection when he ran into conflict with the condominium association, and used his position to cast himself in a favorable light during a candidates' night of the homeowners' association. In re Longo, OAL Dkt. No. CSV 2968-06, 2008 N.J. AGEN LEXIS 1052, Final Decision (October 8, 2008).

While the Civil Service Commission cannot tolerate the continued employment of an employee who is in constant contact with a vulnerable population and who reports to duty while under the influence of alcohol, nevertheless the Commission is hesitant to deprive an employee of his property interest in his employment solely on the basis of a test that reflected a blood alcohol content (BAC) reading of .011%, which an expert testified equated to one-half of an alcoholic beverage, at 11:25 a.m., the time of the BAC test. The case was remanded to the OAL in order that the expert could present his expert opinion regarding what the employee's BAC would have been when he reported to duty at 6:25 a.m., and the employee was to be given the opportunity to cross-examine the expert regarding his opinion and to present testimony from his own expert on the extrapolation issue. In re Dare, OAL Dkt. No. CSV 548-08, 2008 N.J. AGEN LEXIS 1227, Remand Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 787) adopted, which concluded that a county correction officer was properly removed for falsely reporting that he had attended high school for four years and had received a GED; even though the misconduct occurred before his employment began, the fact that he lied in order to obtain his position constituted grounds for discipline since his false representation could have impacted those who reviewed his application and decided to hire him. In re Anderson, OAL Dkt. No. CSV 0638-07 (CSV 02101-05 and CSV 4698-04 On Remand), 2008 N.J. AGEN LEXIS 1205, Final Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 813) adopted, which concluded that a police officer was properly removed because, even though the appointing authority failed to present sufficient credible evidence to establish that the officer had actual knowledge of her brother's criminal activity out of her apartment, it was clear that the officer had a romantic association with a convicted felon, left an assigned post early and without authority, failed to properly report "off duty," failed to keep the Department aware of her current residence, and failed to completely answer her employment questionnaire by omitting the names and addresses of all of her siblings, including her brother. In re Decosey, OAL Dkt. No. CSV 3932-08, 2008 N.J. AGEN LEXIS 1056, Final Decision (October 8, 2008).

Administrative law judge (ALJ) ordered that the action of the County of Essex in removing a hospital attendant for conduct unbecoming a public employee and violation of hospital policies and procedures was not justified under N.J.S.A. 11A:2-6, N.J.S.A. 11A:2-20, N.J.A.C. 4A:2-2.2, and N.J.A.C. 4A:2-2.3(a). In view of divergent testimony, the ALJ concluded that the attendant attempted a least restrictive intervention by speaking to a patient who was both verbally abusive and had a history of "hitting everyone." The attendant did not place the patient into seclusion or use a clinically inappropriate restriction. The attendant moved the patient, without restraints, to the quiet room or ante room area in order to reduce stimuli and minimize further disruption in accordance with hospital procedure. In re Annata Wade, Essex Cnty., OAL DKT. No. 1544, 2008 N.J. AGEN LEXIS 1544, Initial Decision (October 6, 2008).

Removal of a city water worker for chronic or excessive absenteeism was improper; although the appointing authority requested that the employee submit a medical certification in support of his absences, his verbal notification of his son's illness was sufficient notice that he had rights under the Family and Medical Leave Act. Since the appointing authority acknowledged that it was aware that the worker's son's asthma might have been a qualifying illness, the burden shifted to it to inquire further and to request the necessary medical documentation and such documentation should have been applied retroactively (adopting 2008 N.J. AGEN LEXIS 483). In re Rivera, OAL Dkt. No. CSV 10109-07, 2008 N.J. AGEN LEXIS 1082, Final Decision (September 24, 2008).

Removal of a city water worker for chronic or excessive absenteeism was improper because 6 absences in a 90-day period were not, by themselves, chronic or excessive absenteeism; while such a determination was generally left to the discretion of the appointing authority, the ultimate decision rested with the Commission, which was not bound by the appointing authority's contractual provisions (adopting 2008 N.J. AGEN LEXIS 483). In re Rivera, OAL Dkt. No. CSV 10109-07, 2008 N.J. AGEN LEXIS 1082, Final Decision (September 24, 2008).

Correction officer was guilty of misconduct for driving on a suspended license due to unpaid parking tickets; a county correction officer is a law enforcement employee who must enforce and promote adherence to the law. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

Correction officer was guilty of misconduct for failing to report, in writing, his outside employment activities, regardless of his supervisor's tacit approval. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

County correction lieutenant was improperly removed on the charge of inability to perform duties due to being psychologically unfit where there was a lack of any evidence that the lieutenant had any difficulty fulfilling her job responsibilities upon her return to work. The testimony of the lieutenant's treating psychiatrist, who treated the lieutenant over the years and had constant interaction with her, was given more weight than the testimony of the appointing authority's psychiatrist, who evaluated the lieutenant for just over an hour. In re Moore, OAL Dkt. No. CSV 9778-07, 2008 N.J. AGEN LEXIS 1070, Civil Service Comm'n Decision (September 10, 2008).

Correction sergeant's use of the term "fag" in an argument with a fellow employee violated the State Policy as it was a demeaning term based on gender and sexual orientation, and a 10-working-day suspension was appropriate. Although the sergeant had only one prior minor disciplinary suspension, her conduct was unacceptable and warranted major discipline. Her behavior was especially egregious given that she was a law enforcement superior officer; a correction sergeant, like a municipal police officer, holds a highly visible and sensitive position within the community and the standard for an applicant includes

good character and an image of utmost confidence and trust. In re Carter-Green, OAL Dkt. No. CSV 4272-07, 2008 N.J. AGEN LEXIS 1221, Final Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 361) adopted, which concluded that a correction officer committed no infraction by failing to submit written proof of her family emergency because the emergency was that the officer's young daughter was locked out of the house, a situation that would not generate written proof. In re Irizarry, OAL Dkt. No. CSV 03298-07, Final Decision (Aug. 27, 2008).

Senior correction officer at youth correctional facility who was found to have interfered with an escort team of correction officers attempting to remove an inmate from a scuffle was properly terminated from employment; the officer contended that the other officers were mistreating the inmate. The officer's interference and shouting of inflammatory remarks in the presence of other inmates could have incited the other prisoners in the area to riot and could have led to injuries to officers (adopting 2008 N.J. AGEN LEXIS 766). In re Lee, OAL Dkt. No. CSV 6814-07, 2008 N.J. AGEN LEXIS 1064, Final Decision (August 27, 2008).

Police officer was improperly disciplined for failing to answer questions during an Internal Affairs investigation because he was denied the right to counsel. The officer explicitly stated that he refused to answer the questions without consulting an attorney because he feared self-incrimination; even if there was no reasonable basis to perceive a criminal violation, the Department's own regulations (which incorporated non-conflicting Attorney General Guidelines) were not followed. In re Young, OAL Dkt. No. CSV 07809-07, 2008 N.J. AGEN LEXIS 618, Initial Decision (July 15, 2008), adopted (Civil Service Comm'n August 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 617) adopted, which found that where a senior food service handler was convicted for offensive touching following an incident in which he yelled, used profanity, and pushed a fellow coworker, he was disqualified from his position pursuant to N.J.S.A. 30:4-3.5(a)(1)(a), absent a finding that he affirmatively demonstrated to the Commissioner of Human Services clear and convincing evidence of his rehabilitation. In re Taylor, OAL Dkt. No. CSV 6837-05, 2008 N.J. AGEN LEXIS 617, Final Decision (August 27, 2008).

Forty-five-day rule set forth in N.J.S.A. 40A:14-147 only applies to charges relating to violations of internal rules or regulations; where an employee is also charged with conduct unbecoming a public employee and other sufficient cause in violation of N.J.A.C. 4A:2-2.3, the statutory 45-day time limitation is not applicable to all of the charges (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1427). In re Parham, OAL Dkt. No. CSV 5340-07, 2008 N.J. AGEN LEXIS 1414, Final Decision (June 25, 2008).

Police officer was properly removed after the ALJ found, based on the credible evidence and testimony presented, that the officer carried an unauthorized weapon and pointed it at a civilian whose sister was involved in an altercation with the daughter of the officer's girlfriend, and that he subsequently falsely told the investigator that he did not have a handgun on the date in question; in addition, the officer failed to return to work when medically authorized, and he neglected to comply with an order to attend a medical evaluation with the appointing authority's physician (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1427). In re Parham, OAL Dkt. No. CSV 5340-07, 2008 N.J. AGEN LEXIS 1414, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 314) adopted, which concluded, *inter alia*, that an employee charged with excessive absenteeism presented no basis to find that the appointing authority violated FMLA rights in connection with her absences to care for her son when he was suspended from school; the record did not contain sufficient evidence substantiating the suspensions, supporting the pediatrician's opinion, and relating the school suspensions to the son's psychological/emotional problems. In re Paolella, OAL Dkt. No. CSV 118-08, 2008 N.J. AGEN LEXIS 707, Final Decision (June 11, 2008).

Printing machine operator was properly suspended for 25 days for falsifying his time sheet; even though the operator was only 20 minutes late, any falsification of a record by a public employee could not be tolerated. The operator was properly suspended for 45 days for another incident, in which he returned late from an appointment without informing his supervisor. A 90-day suspension was appropriate for a third incident, in which the operator left work for a family emergency without informing the supervisor or another employee of the emergency. In re Middleton, OAL Dkt. No. CSV 10657-06 and CSV 10658-06 (Consolidated), 2008 N.J. AGEN LEXIS 704, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 317) adopted, which concluded that undisputed testimony established that a sanitation department laborer used reasonable force to defend himself when a co-worker pushed him; thus, the 10-day suspension of the laborer was not justified. In re Greene, OAL Dkt. No. CSV 5322-06, 2008 N.J. AGEN LEXIS 501, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 290) adopted, which concluded that dismissal was justified where an assistant water treatment plant operator failed a drug test, after having signed a last-chance agreement; the failure of a public employee to abide by the terms of a last-chance agreement constitutes sufficient cause for dismissal. In re McBride, OAL Dkt. No. CSV 10111-07, 2008 N.J. AGEN LEXIS 585, Final Decision (May 21, 2008).

Working day suspension of 120 days rather than removal was appropriate where a police officer's deficiencies, while serious, were in one area only, that of report preparation, and the officer was otherwise able to successfully execute the duties of police officer (adopting in part and modifying in part 2008 N.J. AGEN LEXIS 290). In re Linthicum, OAL Dkt. No. CSV 10251-07, 2008 N.J. AGEN LEXIS 703, Merit System Board Decision (May 21, 2008).

An Administrative Law Judge (ALJ) concluded that a county had acted properly when it removed the petitioner from his position as a county corrections officer based on the county's determination that he had engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6. The conduct at issue was use of marijuana, which was confirmed by the results of a routine urine sample that was obtained from the petitioner during his enrollment at the Correction Officer Academy. The results of the urine test, which the petitioner did not contest, afforded a sufficient basis for his removal on the ground that use of illegal substances was conduct unbecoming a public employee. Moreover, since he was removed from the Academy by reason of the drug test, he was unable to complete a program that was a prerequisite to his remaining in his position as a corrections officer, thereby afforded "other sufficient cause" for his removal. In re Loveland, Burlington Cnty., OAL DKT. NO. CSV08827-07, AGENCY DKT. NO. 2008-833-I, 2008 N.J. AGEN LEXIS 1514, Initial Decision (May 13, 2008).

An Administrative Law Judge (ALJ) concluded that the Juvenile Justice Commission had proven that a senior correction officer (SCO) was properly disciplined for insubordination and conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6 based on a confrontation between the SCO and her sergeant in which the SCO cursed at the sergeant and called him derogatory names. Such actions constituted conduct unbecoming a public employee because it was excessive, in bad taste and improper and could affect the efficiency of the institution. Such actions also constituted insubordination for which discipline was properly imposed. In re Collins, Juvenile Justice Comm'n, OAL DKT. NO. CSV4534-07, AGENCY DKT. NO. 2007-2154-I, 2008 N.J. AGEN LEXIS 1505, Initial Decision (May 6, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 61) adopted, which found that a police officer's off-duty arrests for domestic violence and abuse of alcoholic beverages amounted to unfitness for duty, criminal mischief, and conduct unbecoming a public employee, and that his removal was appropriate. In re Allen, OAL Dkt. No. CSV 09765-05, 2008 N.J. AGEN LEXIS 584, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 160) adopted, in which county employee was terminated for failing to submit to a medical ex-

amination and for missing 10 days of work without medical documentation. The submission was required as a result of the settlement of an earlier disciplinary action, which required the employee to submit to six random drug tests during a 15-month period. In re Walker, OAL Dkt. No. CSV 11068-06, 2008 N.J. AGEN LEXIS 589, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 219) adopted, which concluded that county policy mandated removal of an equipment operator who refused to provide a second sample during a drug test, considering his drug test record; the presence or absence of random selection for the testing in question had not been demonstrated with persuasive scientific evidence, and even if so found, absence of randomness would not, on the present record, have forestalled application of the rules directing termination. In re Riggins, OAL Dkt. No. CSV 4788-07, 2008 N.J. AGEN LEXIS 555, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 218) adopted, which concluded that city failed to meet its burden of proof that a police lieutenant, assigned as desk supervisor, neglected his duty by failing to maintain order and control over a subordinate officer when a detective entered the precinct in a disorderly manner looking for a relative who was under arrest; the lieutenant did all that he could to subdue the ranting and raving of the detective. In re Mercado, OAL Dkt. No. CSV 7901-07, 2008 N.J. AGEN LEXIS 518, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 223) adopted, which found that conduct unbecoming a police officer included engaging in outside employment while on sick leave and failing to obtain approval for, and making a false statement to an Internal Affairs investigator about, the outside employment; removal was neither unduly harsh nor disproportionate. In re Howard, OAL Dkt. No. CSV 9338-06, 2008 N.J. AGEN LEXIS 627, Final Decision (May 7, 2008).

Failure on the part of a correction officer recruit (COR) to conduct a required formal inmate count in a state institution was negligence and disregard of safety and security procedures and caused a delay in the discovery that an inmate was seriously ill. The COR had also submitted a report that he had searched a cell but later admitted that the report was false. The record showed that the COR had responsibility to conduct formal counts and failed to do so, thus establishing neglect of duty and conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6. Moreover, because the COR's neglect of duty had the potential to delay the response to a situation in which an inmate's life was in jeopardy and was egregiously inconsistent with the fundamental responsibility of an officer to be reliable, his removal from his position was an appropriate penalty. In re Giordano, Northern State Prison, OAL DKT. NO. CSV05897-07, AGENCY DKT. NO. 2007-3578-I, 2008 N.J. AGEN LEXIS 1507, Initial Decision (April 30, 2008).

Matter remanded because an incident report completed to document an employee's refusal to submit to a drug screening and for the purpose of pursuing discipline was not a routine report admissible under N.J.R.E. 803(c)(6); the supervisor who completed the report did not testify. In re Richardson, OAL Dkt. No. CSV 5339-07, 2008 N.J. AGEN LEXIS 502, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 192) adopted, which concluded that 10-day suspension for unbecoming conduct was proper where the ALJ found, on conflicting testimony, that a cook employee refused four direct orders from her supervisors and openly dared them to charge her with insubordination. In re Johnson-McCall, OAL Dkt. No. CSV 4825-07, 2008 N.J. AGEN LEXIS 560, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 106) adopted, which found that removal of a senior correction officer for conduct unbecoming an employee was appropriate after the officer was involved in a physical confrontation with the mother of his children, which resulted in serious injury to her facial area; the absence of a criminal conviction, whether by reason of non-prosecution or even acquittal, did not bar a finding of guilt for misconduct in office in the disciplinary proceedings. In re Baylor, OAL Dkt. No. CSV 2184-06, 2008 N.J. AGEN LEXIS 534, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 80) adopted, which found that termination of a police aide for failure to timely and satisfactorily respond to a 911 call was warranted where the aide neglected to refer and prioritize a domestic violence call to the dispatcher. In re Flagler, OAL Dkt. No. CSV 1302-06, 2008 N.J. AGEN LEXIS 527, Final Decision (April 9, 2008).

Police officer's forwarding of crime scene photograph to a civilian constituted conduct unbecoming a public employee; 30 days suspension. In re Curry, OAL Dkt. No. CSV 5512-06, 2008 N.J. AGEN LEXIS 505, Final Decision (April 9, 2008).

Removal of a truck driver following his positive drug test was too harsh of a penalty, given his unblemished disciplinary history and the fact that he was a non-law enforcement employee, who was not held to the stricter standard of conduct expected of law enforcement officers; the truck driver was entitled to a "second chance" and, therefore, his penalty was modified to a four-month suspension, with reinstatement subject to a return to work drug test and random monthly drug testing for a period of one year (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 2). In re Simpson, OAL Dkt. No. CSV 4498-07, 2008 N.J. AGEN LEXIS 552, Merit System Board Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 88) adopted, in which a police officer was removed for associating with criminals. The officer's husband was a gang member and she had answered in the negative when asked during the employment application process if she had associated with criminals or gang members. In addition, prior to the officer's removal, her husband had pleaded guilty to several felonies, amounting to safety concerns arising out of her possession of her service weapon and bullet proof vests in the home she shared with her husband. In re Griffin, OAL Dkt. No. CSV 11074-07, 2008 N.J. AGEN LEXIS 590, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 107) adopted, which found that a six-day suspension of a correction officer was appropriate where she neglected to provide a land line phone number and where she had a disciplinary history that included a 60-day suspension for incompetence. In re Gaines, OAL Dkt. No. CSV 4265-07, 2008 N.J. AGEN LEXIS 549, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 104) adopted, which concluded that termination was proper for a university cleaning employee who was found, on conflicting testimony, to have threatened another employee, while off-campus and off-duty, and to have made false charges against a supervisor; although the phrase "conduct unbecoming," is not defined in the New Jersey Statutes or in the New Jersey Administrative Code, as noted by the New Jersey Supreme Court, the phrase is an elastic one, and has been defined as "any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Ufomba, OAL Dkt. No. CSV 00440-06, 2008 N.J. AGEN LEXIS 572, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 58) adopted, which reversed police officer's 59-day suspension, as the officer's actions, in his capacity as a union representative, were within the bounds of allowable advocacy and therefore, were neither insubordinate nor unbecoming a police officer. An employer cannot condition a union representative's attendance at an interview on the representative's silence, and a shop steward may help an employee clarify an account; object to harassing, confusing, or misleading questions; and suggest additional witnesses. In re Rowe, OAL Dkt. No. CSV 07535-07, 2008 N.J. AGEN LEXIS 580, Merit System Board Decision (March 12, 2008).

Removal by a city sanitation department of a laborer on the ground that he was excessively absent and/or absent without leave on the dates identified by the department was appropriate given the evidence which showed that the laborer failed to work at least eight days in August and eighteen days in September of 2006. His attendance record was such that

it was proper for the department to conclude that the laborer had abandoned his position within the meaning of N.J.A.C. 4A:2-2.3(a) and was subject to termination on account thereof. In re Morrison, City of Newark, OAL DKT. NO. CSV03885-07, AGENCY DKT. NO. 2007-3022-I, 2008 N.J. AGEN LEXIS 1548, Initial Decision (March 7, 2008).

An employee of city school district 1 who took a personal leave of absence without pay from August 22, 2005 to December 19, 2005 and used it to begin working at city school district 2 was properly removed from his position at district 1. When district 1 discovered that the employee actually was working at district 2, it rescinded his leave and ordered him to report, which he failed to do. That failure constituted neglect of duty within the meaning of N.J.A.C. 4A:2-2.3(a). Because the employee did deal with district 1 with honesty and fairness but in fact applied for, interviewed for and accepted an identical job at a higher salary with district 2 which continuing to hold a title with district 1, it was fair to conclude that he had engaged in conduct unbecoming a public employee. However, the penalty of removal for cause was too harsh when the employee's history with district 1 was considered, and the Administrative Law Judge recommended that the district modify the penalty from removal to resignation in good standing. Holland v. Newark Pub. Schls., OAL DKT. NO. CSV1861-07, AGENCY DKT. NO. 2007-2041-I, 2008 N.J. AGEN LEXIS 1543, Initial Decision (March 4, 2008).

A laborer employed by a city department of water and sewer utilities was properly removed from his position for conduct unbecoming a public employee, for inability to perform duties and for other sufficient cause within the meaning of N.J.A.C. 4A:2:2.3(a) after a drug test was positive for cocaine. The laborer had previously admitted to the city that he had a drug problem and had entered a rehabilitation program after signing a "Letter of Conditional Employment" with the department under which he would be permitted to retain his job on conditions. One of the conditions contained therein was that he refrain from substance abuse during the balance of his employment. Because the drug test was conclusive evidence that he had not refrained from substance abuse, he was properly removed from his position. In re Jones, City of Newark, OAL DKT. NO. CSV1856-07, AGENCY DKT. NO. 2007-2443-I, 2008 N.J. AGEN LEXIS 1542, Initial Decision (February 29, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 59) adopted, which concluded that a correction officer accused of sleeping had been inattentive, evidenced by his failure to stand when the superior entered the trailer, and that the appropriate punishment was a 15-day suspension. While punishment was necessary because harm to inmates could have resulted, the supervisor had failed to have a third party witness the incident and he had failed to mention in his report that the employee had fashioned a makeshift pillow. In re Melendez, OAL Dkt. No. CSV 7822-07 (CSV 11302-06 On Remand), 2008 N.J. AGEN LEXIS 592, Merit System Board Decision (February 13, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 87) adopted, which found that municipal police officer's removal was warranted for the officer's participation in a multi-jurisdictional high-speed chase without authorization from either the initiating police agencies or his own superiors; the officer had a history of suspensions during his employment. In re Jasiecki, OAL Dkt. No. CSV 09659-02, Final Decision (February 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 800) adopted, which found that the language a police officer used in a report was disrespectful and insubordinate, justifying a 15-day suspension; instead of explaining his behavior regarding his use of the term "ghetto" over the police scanner, the officer took the opportunity to berate and criticize his superior. In re Montalvo, OAL Dkt. No. CSV 9869-02, 2008 N.J. AGEN LEXIS 628, Final Decision (January 16, 2008).

City health officer who used paid sick time while out under the Family and Medical Leave Act, but engaged in and was compensated for secondary employment, was guilty of conduct unbecoming a public employee; however, an official written reprimand and a fine of an amount equivalent to the number of hours of sick leave she received while performing work for another municipality, rather than removal, was the appropriate penalty based on the officer's record of no prior major discipline. In re Warwas, OAL Dkt. No. CSV 11781-06, 2008 N.J. AGEN LEXIS 594, Merit System Board Decision (January 16, 2008).

Reversal of disciplinary action against a county correction officer was required where neither a videotape of the officer's conduct nor the testimonial evidence demonstrated that the officer was publicly intoxicated, ordered and consumed food without the intent to pay, or brought the police department into disrepute; additionally, the effect of the officer's "last chance agreement" was irrelevant, since the officer did not engage in any misconduct (adopting 2007 N.J. AGEN LEXIS 733). In re Keegan, OAL Dkt. No. CSV 2777-07, 2008 N.J. AGEN LEXIS 537, Merit System Board Decision (January 16, 2008).

Senior investigator with the state prison was properly removed where the evidence demonstrated that the officer falsified his investigation report regarding the escape and subsequent apprehension of an inmate, failed to advise the Fugitive Unit of the specific time and place of the apprehension, and was improperly equipped to execute the apprehension; the officer neglected his duty and violated safety and security rules in failing to contact the appropriate personnel and safeguard the public and himself with the appropriate back-up personnel and equipment (adopting as modified 2007 N.J. AGEN LEXIS 710). In re Cesare, OAL Dkt. No. CSV 6511-06 and CSV 6645-06 (Consolidated), 2008 N.J. AGEN LEXIS 514, Final Decision (January 16, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 616) adopted, which found that removal of a correction sergeant for having tested positive for cocaine was inappropriate, because he was taking several prescription drugs and had informed an investigator of his use of prescription drugs, but no additional action was taken by the investigator prior to submission of the officer's sample for testing. In re Jordan, OAL Dkt. No. CSV 9979-06, 2007 N.J. AGEN LEXIS 1036, Merit System Board Decision (December 19, 2007).

Police sergeant was properly charged with neglect of duty and other sufficient cause after failing to timely report to duty, leaving the communication center without supervision for approximately 4½ hours; the officer's argument that the six-day suspension did not comport with progressive discipline failed, and there was insufficient information on other employees' disciplinary history to support allegations of disparate treatment. In re Michelson, OAL Dkt. No. CSV 05839-06, 2007 N.J. AGEN LEXIS 827, Initial Decision (December 18, 2007), adopted (Merit System Board February 13, 2008), aff'd per curiam, No. A-3523-07T3, 2009 N.J. Super. Unpub. LEXIS 1953 (App.Div. July 28, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 437) adopted, which concluded that two police sergeants were properly disciplined after the non-arrest of a person for whom an arrest warrant had been issued; the evidence demonstrated that one of the sergeants ordered a police officer not to arrest the man as a courtesy because of the holiday and the other sergeant's investigation into the matter was perfunctory and deficient. In re Whitaker, OAL Dkt. No. CSV 8669-03 and CSV 2881-04 (Consolidated), 2007 N.J. AGEN LEXIS 1165, Final Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 676) adopted, which found that a communications operator's voicemail to the union representative in which he threatened bodily harm to the Human Resources Director, even when considered apart from tardiness and falsification charges, warranted his removal; in addition, suspensions were appropriate for the operator's failure to dispatch emergency assistance to repair a ship channel bridge and to remove debris from a highway. In re Jackson, OAL Dkt. No. CSV 11933-05 and CSV 04971-06 (Consolidated), 2007 N.J. AGEN LEXIS 1078, Final Decision (December 5, 2007).

Employee's medical condition made resignation in good standing, and not removal based on "inability to perform duties," appropriate. In re Gore-Bell, OAL Dkt. No. CSV 3975-06, 2007 N.J. AGEN LEXIS 1024, Final Decision (December 5, 2007).

Removal was warranted after a plumbing official urinated out of a window of a building under construction, in front of a representative of the construction company, while he was performing official duties; the public expects its servants to conduct its business in a manner that does

not offend publicly accepted standards of decency (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 769). In re Malayter, OAL Dkt. No. CSV 2188-06, 2007 N.J. AGEN LEXIS 1019, Final Decision (December 5, 2007).

Corrections officer was removed after incident in which an inmate remained in the cell block control area and engaged in a sexual act with another officer. In re Clark, OAL Dkt. No. CSV 11305-06, 2007 N.J. AGEN LEXIS 712, Initial Decision (November 8, 2007), adopted (Merit System Board Dec. 19, 2007).

Appointing authority was not justified in removing a corrections lieutenant following his positive drug screen for opiates where the ALJ found, on conflicting evidence, that the positive result was caused by the ingestion of poppy seed bagels; the ALJ was within its right to give more weight to the officer's expert witness than to the appointing authority's expert because the officer's expert's analysis comported with scientific articles on the record, including those offered by the appointing authority's expert, whereas the appointing authority's expert focused mostly on anecdotal situations and did not explain discrepancies between his analysis and the scientific articles (adopting 2007 N.J. AGEN LEXIS 435). In re Bennett, OAL Dkt. No. CSV 4576-05, 2007 N.J. AGEN LEXIS 1130, Final Decision (October 24, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 617) adopted, in which a housing authority maintenance worker was removed while incarcerated. The worker had failed to reveal his status as a registered sex offender, subsequent conviction for failure to register as a sex offender, and his status as a Tier 2 Sex Offender. In re Brown, OAL Dkt. No. CSV 10483-06, 2007 N.J. AGEN LEXIS 1059, Final Decision (October 24, 2007).

Where the nature and extent of a county clerk's mental condition and accompanying alarming behavior precluded her from successfully performing her job, the appointing authority was not precluded from pursuing termination (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 574). In re Wilson, OAL Dkt. No. CSV 9640-04, 2007 N.J. AGEN LEXIS 1180, Final Decision (October 10, 2007), aff'd per curiam, No. A-1291-07T1, 2009 N.J. Super. Unpub. LEXIS 1055 (App.Div. May 5, 2009).

Charges against a Youth Worker for excessive use of force against a resident of a youth detention center were properly dismissed where a videotape of the event and testimony revealed that the officer acted in an appropriate manner when faced with an unruly resident who was inciting other residents to misbehave and disregard the officer's directives; the resident made a number of threats of physical violence toward the officer that appeared to be genuine, causing the officer to call for assistance and use a minimal amount of force to defuse an escalating situation (adopting 2007 N.J. AGEN LEXIS 568). In re Zorn, OAL Dkt. No. CSV 2685-06 (CSV 8501-05 On Remand), 2007 N.J. AGEN LEXIS 1104, Merit System Board Decision (October 10, 2007).

Police officer did not violate any statutory provision, administrative regulation, departmental rule, or collective bargaining agreement when he took time off to work an off-duty job and on some of the days would have to appear in municipal court and be paid overtime; the officer testified, and the evidence corroborated, that he always found someone to cover for him at the off-duty job when he had to appear in court, that he always paid that person the hours the person worked from the check he received from the off-duty job, and that he received payment from the off-duty job only for the hours he worked and payment from the city only for the overtime he worked. Charges were dismissed; if the appointing authority wished to prevent similar circumstances in the future, it needed to adopt clear policies, with adequate documentation requirements, regarding overtime and off-duty work (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 610). In re Lewis, OAL Dkt. No. CSV 5245-07, 2007 N.J. AGEN LEXIS 1135, Merit System Board Decision (October 10, 2007).

An Administrative Law Judge (ALJ) concluded that a psychiatric hospital properly terminated the employment of a residential living specialist (RLS) who had been employed at the hospital for 23 years as a result of her actions in engaging in prohibited social interactions with a patient and becoming financially involved with the patient. The undisputed facts were after that the patient, a convicted sex offender who was diagnosed with schizoaffective disorder, was released from the hospital (a separate circumstance resulting in disciplinary action against hospital personnel including the RLS), he was wanted on a local warrant for a charge of disorderly conduct; that the RLS posted bail for the patient, arranged for him to have a motel room and to be employed by her boyfriend. Such conduct constituted prohibited social interactions and violated explicit prohibitions against non-therapeutic relationships and provided an adequate basis on which to find that the RLS had engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a). In re Flowers, Trenton Psychiatric Hosp., OAL DKT. NO. CSV2942-07, AGENCY DKT. NO. 2007-3525-I, 2007 N.J. AGEN LEXIS 1303, Initial Decision (October 4, 2007).

Disciplinary action was not properly taken against two correctional officers on a county's claim of incompetence, inefficiency or failure to perform duties per N.J.A.C. 4A:2-2.3(a)1; neglect of duty per N.J.A.C. 4A:2-2.3(a)7, or other sufficient cause per N.J.A.C. 4A:2-2.3(a)11, which cause was claimed to be their failure to properly report and incident between an inmate and another officer and neglecting to appropriately handle that situation. First, the officers were not responsible to directly handle a complaint about another officer on another shift because neither of the disciplined officers supervised the officer against whom the complaint had been lodged. Second, there was no showing that the officers attempted to evade their responsibility once they became aware of the complaint but they used common sense and discretion in evaluating it and in reporting the claim, which did not include a claim that the inmate had been injured, to the charged officers' lieutenant. That verbal report was all that was required; the facility rules required that there be a verbal or a written report, not both. Nor were the charged officers required to investigate the complaint; again, their responsibility was to report the complaint to their supervisor, which they did. Because the officers were not subject to discipline for their conduct, moreover, they were entitled to receive back pay, benefits and counsel fees resulting from the disciplinary proceedings per N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Grupico, Burlington Cty., and in re McLeod, Burlington Cty., OAL DKT. NO. CSV2489-06, OAL DKT. NO. CSV2490-06 (CONSOLIDATED), AGENCY DKT. NOS. 2006-1621-I and 2006-1622-I (CONSOLIDATED), 2007 N.J. AGEN LEXIS 1302, Initial Decision (October 4, 2007).

An Administrative Law Judge (ALJ) concluded that a school district acted lawfully when it suspended a school bus driver from his position for failing to timely obtain the additional commercial driver's license (CDL) endorsement that was required for school bus driving. Though the district repeatedly reminded the driver of the requirement that he obtain the needed endorsement, as of the deadline he had failed to do so. Moreover, even without his failure to obtain the endorsement, the driver's overall record with the district was poor as it included excessive and chronic absenteeism and lateness in violation of N.J.A.C. 4A:2-2.3(a)7 and violations of the district's toll-road payment policies. Given that record as well as the repercussions to students when the driver was late or absent, removal of the driver from his position was appropriate. In re Cobb, State Operated Sch. Dist. of Newark, N.J., OAL DKT. NO. CSV05592-07, AGENCY NO. 2007-3189-1, 2007 N.J. AGEN LEXIS 1239, Initial Decision (October 3, 2007).

Human Services Assistant's lack of intent to cause harm was irrelevant in determining whether he was guilty of a serious mistake due to carelessness and mistreatment of a patient (adopting 2007 N.J. AGEN LEXIS 577). In re Clarke, OAL Dkt. No. CSV 6364-04, 2007 N.J. AGEN LEXIS 1146, Final Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 606) adopted, which concluded that, notwithstanding the conceded claims of illness, sickness, and caregiving, a correction officer still had the duty to confirm her leave status; additionally, there was an urgency of staffing shortages and the officer's use of sick time was already highly excessive during her short career. In re Burnett, OAL Dkt. No. CSV 6374-05, 2007 N.J. AGEN LEXIS 963, Final Decision (September 26, 2007).

City failed to satisfy its burden of proof demonstrating that a police officer was psychologically unfit for duty, in view of the inconsistent and conflicting psychological evaluations presented; removal reversed

contingent on the officer's successful completion of a psychological fitness for duty examination (adopting in part and modifying in part 2007 N.J. AGEN LEXIS 581). In re Harris, OAL Dkt. No. CSV 11388-03, 2007 N.J. AGEN LEXIS 1075, Merit System Board Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 571) adopted, which concluded that a licensed practical nurse was properly removed after she failed to assist a resident in taking her medication and then later threatened retaliation against a coworker who reported the conduct; instead of helping the resident sit up so that she could swallow the pills, the nurse told the resident that she was too busy to help her, and would record that the resident refused to take her medication. In re Johnson, OAL Dkt. No. CSV 920-06, 2007 N.J. AGEN LEXIS 1179, Final Decision (September 12, 2007).

Termination of county correction officer for her second disciplinary action for fraternizing with an inmate was appropriate. The officer had received several telephone calls from the inmate to her home, had acknowledged that she knew that the calls were inappropriate, and had offered no notes on the contents of the conversations with the inmate. In re David, OAL Dkt. No. CSV 12027-06, 2007 N.J. AGEN LEXIS 619, Initial Decision (September 6, 2007), adopted (Merit System Board Oct. 10, 2007).

Merit System Board adopted ALJ finding that two officers who allegedly performed an unauthorized strip search of a person not under arrest were not subject to discipline for the underlying incident because their agency had not produced the suspect to testify. The officers had contended that their drug possession suspect had lowered his pants voluntarily. However, agency-imposed suspensions against the officers were warranted for failing to properly report the incident; suspensions were reduced from eight-day loss of vacation time in lieu of suspension to three days lost (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 470). In re Peralta, OAL Dkt. No. CSV 9980-06 and CSV 10452-06 (Consolidated), 2007 N.J. AGEN LEXIS 1073, Final Decision (August 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 467) adopted, which found, on conflicting testimony, that a police officer assaulted and threatened his girlfriend, which constituted conduct unbecoming a public employee; the officer's acquittal on criminal charges was not dispositive. Given the egregious nature of the conduct and the officer's disciplinary history, significant suspension was warranted; since the City determined that 123 days suspension was appropriate, the penalty, although insufficient, was not increased. In re DeLeon, OAL Dkt. No. CSV 05466-05, 2007 N.J. AGEN LEXIS 1137, Final Decision (August 15, 2007).

Thirty-working-day suspension was warranted where a police officer used her cellular phone while on duty for 278 hours in a two-year period, even though there was no direct departmental prohibition against personal cell phone usage while on duty; a public employee who is sworn to protect and serve the public is prohibited from excessive personal telephone calls while on duty because it constitutes a distraction from those duties (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 378). In re Butler, OAL Dkt. No. CSV 13065-05, 2007 N.J. AGEN LEXIS 1091, Merit System Board Decision (August 15, 2007).

Approval of intermittent leave under the Family and Medical Leave Act does not preclude an appointing authority from disciplining an employee for chronic or excessive absenteeism, when that employee has not established that the absence was due to the FMLA reason; 10-day suspension was warranted for correction officer and Merit System Board recommended that appointing authority investigate altered note purporting to be from physician (adopting 2007 N.J. AGEN LEXIS 200). In re Moss, OAL Dkt. No. CSV 06050-06, 2007 N.J. AGEN LEXIS 1143, Final Decision (July 11, 2007).

Ninety-day suspension, rather than removal, was the appropriate penalty for a county correction officer who violated the county's inmate visitation regulation when she visited an acquaintance at a state prison on three separate occasions. The evidence was clear that there was no "fraternization" or "undue familiarity"; rather, it appeared as though the officer was doing a favor for the inmate's aunt by providing transportation to the facility (adopting as modified 2007 N.J. AGEN LEXIS 372). In re Brown, OAL Dkt. No. CSV 7960-06 and CSV 7962-06, Merit System Board Decision (July 11, 2007).

Municipal police officer who was injured during Police Academy mandatory physical training and dismissed from the Academy indefinitely was awarded back-due sick pay for the period after his injury until he was cleared to return to the Academy, and back-due pay for the period after he was cleared to return to the Academy but before he was actually allowed to return to duty because he had a doctor's excuse for missed time and a doctor's permission to return to training shortly after his injury, and his suspension from duty for lack of physical ability was dismissed in a final agency action. In re Rankin, OAL Dkt. No. CSV 09983-06, 2007 N.J. AGEN LEXIS 471, Initial Decision (July 10, 2007), adopted (Merit System Board August 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 375) adopted, which found that removal of police recruit from the Police Academy and his duties for personal website containing objectionable statements was appropriate because recruit had updated website after entering the Academy. In re Harb, OAL Dkt. No. CSV 09640-06, Final Decision (June 20, 2007).

Senior correction officer's arrest and conviction for driving while intoxicated, which resulted in a 90-day jail sentence, served as a basis for his removal; the officer held a highly visible and sensitive position within the community and was subject to a higher standard of conduct and responsibility than what was required of other public employees (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 114). In re Greenfield, OAL Dkt. No. CSV 4473-05, 2007 N.J. AGEN LEXIS 1127, Final Decision (May 23, 2007), aff'd per curiam, No. A-0713-07T1, 2009 N.J. Super. Unpub. LEXIS 148 (App.Div. February 19, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 275) adopted, which concluded that county corrections officer's failure to call the county to report an absence did not rise to the level of "conduct unbecoming" since it was not an activity that would destroy public confidence in governmental services. In re Novielli, OAL Dkt. No. CSV 03981-06, Final Decision (June 20, 2007), aff'd per curiam, No. A-5890-06T2, 2009 N.J. Super. Unpub. LEXIS 350 (App.Div. February 24, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 175) adopted, which found that a police officer was properly terminated for conduct unbecoming a police officer after he was convicted of driving under the influence of alcohol; the officer was not rehabilitated and his advertising his ability to drink beer on MySpace.com was conduct that diminished respect for the office. In re Larkin, OAL Dkt. No. CSV 225-06, 2007 N.J. AGEN LEXIS 1087, Final Decision (June 20, 2007).

Three-day suspension, rather than 10-day suspension, was the appropriate penalty after a correction officer was insubordinate for failing to immediately following her supervisor's order that she return to her post; the officer was required to comply with the order, even if she believed it to be improper or contrary to established rules and regulations (adopting 2007 N.J. AGEN LEXIS 243). In re Faasen, OAL Dkt. No. CSV 2617-06, 2007 N.J. AGEN LEXIS 1103, Merit System Board Decision (June 20, 2007).

Contrary to the Administrative Law Judge's finding, a correction officer may have been eligible for time off to care for sick family members under New Jersey's Family Leave Act and the federal Family Medical Leave Act, had she applied. However, the officer was properly suspended for chronic and excessive absenteeism, as the ALJ found, contrary to the officer's testimony, that she was given notice of those rights (adopting as modified 2007 N.J. AGEN LEXIS 176). In re Stokes, OAL Dkt. No. CSV 4327-05 and CSV 8116-06 (Consolidated), 2007 N.J. AGEN LEXIS 1111, Final Decision (May 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 144) adopted, which concluded that a school bus inspector was properly suspended for seven days after falsifying documents to indicate that the buses' brakes were in approved working order when he never performed the inspections; the inspector's prior reprimand for neglect of duty based on his failure to

actually perform the required inspections did not prevent a later finding that he falsified documents pertaining to the phantom inspections and, therefore, the inspector was not punished twice for the same offense. In re Leaty, OAL Dkt. No. CSV 5351-06, 2007 N.J. AGEN LEXIS 1136, Final Decision (April 25, 2007).

Correction officer was properly suspended for 35 days for incompetency, inefficiency, and failure to perform her duties for an incident in which the officer's inattentiveness to an inmate resulted in the inmate's attempted sexual assault of a nurse; it was the officer's primary duty to maintain the safety of individuals in the medical unit and it was undisputed that she did not see the inmate get up and walk down the corridor because the officer was busy filling out paperwork. In re George, OAL Dkt. No. CSV 752-06, 2007 N.J. AGEN LEXIS 1167, Final Decision (April 25, 2007).

In a disciplinary action against a correction officer for neglect of duty based on his alleged knowledge of a missing weapon and his failure to report it, evidence was lacking that the officer was actually aware that the gun was missing; instead, his failure to notice that the gun was missing was a "mere oversight." However, had the appointing authority charged the officer with neglect of duty for his failure to discover the missing weapon during an inventory search, the evidence would have supported his 30-day suspension (adopting with comment 2007 N.J. AGEN LEXIS 112) In re O'Donnell, OAL Dkt. No. CSV 4331-05, 2007 N.J. AGEN LEXIS 1123, Merit System Board Decision (April 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 116) adopted, which concluded that a hospital attendant was properly suspended for 90 days for neglect of duty despite his testimony that he was not asleep; the attendant admitted that he had not noticed an employee pass him during a surprise inspection, and the environment required the constant monitoring of psychiatric patients. In re Okafor, OAL Dkt. No. CSV 09551-02, 2007 N.J. AGEN LEXIS 1089, Final Decision (April 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 117) adopted, which found that County Correction Lieutenant who had allowed 16 corrections officers to leave after roll call had not violated the common practice of supervisors allowing officers claiming illness to leave, even though there was testimony that supervisors could have required officers claiming sickness to see the county doctor or visit the infirmary. In re Condito, OAL Dkt. No. CSV 09638-04, 2007 N.J. AGEN LEXIS 1096, Merit System Board Decision (April 11, 2007).

Where an employee believed that he was being asked to perform duties outside of his job title, he should have sought an audit of the position to determine whether re-classification was warranted; but until such time as an audit could be performed and a final determination made, the employee was required to continue to perform the duties assigned by management. In refusing to perform the disputed duties, the employee engaged in conduct of insubordination because "insubordination" refers not only to affirmative acts of disobedience, but also acts of non-compliance and non-cooperation, including any conduct that constitutes a refusal to submit to supervisory authority (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 57). In re Hatcher, OAL Dkt. No. CSV 2123-06, 2007 N.J. AGEN LEXIS 352, Final Decision (March 28, 2007).

Initial Decision rejected, in which ALJ concluded that psychiatric hospital employee's removal for sleeping on duty was erroneous. Merit System Board found that the employee's testimony that he was merely relaxing and resting his eyes had not been credible, and the testimony of a supervisor that the employee was sleeping was credible despite some prior animus between the supervisor and the employee. In re Wilson, OAL Dkt. No. CSV 10082-05, 2007 N.J. AGEN LEXIS 346, Final Decision (March 14, 2007).

Appointing authority's use of a firefighter's medical records as a basis for ordering him to submit to a drug test was proper because the records were received for the explicit purpose of confirming the firefighter's prior illness and determining his fitness to return to work (adopting 2006 N.J. AGEN LEXIS 1033). In re Gonzalez, OAL Dkt. No. CSV 7558-02, 2007 N.J. AGEN LEXIS 964, Final Decision (January 31, 2007), aff'd per curiam, A-4847-06T3, 2009 N.J. Super. Unpub. LEXIS 70 (App.Div. January 15, 2009).

Public works employee was properly assessed a 15-day suspension on charges of conduct unbecoming a public employee after he used a township vehicle to transport cases of beer while on duty and also transported bricks for a home improvement project; the employee's 3- and 5-day suspensions in 2002 were properly considered in fashioning his penalty under the concept of progressive discipline (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 48). In re Stefani, OAL Dkt. No. CSV 1849-06, Final Decision (January 23, 2007).

Suspension of 10 days was warranted, where there was no dispute that the county employee served on the advisory board of a community group that was seeking county approval of a proposed redevelopment project on county property; despite repeated warnings by supervisors, the employee continued to make contact with other public and private officials in his capacity as a Senior Planner with the county in an attempt to further the goals of the community group. The employee's activities constituted conduct unbecoming a public employee, misuse of county property, and violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.5. In re Reid, OAL Dkt. No. CSV 2045-06, 2007 N.J. AGEN LEXIS 1044, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 994) adopted, which found that a 90-day suspension of a corrections officer was appropriate based on his failure to work mandatory overtime; the officer failed to comply with a direct order to stay on his post (given after he had e-timed out), and instead left the premises. In re Ballon, OAL Dkt. No. CSV 3974-06, 2007 N.J. AGEN LEXIS 92, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 969) adopted, which concluded that removal was proper of a correction officer found to have forcibly resisted arrest after a domestic altercation, engaged in excessive absenteeism, and failed to report suspensions of his driver's license. In re Marshall, OAL Dkt. No. CSV 12097-05, 2007 N.J. AGEN LEXIS 91, Final Decision (January 7, 2007).

Where it was determined that a police officer's ingestion of cocaine was involuntary and the charges against him were dismissed, there was no basis to require that the officer be subjected to random drug testing twice a month for a year upon reinstatement (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 993). In re Harper, OAL Dkt. No. CSV 3579-06 and CSV 5453-02 (On Remand), 2006 N.J. AGEN LEXIS 1115, Merit System Board Decision (December 20, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 996) adopted. Code enforcement officer who refused to wear standard uniform and authored and distributed a slanderous document during business hours was suspended a total of 120 days for insubordination and conduct unbecoming a public employee; such conduct was not protected speech. In re Gaines, OAL Dkt. No. CSV 9427-04 and CSV 12279-05 (Consolidated), 2006 N.J. AGEN LEXIS 1103, Final Decision (December 6, 2006).

Corrections officer was properly suspended for 30 days after he submitted a letter on behalf of a former inmate, seeking leniency for the inmate and relying upon his experience as a corrections officer in support of that request; the officer had been counseling the former inmate as a pastor but violated the rules and regulations by not obtaining permission from competent authority to submit a letter on behalf of the former inmate, who was about to be incarcerated. The officer's actions undermined the Department of Corrections by offering personal opinions under the guise of the Department and while wearing components of current or past official uniform clothing, without any official permission by competent authority. In re Leek, OAL Dkt. No. CSV 452-05, 2006 N.J. AGEN LEXIS 826, Initial Decision (October 16, 2006), adopted (Merit System Board November 15, 2006), aff'd per curiam, No. A-2350-06T3, 2008 N.J. Super. Unpub. LEXIS 596 (App.Div. May 14, 2008).

Where a police officer was arrested on charges of cocaine possession, the appointing authority had reasonable suspicion to believe that the officer was under the influence of drugs; therefore, his refusal to submit to timely drug testing at the authority's request was insubordination

warranting removal from his position. In re Hosten, OAL Dkt. No. CSV 3269-04, 2006 N.J. AGEN LEXIS 829, Initial Decision (October 13, 2006), adopted (Merit System Board November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 705) adopted, which concluded that police officer was unable to perform required duties and properly removed, as he had been determined unfit to carry a firearm following a domestic matter. In re Love, OAL Dkt. No. CSV 05457-04, 2006 N.J. AGEN LEXIS 856, Final Decision (October 4, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 739) adopted, which concluded that removal of senior correction officer for testing positive for cocaine in a random drug test was warranted. The officer had contended that his urine sample should have been transferred to the state laboratory within one day, but storing the sample in a limited-access refrigerator for transport as soon as possible was not a violation of agency policy, and he had not presented any evidence of over-the-counter medications that could have caused his positive result. In re Romine, OAL Dkt. No. CSV 10246-04, 2006 N.J. AGEN LEXIS 857, Final Decision (October 4, 2006).

Removal of correction officer trainee was warranted after charges were proven that she had opened her towel to reveal her nude body, that she had invited another officer to move her bed next to her own, and that she had made sexually explicit comments and gestures (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 408). In re Williams, OAL Dkt. No. CSV 12210-04, 2006 N.J. AGEN LEXIS 858, Final Decision (September 20, 2006), aff'd per curiam, No. A-2114-06T1, 2008 N.J. Super. Unpub. LEXIS 2136 (App.Div. April 25, 2008).

Department of Transportation employee was improperly removed because his departure from the workplace was not a refusal to submit to drug and alcohol testing where he had, in fact, made three unsuccessful attempts to provide a sufficient sample beyond the three-hour time limitation in the federal regulations; the appointing authority's unilateral decision to extend his testing time, coupled with its failure to notify him of his opportunity to provide a medical excuse for his inability to provide a sufficient sample, deprived him of any opportunity to avoid disciplinary charges and substantively impacted his rights (adopting 2006 N.J. AGEN LEXIS 704). In re Johnson, OAL Dkt. No. CSV 4572-05, 2006 N.J. AGEN LEXIS 868, Merit System Board Decision (September 6, 2006).

Police officer was guilty of conduct unbecoming a police officer when he refused to answer questions during a criminal investigation into the abuse of overtime; while the officer's attorneys' advice did not invalidate the charges against him, the officer had no prior major discipline in 17 years and his misplaced reliance on his attorneys' advice mitigated the penalty of removal to a 6-month suspension. In re Sandifer, OAL Dkt. No. CSV 5096-05, 2006 N.J. AGEN LEXIS 869, Merit System Board Decision (September 6, 2006), aff'd per curiam, No. A-1992-06T2, 2008 N.J. Super. Unpub. LEXIS 2892 (App.Div. July 18, 2008).

Correction officer was improperly disciplined for his alleged failure to cooperate in an investigation of a fellow officer; even if the officer displayed a defiant attitude in asserting his right to counsel, the investigators had suggested that he "think about his family," remarked that he was "leaving himself as a target" of the investigation, refused to permit the officer's union representative to enter the room with him after the suggestion was made that he had become a target of the investigation, and persisted in attempting to question him over two days, despite his repeated requests to consult with his attorney and his assurance that he would cooperate following his consultation (adopting 2006 N.J. AGEN LEXIS 363). In re Ricchiuti, OAL Dkt. No. CSV 4992-04, 2006 N.J. AGEN LEXIS 773, Merit System Board Decision (August 9, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 434) adopted, in which a city employee was terminated for insubordination after failing to return a grant check to be used for the purchase of a home in her city of employment after the closing had failed. The employee had been advised that she was required to return the check and reapply for another grant if she wished to purchase a qualifying home in the future. In re Woods, OAL Dkt. No. CSV 11186-02 (CSV 3010-02 On Remand), 2006 N.J. AGEN LEXIS 767, Final Decision (August 9, 2006).

County building maintenance worker who had spoken to her supervisor in a loud voice was properly found to have been insubordinate and engaging in conduct unbecoming a public employee. ALJ had reduced the employee's penalty to a 15-day suspension, but the Merit System Board determined that a 20-day suspension was appropriate (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 433). In re Meyers, OAL Dkt. No. CSV 11120-04, 2006 N.J. AGEN LEXIS 766, Final Decision (July 19, 2006).

Thirty-day suspension of a Motor Vehicle Commission safety specialist for completing paperwork in an unprescribed manner was appropriate. Despite orders to the contrary, the specialist continued to use his own personal style of writing on official documents, including using Roman numerals where inappropriate and recording driver license numbers in an unapproved manner (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 366). In re Anton, OAL Dkt. No. CSV 12640-05, 2006 N.J. AGEN LEXIS 769, Final Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 360) adopted, which found that a police officer was properly removed for conduct unbecoming an officer where she used her position as an officer to have a legally parked car towed and then lied about having the authority to release the car to the registered owner; either the officer was not candid about drugs being in the car, and only made the statement to have the vehicle towed, or knowing that there were drugs in her car, she was helping to have the vehicle released before it could be searched – either scenario represented a severe breach of public trust. In re Colon, OAL Dkt. No. CSV 2853-05 (CSV 4989-04 On Remand), 2006 N.J. AGEN LEXIS 532, Final Decision (July 19, 2006).

Fifteen-day suspension of a correction officer was appropriate where the officer pushed his way into an agitated crowd of inmates in order to restrain an inmate without seeking authorization and without following the established procedures regarding use of force; such behavior compromised the safety and security of the institution and had the dangerous potential to subvert prison order (adopting 2006 N.J. AGEN LEXIS 292). In re Ricigliano, OAL Dkt. No. CSV 4326-05, 2006 N.J. AGEN LEXIS 534, Final Decision (June 7, 2006).

Where a cottage training technician pleaded guilty to a weapons possession charge following a domestic dispute in which he allegedly pointed a pellet gun at his wife, the appointing authority was within its right to discipline the technician for conduct unbecoming a public employee; the fact that the incident occurred at home and not at work was of no consequence. In re Green, OAL Dkt. No. CSV 8108-05, 2006 N.J. AGEN LEXIS 632, Merit System Board Decision (June 7, 2006).

While a cottage training technician's conviction for possession of a weapon (pellet gun) following a domestic disturbance formed the basis for disciplinary action, a six-month suspension, rather than removal, was the appropriate penalty in light of the fact that the technician had been employed by the appointing authority for 20 years with no prior disciplinary record and the infraction was not work-related. In re Green, OAL Dkt. No. CSV 8108-05, 2006 N.J. AGEN LEXIS 632, Merit System Board Decision (June 7, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 407) adopted, which found that an assistant superintendent of public works was properly removed for failing to report positive drug tests of a truck driver. In re Stulso, OAL Dkt. No. CSV 11869-04, Final Decision (June 7, 2006).

Initial Decision rejected, in which ALJ found that corrections facility sergeant was improperly removed for misconduct involving his failure to call an emergency when an inmate was discovered unresponsive and ultimately died. Potentially threatening off-duty comments made by the sergeant as well as conflicting testimony by a co-worker and an inmate led the Board to reject the ALJ's finding that sergeant's version of events was credible. In re Mitchell, OAL Dkt. No. CSV 10248-04, 2006 N.J. AGEN LEXIS 612, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 155) adopted, in which the ALJ found, on conflicting evidence, that a worker in a psychiatric hospital neglected to account for the presence of a male patient, who was subsequently found to have committed suicide in a unit bathroom, and then falsified the patient census sheet; the patient committed suicide during the preceding shift but was not missed or found until almost four and a half hours later, lying within six feet of the nurses' station. In re Whisnant, OAL Dkt. No. CSV 4999-04, 2006 N.J. AGEN LEXIS 621, Final Decision (May 24, 2006).

Police officer was properly disciplined for insubordination and neglect of duty when he failed to follow his superior's order to arrest a juvenile for receiving stolen property (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 293). In re Solowiej, OAL Dkt. No. CSV 5101-04, 2006 N.J. AGEN LEXIS 537, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 295) adopted, which concluded that a correction officer's removal for violating the County's policy and rules by having an intense romantic relationship with an inmate did not unconstitutionally restrict the fundamental right to association. In re Stansfield, OAL Dkt. No. CSV 6101-05, 2006 N.J. AGEN LEXIS 540, Final Decision (May 24, 2006).

Correction officer was properly removed after testing positive for marijuana; although use of a coffee cup during testing violated the Attorney General's Law Enforcement Drug Testing Policy, the technical deviations did not amount to a violation of the officer's right to due process or call into question the validity of the positive test result (adopting 2006 N.J. AGEN LEXIS 154). In re Grillo, OAL Dkt. No. CSV 2813-04, 2006 N.J. AGEN LEXIS 562, Final Decision (May 10, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 257) adopted, which found that a senior correction officer was properly removed for an inability to perform his duties after his gun was confiscated following a domestic abuse dispute; although the prohibition against carrying a firearm imposed on the officer was a legal inability based on psychological reports recommending that the officer's gun not be returned because of his history of poor judgment, the appointing authority was not expected to maintain the officer's employment indefinitely when eligibility to carry a firearm was a requirement of his position. In re Hawkins, OAL Dkt. No. CSV 2814-05, 2006 N.J. AGEN LEXIS 617, Final Decision (May 10, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 157) adopted, which concluded that a city truck driver's act of engaging in horseplay at work, taking out a knife, and cutting the pants of another employee near the employee's groin constituted conduct unbecoming a public employee. In re James, OAL Dkt. No. CSV 6099-05, 2006 N.J. AGEN LEXIS 625, Final Decision (April 26, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 157) adopted, which concluded that the term "insubordination" refers not only to affirmative acts of disobedience, but also acts of noncompliance and non-cooperation, including any conduct that constitutes a refusal to submit to supervisory authority; therefore, a city truck driver was insubordinate in refusing to take an alcohol and drug screening when requested. In re James, OAL Dkt. No. CSV 6099-05, 2006 N.J. AGEN LEXIS 625, Final Decision (April 26, 2006).

Where an odor of alcohol emanated from a senior parole officer and he was unsteady, groggy, and fell asleep during his shift, it was irrelevant that his supervisor did not disarm him or that he was sent home during the preparatory period in the office prior to going out on the road; notwithstanding the fact that the officer was not charged with sleeping on duty, he came to work unfit to carry a firearm and had every intention of going on his assignment in the field — such inappropriate behavior warranted a 13-day suspension (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 36). In re Steimle, OAL Dkt. No. CSV 2837-05, 2006 N.J. AGEN LEXIS 618, Final Decision (March 22, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 32) adopted, which concluded that a police officer who failed to transport a teenager to a crisis center after she threatened to attack her father and then herself with a knife, but instead arrested her and then returned her to her home, exercised proper discretion and did not ignore an order to transport the girl; however, the officer was suspended for three days for insubordination after failing to submit a letter-report as requested by his supervisor. In re Lynch, OAL Dkt. No. CSV 771-05, 2006 N.J. AGEN LEXIS 1123, Merit System Board Decision (March 22, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 34) adopted, which concluded that a building maintenance worker was properly terminated for conduct unbecoming a public employee as a result of allegedly punching other employees' time cards; when the worker punched others' time cards, he clearly violated the implicit standard of good behavior that devolves upon the public employee. In re Davis, OAL Dkt. No. CSV 1698-04, 2006 N.J. AGEN LEXIS 1106, Final Decision (March 22, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 41) adopted, which concluded that removal of a senior correction officer was proper for testing positive for cocaine as a result of a random drug screening; the chain of custody was proper, and the officer did not provide any evidence that the integrity of his sample was compromised. The mere fact that two other officers walked into the bathroom while he was voiding and were present when he put his sample down to wash his hands, did not evidence that the sample was tampered with. In addition, the officer did not contend that he requested privacy at the time he was voiding and such privacy was denied. In re Stith, OAL Dkt. No. CSV 7373-03, 2006 N.J. AGEN LEXIS 1095, Final Decision (March 8, 2006).

Attorney General Guidelines were adopted in order to provide a uniform random drug testing program for law enforcement agencies, which would meet the standards set forth in *NJ Transit PBA Local 304 v. NJ Transit Corp.*, 151 N.J. 531 (1997); however, the AG Guidelines are certainly not the only means by which a law enforcement agency's random drug testing program can pass muster under *New Jersey Transit*. If deviations from the AG Guidelines do not amount to violations of the employee's right to due process or call into question the validity of the positive test result, such deviations do not mandate voiding the test result. In re Stith, OAL Dkt. No. CSV 7373-03, 2006 N.J. AGEN LEXIS 1095, Final Decision (March 8, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 12) adopted, which found on conflicting evidence that a police officer was insubordinate when he refused to obey a lawful order to respond to a motor vehicle incident on a snowy, busy roadway, preferring to remain in his office and telling the commanding officer that "if there is a problem, see me in my office"; the officer's allegations that the department's administrators subjected him to unfair treatment in retaliation for his union activities or that they otherwise acted in bad faith did not constitute credible contradiction of the facts. In re Cipriano, OAL Dkt. No. CSV 6285-04, 2006 N.J. AGEN LEXIS 214, Final Decision (February 22, 2006).

Removal of a correction officer recruit was the appropriate penalty when an anonymous tip revealed that she was living with a parolee, who was the father of her children; the officer was removed, not simply for the fact that she violated the rule against undue familiarity, but because she was aware of her duty to disclose her relationship, but failed to do so (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 920). In re Ridgeway, OAL Dkt. No. CSV 552-05, 2006 N.J. AGEN LEXIS 1532, Final Decision (February 8, 2006).

Thirty-day suspension of a juvenile senior correction officer was appropriate after he verbally abused inmates, using profanity; regardless of the provocations directed towards the officer by the inmates, the officer had a professional duty to remain in control of his behavior and speech and, contrary to the ALJ's determination, the inmates did not have a lesser expectation of civility and were not owed less of a duty of reasonable official conduct than other city employees, officials, or visitors. In re Fuentes, OAL Dkt. No. CSV 6115-05 (CSV 2747-04 On Remand), 2006 N.J. AGEN LEXIS 213, Final Decision (January 11, 2006), aff'd per curiam, No. A-3323-05T2, 2007 N.J. Super. Unpub. LEXIS 1914 (App.Div. June 15, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 409) adopted, which concluded that a sheriff's officer was properly terminated after he

surreptitiously recorded a proceeding knowing he was not allowed to do so and filed unsubstantiated criminal charges against superiors and fellow officers as an act of retribution and an abuse of the criminal process; the record was clear that the officer was a malcontent. In re Siegelman, OAL Dkt. No. CSV 6623-02, 2006 N.J. AGEN LEXIS 131, Final Decision (January 11, 2006).

Employee is not required to follow the order of a supervisor if it will place the employee *or others* entrusted to the employee's care in jeopardy; therefore, a driver's removal for failing to place a resident on his bus was reversed because transferring the resident from a wheelchair to a seat was prohibited due to the risk of serious injury and the driver was justified in not obeying the order since doing so would have placed the client or the other clients on the bus at risk for injury. In re Allen, OAL Dkt. No. CSV 9132-05 (CSV 11160-04 On Remand), 2006 N.J. AGEN LEXIS 105, Merit System Board Decision (January 11, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 650) adopted, which concluded that a police officer was properly removed from employment after she received credible information from an individual she believed was a gang member regarding the planned killing of a fellow female officer, but failed to immediately report the information to the Newark Police Department; the protection of human life is one of the most important and fundamental duties of a police officer and the officer's failure to immediately act on the information she received amounted to neglect of duty under N.J.A.C. 4A:2-2.3(a)7. In re Ellis, OAL Dkt. No. CSV 1554-03, 2005 N.J. AGEN LEXIS 1044, Final Decision (December 7, 2005), aff'd per curiam, No. A-2657-05T5, 2007 N.J. Super. Unpub. LEXIS 2597 (App.Div. May 15, 2007).

Arriving late for work and failing to call the supervisor does not rise to the level of "conduct unbecoming a public employee." In re Wilson, OAL Dkt. No. CSV 2162-05, 2005 N.J. AGEN LEXIS 1046, Final Decision (December 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 337) adopted, which explained that an occurrence reflecting upon an individual's character and honesty may constitute unbecoming conduct and cause for discipline; a county correction sergeant's actions as a supervisor and prison official in directing his subordinates to violate rules and procedures, and causing posts to be unmanned resulting in mandated inmate checks not being conducted, were putting the facility, staff, and inmates at risk. In re Matza, OAL Dkt. No. CSV 1967-01, 2005 N.J. AGEN LEXIS 1045, Final Decision (November 22, 2005), aff'd per curiam, No. A-2481-05T1, 2007 N.J. Super. Unpub. LEXIS 907 (App.Div. June 19, 2007).

Police officer's unintentionally leaving his keys in a safety box that contained live ammunition in a secured area only frequented by officers did not meet the standard of conduct unbecoming a public employee; however, the conduct supported a finding of negligence and careless handling of county property and violations of departmental rules and regulations pertaining to equipment and property and safety and control, supporting a five-day suspension. In re Currier, OAL Dkt. No. CSV 2589-05, 2005 N.J. AGEN LEXIS 1082, Merit System Board Decision (November 22, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 634) adopted, which found that a correction officer was improperly disciplined for indulging in undue familiarity with an inmate by allowing him to call her residence numerous times; although the appointing authority established that an inmate made collect calls to and spoke with someone at the officer's residence on nine separate occasions over the course of four days, it did not prove that it was the officer who received those calls and not her brother or her friend. In re Williams, OAL Dkt. No. CSV 2875-04, 2005 N.J. AGEN LEXIS 1188, Merit System Board Decision (November 22, 2005).

Where the medical evidence unquestionably established that a firefighter was physically unable to perform the essential functions of a firefighter, rendering him unfit and unqualified for the position he sought, the appointing authority was not legally obligated to create or maintain a light-duty assignment position, initially offered as a temporary accommodation for what was then perceived to be a temporary job-related disability (adopting 2005 N.J. AGEN LEXIS 574). In re Czarnecki, OAL Dkt. No. CSV 2943-03, 2005 N.J. AGEN LEXIS 1254, Final Decision (November 3, 2005), aff'd per curiam, No. A-1993-05T5, 2007 N.J. Super. Unpub. LEXIS 2927 (App.Div. July 20, 2007).

Police officer was properly removed after the ALJ found, on conflicting evidence, that the officer drew an obscene cartoon on a summons, presented the summons to a black driver, and made racially insensitive remarks about the driver to a fellow officer; although the officer was not specifically charged with racial profiling and making racially derogatory remarks, the actions did not constitute a separate offense, but were appropriately considered as lending credibility to the allegations against the officer. In any event, even without consideration of the issues of racial profiling and the racial remarks, removal was the appropriate penalty (adopting 2005 N.J. AGEN LEXIS 376). In re Moran, OAL Dkt. No. CSV 7157-03, 2005 N.J. AGEN LEXIS 1213, Final Decision (November 3, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 482) adopted, which reversed an agency suspension of a county correction officer. The amount of family leave available to the officer was in dispute and he had been told that he had family leave remaining covering the time of his absences. There was no bad faith by the officer and he had not violated the unauthorized absence policy. In re Gogan, OAL Dkt. No. CSV 10241-04, 2005 N.J. AGEN LEXIS 1176, Merit System Board Decision (October 19, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 522) adopted, which found that a senior correction officer was properly removed where the officer mismanaged the juvenile detention unit by encouraging inmates to beat each other for the purpose of enforcing order; the officer also failed to report an injury involving a resident. In re Matias, OAL Dkt. No. CSV 2749-04, 2005 N.J. AGEN LEXIS 1187, Final Decision (October 19, 2005).

Ten-day suspension, rather than 25-day suspension, was warranted where a correction officer's employment record revealed that he had received no prior major discipline and it was undisputed that he did not intentionally allow a fellow officer to deliver contraband to an inmate, nor did he file a false report about the incident; while it was undisputed that the officer had failed to fulfill his duties as Control Room officer and that his actions were negligent, the harsh sanction of the appointing authority was not appropriate (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 605). In re Beuckman, OAL Dkt. No. CSV 403-03, 2005 N.J. AGEN LEXIS 1482, Merit System Board Decision (October 19, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 578) adopted, which concluded that there was insufficient evidence to support a finding that a correction officer who had called in sick and had attended a party had engaged in conduct unbecoming a public employee or abused sick time, where the party had continued after the end of her shift, because the officer could have arrived at the party after the end of her shift. In re Holmes-Marrow, OAL Dkt. No. CSV 05107-04, 2005 N.J. AGEN LEXIS 1240, Merit System Board Decision (October 5, 2005).

Rights of sheriff's officer were not violated when his legal representative was permitted to attend a departmental interview, but was limited to hearing the employee's own account of the matter under investigation and was not permitted to take an active role in the interview process; the officer was not threatened, coerced, or harassed during the interview and there was no reason for counsel or the union representative to interject himself into the interview process. In re Cawley, OAL Dkt. No. CSV 6234-02, 2006 N.J. AGEN LEXIS 798, Initial Decision (September 28, 2006), adopted (Merit System Board November 1, 2006).

Sheriff's officer was properly removed after he arranged to meet three high school girls in an isolated area and kissed one of them and kissed and fondled the breasts of another while on duty, and then later incorrectly noted his location as headquarters; the officer's conduct was inexcusable and egregious and brought disrepute to the Sheriff's Office. In re Cawley, OAL Dkt. No. CSV 6234-02, 2006 N.J. AGEN LEXIS 798, Initial Decision (September 28, 2006), adopted (Merit System Board November 1, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 576) adopted, which concluded that a correction officer was properly disciplined for fraternization or undue familiarity with an inmate based on numerous phone calls the inmate made to the officer's home; the fact that there was no evidence alleging any undue familiarity with the inmate while "on-the-job" in the jail was of no consequence where the officer accepted and had lengthy phone conversations with the inmate, as evidenced by the business phone records of both the jail phone system and the officer's phone records and bills. In re Addison, OAL Dkt. No. CSV 4988-04, 2005 N.J. AGEN LEXIS 1199, Final Decision (September 21, 2005), aff'd per curiam, No. A-0892-05T5, 2006 N.J. Super. Unpub. LEXIS 2673 (App.Div. May 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 576) adopted, which concluded that undue familiarity existed when an inmate had a correction officer's phone number, the inmate made over 30 collect calls to the correction officer's home phone which were accepted, and multiple and lengthy phone conversations occurred between the inmate and the correction officer at her home. In re Addison, OAL Dkt. No. CSV 4988-04, 2005 N.J. AGEN LEXIS 1199, Final Decision (September 21, 2005), aff'd per curiam, No. A-0892-05T5, 2006 N.J. Super. Unpub. LEXIS 2673 (App.Div. May 26, 2006).

Emergency medical technician had a duty to respond on foot to an emergency call one block away when an ambulance was not available during a blackout; even though the call came at night in a crime-ridden neighborhood, it was the fundamental duty of an EMT to render emergency medical aid. The ALJ's reliance on the Department of Personnel job specifications for EMTs and the appointing authority's procedures to support his conclusion that the EMT was not required to respond was misplaced where such documents could not account for all the potential situations that may arise for such a position (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 457). In re Vena, OAL Dkt. No. CSV 9340-01, 2005 N.J. AGEN LEXIS 1088, Final Decision (August 10, 2005), aff'd per curiam, No. A-4128-05T1, 2007 N.J. Super. Unpub. LEXIS 1325 (App.Div. October 26, 2007).

Police sergeant who prepared a memo addressed to his superior officer and forwarded the memo to his union representative and a lawyer should not have been subject to discipline because the subject of the memo was the transfer of a police officer from the sergeant's squad and the sergeant expressed that he was disturbed by potential issues arising out of the transfer and allegations by that officer that the sergeant had been harassing him; there was nothing in the language of the memo that reasonably could have been considered insubordinate or conduct unbecoming and the dissemination of the memo to the attorney and the union representative was not a subversion of the good order and discipline of the department (adopting 2005 N.J. AGEN LEXIS 344). In re Scymanski, OAL Dkt. No. CSV 9886-03, 2005 N.J. AGEN LEXIS 1052, Merit System Board Decision (August 10, 2005).

Tax collector's refusal to comply with new business hours; cause for suspension without pay. Newfield Borough v. Moynihan, 94 N.J.A.R.2d (CAF) 2.

Incompetence and poor judgement exhibited by Casino Control Commission's Chief of Staff with respect to employee buyouts and meal recompensation merited three-month suspension without pay and demotion. In the Matter of Papp, 96 N.J.A.R.2d (CCC) 1.

Lack of specificity in assignment defeats employer's suspension action for neglect of duty. Stevenson v. Burlington County Mosquito Control Commission, 97 N.J.A.R.2d (CSV) 702.

Removal of utilities employees due to unbecoming conduct and falsification of records affirmed. Phillips and Williams v. Deptford Township Municipal Utilities Authority, 97 N.J.A.R.2d (CSV) 695.

Probationary firefighter removed after testing twice for drug use and signing certifications authenticating testing procedures. McHugh v. City of East Orange Fire Department, 97 N.J.A.R.2d (CSV) 692.

Building engineer's appropriate action to solve building's mechanical problems inappropriate subject for removal. Clark v. Northern State Prison, 97 N.J.A.R.2d (CSV) 686.

Excessive absences justify classified employee's removal. Cesaretti v. Atlantic County, 97 N.J.A.R.2d (CSV) 680.

Corrections officer terminated for over-familiarity with inmate. Anderson v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 675.

Suspension of hospital attendant due to excessive absenteeism modified. Shapiro v. Burlington County, 97 N.J.A.R.2d (CSV) 673.

Suspension of correction officer for unbecoming conduct due to falsification of time records affirmed. Rodriguez v. Cumberland County, 97 N.J.A.R.2d (CSV) 671.

Removal of juvenile detention officer for excessive absenteeism affirmed. King v. Cumberland County, 97 N.J.A.R.2d (CSV) 664.

Demotion of correction sergeant due to failure to follow policies regarding removal of inmate affirmed. Gianni v. Albert C. Wagner Youth Correctional Facility, 97 N.J.A.R.2d (CSV) 661.

Termination of human services technician for physical abuse of patient reduced to suspension. Farmer v. Marlboro Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 660.

Employee's workload backlog not grounds for suspension if work pace within reasonable levels within agency. Teel v. Mercer County Board of Social Services, 97 N.J.A.R.2d (CSV) 657.

Supervisor's threat of assault justifies suspension. Viteritto v. Northern State Prison, 97 N.J.A.R.2d (CSV) 655.

Suspension and removal of police officer due to unbecoming conduct, insubordination and assault affirmed. Schreck v. Township of Woodbridge Police Department, 97 N.J.A.R.2d (CSV) 645.

Suspension of sergeant for unbecoming conduct due to inappropriate use of force against resident affirmed. Mullins v. New Jersey Training School for Boys, Jamesburg, 97 N.J.A.R.2d (CSV) 643.

Excessive absences justify youth worker's removal. Evans v. Mercer County Youth Detention Center, 97 N.J.A.R.2d (CSV) 637.

Removal of building maintenance worker for excessive absenteeism due to work-related injury inappropriate. Allison v. Trenton Housing Authority, 97 N.J.A.R.2d (CSV) 633.

Suspension of Safety Specialist due to chronic or excessive lateness affirmed. Williams v. Division of Motor Vehicles, 97 N.J.A.R.2d (CSV) 632.

Employee's physical abuse of institutional client justifies removal. Vinson v. Vineland Developmental Center, 97 N.J.A.R.2d (CSV) 630.

Removal of Maintenance Repairer based on erroneous information not justified. Peters v. Hackensack Housing Authority, 97 N.J.A.R.2d (CSV) 628.

Removal due to refusal to cooperate with alcohol testing affirmed. Parham and Day v. Department of Transportation, 97 N.J.A.R.2d (CSV) 621.

Removal of laborer due to persistent misconduct affirmed. O'Brick v. Township of Pennsauken, Department of Public Works, 97 N.J.A.R.2d (CSV) 617.

Nurse's removal for backdating facility report on client modified. Milbourne v. Vineland Developmental Center, 97 N.J.A.R.2d (CSV) 614.

Lack of evidence defeats appointing authority's disciplinary charges. Jensen v. North Princeton Developmental Center, 97 N.J.A.R.2d (CSV) 612.

Junior officer's disobedience warrants suspension for unbecoming conduct. Heigler v. Gloucester County, Office of Sheriff, 97 N.J.A.R.2d (CSV) 607.

Removal of truck driver for causing disturbance on state property affirmed. Grimaldi v. Vineland Developmental Center, 97 N.J.A.R.2d (CSV) 604.

Choking institutionalized juvenile justifies technician's removal for client mistreatment. Fouco v. Woodbine Developmental Center, 97 N.J.A.R.2d (CSV) 601.

Removal of clerk typist due to excessive absenteeism and unauthorized use of property unwarranted. Crumidy v. Middlesex County Board of Taxation, 97 N.J.A.R.2d (CSV) 596.

Removal for neglect of duty due to absence reduced to three month suspension. Coppola v. Township of Gloucester, Department of Recreation, 97 N.J.A.R.2d (CSV) 593.

Public employee failing to report for assignment and repeatedly failing to comply with supervisor's directives justifies removal. Bright v. Arthur Brisbane Child Treatment Center, 97 N.J.A.R.2d (CSV) 586.

Removal of clerk typist due to absenteeism modified to suspension. Viereck v. City of Gloucester City, Department of Administration, 97 N.J.A.R.2d (CSV) 573.

Suspensions and removal of institutional attendant for use of insulting language modified. Whitehead v. Monmouth County, 97 N.J.A.R.2d (CSV) 569.

Removal of service officer for neglect of duty remanded. Avanti v. Department of Military and Veteran's Affairs, 97 N.J.A.R.2d (CSV) 564.

Failure to seek treatment but continuing to arrive to work while intoxicated justifies removal of security guard. Joseph v. Jersey City State College, 97 N.J.A.R.2d (CSV) 561.

Hospital technician's inaction resulting in danger to others justifies removal. Polansky v. Hunterdon Developmental Center, 97 N.J.A.R.2d (CSV) 549.

Removal of sheriff's officer for failure to submit to psychological exam appropriate. Villani v. Passaic County Sheriff's Department, 97 N.J.A.R.2d (CSV) 533.

Unexplained tardiness insufficient grounds for removal. Good v. Northern State Prison, 97 N.J.A.R.2d (CSV) 529.

Suspension of correction officer due to alleged sexual harassment and verbal abuse dismissed. Hammond v. Monmouth County Sheriff's Office, 97 N.J.A.R.2d (CSV) 525.

Failure to follow chain of command before releasing test results to personnel agency justifies verbal reprimand over suspension. Hartmann v. Department of Law and Public Safety, Division of Police, 97 N.J.A.R.2d (CSV) 519.

Suspension of sheriff's officer for neglect of duty affirmed. Thomas v. Passaic County Jail, 97 N.J.A.R.2d (CSV) 517.

Bookkeeper's suspension for conduct unbecoming public employee not justified. Volpe v. Bureau of Parole, 97 N.J.A.R.2d (CSV) 448.

Police officer's suspension for insubordination and unbecoming conduct modified. Thigpen v. City of East Orange Police Department, 97 N.J.A.R.2d (CSV) 446.

Hearing officer's suspension for neglect of duty and conduct unbecoming public employee affirmed. Morley v. Department of Labor, 97 N.J.A.R.2d (CSV) 442.

Suspension of employee not justified when appointing authority fails to establish any misconduct. Long v. New Lisbon Environmental Center, 97 N.J.A.R.2d (CSV) 440.

Employee's failure to comply with administrative order warrants removal. Leftridge v. Ancora Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 438.

Removal of institutional attendant for abusive absenteeism and lateness justified. Kralle v. Red Oak Manor, 97 N.J.A.R.2d (CSV) 435.

Removal of employee for encouraging a patient to strike another patient was justified. Hill v. Ancora Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 433.

Suspension for chronic or excessive absenteeism and lateness justified. Gonzalez v. City of Newark, Department of Water and Sewer Utility, Division of Sewers and Water Supply, 97 N.J.A.R.2d (CSV) 430.

Removal for conduct unbecoming public employee justified. Galloza-Orama v. New Lisbon Development Center, 97 N.J.A.R.2d (CSV) 428.

Removal for conduct unbecoming public employee not justified. Chandler v. Jersey City State College, 97 N.J.A.R.2d (CSV) 426.

Release of telephone operator for unsatisfactory services justified. Bahary v. Department of Buildings and Grounds, 97 N.J.A.R.2d (CSV) 423.

Corrections employee's misuse of state property justifies removal. Williams v. COTA-Department of Corrections, 97 N.J.A.R.2d (CSV) 418.

Employee given authorized absences suffers removal for unauthorized absences after extension denied. Weil v. Atlantic County Department of Public Safety, 97 N.J.A.R.2d (CSV) 413.

Removal of corrections officer for undue familiarity and conduct unbecoming an employee affirmed. Ventola v. Northern State Prison, 97 N.J.A.R.2d (CSV) 408.

Removal from Aviation Mechanics eligibility list justified. Tullo v. State Department of Law and Public Safety, 97 N.J.A.R.2d (CSV) 405.

Male corrections officer's sexual harassment of female officer justifies suspension. Reed v. Department of Corrections, 97 N.J.A.R.2d (CSV) 403.

Suspensions modified and removal of correction officer for excessive absenteeism affirmed. Parks v. Atlantic County Adult Detention Center, 97 N.J.A.R.2d (CSV) 395.

Insufficient proof defeats charges supporting suspension of security guard for falsification. Ortiz v. State Department of Transportation, 97 N.J.A.R.2d (CSV) 393.

Falling asleep on duty justified removal of cottage technician. Burton v. Woodbine Developmental Center, 97 N.J.A.R.2d (CSV) 391.

Suspension of employee for failing to follow procedures justified. Steinmetz v. New Lisbon Developmental Center, 97 N.J.A.R.2d (CSV) 389.

Teacher's aide violating inmate contact rules while working in prison suffers removal. Rose v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 385.

City driver's refusal to participate in drug testing justifies termination. Reames v. Department of Public Works, City of Patterson, 97 N.J.A.R.2d (CSV) 376.

Termination of employee for violating Drug-Free Workplace Policy is justified. Myers v. Jersey City Housing Authority, 97 N.J.A.R.2d (CSV) 374.

Employee misstating and falsifying accident injury suffers extended suspension. Montiero v. Vineland Developmental Center, 97 N.J.A.R.2d (CSV) 367.

Police officer's suspension for conduct unbecoming justified. Lewis v. City of East Orange Police Department, 97 N.J.A.R.2d (CSV) 364.

Intoxicated on-duty police officer terminated. Robinson v. City of Wildwood Police Department, 97 N.J.A.R.2d (CSV) 360.

Police officer failing to activate siren upon high speed pursuit suffers suspension. Ring v. Department of Public Safety of the Township of South Orange, 97 N.J.A.R.2d (CSV) 351.

Nurse's aide's use of physical force to restrain patient not patient abuse. King v. Morrisview Nursing Home, 97 N.J.A.R.2d (CSV) 342.

Final warning notice triggers suspension for previously chronically absent employee lately absent due to accident injuries. Hoffman v. Hudson County Department of Public Safety, 97 N.J.A.R.2d (CSV) 337.

Removal of maintenance engineer for unbecoming conduct and neglect of duty modified to suspension. Gann v. Marlboro Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 326.

No suspension for assault on state property when employee reasonably responding to being assaulted. Fritsch v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 323.

Removal of employee for excessive absenteeism and neglect of duty justified. DelGresso v. Atlantic County Adult Detention Center, 97 N.J.A.R.2d (CSV) 321.

Electrician properly demoted for dangerous wiring. Brown v. Vineland Developmental Center, 97 N.J.A.R.2d (CSV) 315.

Nurse's carelessness in administering medicine to clients warrants suspension. Baker v. North Princeton Developmental Center, 97 N.J.A.R.2d (CSV) 313.

Termination of employee for excessive absenteeism and lateness is justified. Morgan v. Union County Runnells Specialized Hospital, 97 N.J.A.R.2d (CSV) 295.

Employee's failure to show bad faith justifies employer's layoffs for reasons of economy. Johnston v. Jersey City, 97 N.J.A.R.2d (CSV) 290.

Removal of Youth Worker for insubordination modified to six month suspension. Janetta v. Division of Youth and Family Services, 97 N.J.A.R.2d (CSV) 286.

Good faith reasons of efficiency and economy justify layoffs. Herr and Torry v. Borough of Fairview, 97 N.J.A.R.2d (CSV) 283.

Employer's demotion action justified if found to be based upon good faith reasons of economy and efficiency. Chiger and O'Neil v. Borough of Highlands, 97 N.J.A.R.2d (CSV) 276.

Police officer ignoring radio commands to terminate high-speed pursuit suffers suspension. Carrero v. City of Passaic Police Department, 97 N.J.A.R.2d (CSV) 272.

Corrections officer's failure to give adequate absence notice and disrespectful response to superior triggers suspension. Butler v. Monmouth County Sheriff's Office, 97 N.J.A.R.2d (CSV) 266.

Employee removed if incapable of performing required duties. Brannon v. New Jersey Department of Transportation, 97 N.J.A.R.2d (CSV) 258.

Employee's excessive absenteeism and neglect of duty warrants removal. Andrews v. Newark Board of Education, 97 N.J.A.R.2d (CSV) 257.

Suspension of correction officer for neglect of duty and insubordination justified. Murie v. Atlantic County Adult Detention Center, 97 N.J.A.R.2d (CSV) 254.

Removal of cottage training technician for neglect of duty modified to a six-month suspension. McMillan v. New Lisbon Developmental Center, 97 N.J.A.R.2d (CSV) 252.

Cottage worker removed for sleeping in client's room. Smith v. North Jersey Developmental Center, 97 N.J.A.R.2d (CVS) 246.

Removal of human services assistant for physically abusing patient and threatening coworker justified. Reeves v. Marlboro Psychiatric Hospital,. 97 N.J.A.R.2d (CSV) 243.

Employee's willful refusal to improve work performance justifies termination. Parcella v. Morris Board of Social Services, 97 N.J.A.R.2d (CSV) 235.

Human services assistant's assault of developmental facility's client justifies removal. Nunley v. New Lisbon Development Center, 97 N.J.A.R.2d (CSV) 232.

Police officer loses job over excessive disciplinary problems. Molan v. Township of Deptford Police Department, 97 N.J.A.R.2d (CSV) 225.

Removal of patrolman for conduct unbecoming a public employee modified to a one-month suspension. Laudadio v. Woodbridge Police Department, 97 N.J.A.R.2d (CSV) 220.

Employee's failure to account for client during an outing justifies suspension for neglect of duty. Emmons v. New Lisbon Developmental Center, 97 N.J.A.R.2d (CSV) 218.

Commissary manager suspended for maintaining neglected and messy store. Cooper v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 213.

No removal of employee for sexual harassment based on witnesses' credibility favoring employee. Street v. Vineland Development Center, 97 N.J.A.R.2d (CSV) 207.

Removal of motor broom laborer for excessive absenteeism, neglect of duty and insubordination justified. Lomax v. City of Newark Neighborhood Services, 97 N.J.A.R.2d (CSV) 200.

Employee's excessive lateness warrants removal. Goode v. Bergen Pines Hospital, 97 N.J.A.R.2d (CSV) 195.

Employee's substance abuse triggers suspension and rehabilitation. Dunnion v. Division of Youth and Family Services, 97 N.J.A.R.2d (CSV) 191.

Removal of employee for sleeping while on duty justified. Barr v. North Princeton Development Center, 97 N.J.A.R.2d (CSV) 187.

Medical security officer suspended for fighting with coworker. Alyenigba v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 184.

Directing employees to perform private work while on "state time" warrants removal for unbecoming conduct. Stark v. Marlboro Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 178.

Public employee's failure to perform statutory duties justifies lengthy suspension. Richards-Mecardo v. City of Hoboken, 97 N.J.A.R.2d (CSV) 170.

Maintenance repairer's suspension for unbecoming conduct and misuse of public property modified. Nassy v. Union County Department of Operational Services, 97 N.J.A.R.2d (CSV) 158.

Nurse's habitual incompetence, inefficiency, and neglect triggers multiple suspension actions. Jenkins v. Buttonwood Hospital, 97 N.J.A.R.2d (CSV) 154.

Removal of Youth Worker for failing to follow procedure justified. Hughes v. Juvenile Services, 97 N.J.A.R.2d (CSV) 152.

Removal of juvenile detention officer for chronic absenteeism justified. Gonzalez v. Passaic County Juvenile Detention Center, 97 N.J.A.R.2d (CSV) 140.

Institution employee using loud, offensive language suffers suspension. Cupid v. John L. Montgomery Medical Home, 97 N.J.A.R.2d 2d (CSV) 137.

Employee's illnesses warrants removal for inability to perform his job. Yaghen v. William Paterson College of New Jersey, 97 N.J.A.R.2d (CSV) 132.

Excessive tardiness or absences justifies removal. Stratton v. Department of Buildings and Grounds, 97 N.J.A.R.2d (CSV) 129.

Attendant in psychiatric hospital removed after hitting high risk patient when no threat of harm present. Sopade v. Greystone Park Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 126.

Failure to conduct physical cell check triggers sergeant's suspension and demotion. Pizzullo v. Hamilton Township, 97 N.J.A.R.2d (CSV) 120.

Confronting and intimidating a supervisor warrants removal of employee. Grant v. Vineland Developmental Center, 97 N.J.A.R.2d (CSV) 110.

Employee's excessive absences and tardiness justifies fine. Dixon v. Mountainview Youth Correctional Facility, 97 N.J.A.R.2d (CSV) 106.

Striking client with hanger warrants removal. Daring v. North Jersey Development Center, 97 N.J.A.R.2d (CSV) 103.

Failure to perform duties warrants removal. Beres v. Township of Marlboro, Department of Public Works, 97 N.J.A.R.2d (CSV) 102.

No suspension for public works superintendent exercising Fifth Amendment right. Barr v. Borough of Lawnside, 97 N.J.A.R.2d (CSV) 98.

Employee's failure to document medical basis for excessive and unauthorized absences suffers removal. Alford v. Essex County Hospital Center, 97 N.J.A.R.2d (CSV) 95.

Youth worker suffers suspension for conduct unbecoming a public employee by continuing unapproved contact with teenager. Janetta v. Department of Human Services, 97 N.J.A.R.2d (CSV) 92.

Public employee suspended for making racial remarks about supervisor and coworkers. Downey v. Department of the Treasury, 97 N.J.A.R.2d (CSV) 90.

Removal of nutrition program coordinator not justified. Reiser v. City of East Orange Health Department, 97 N.J.A.R.2d (CSV) 82.

Corrections office's failure to secure area resulting in inmate's attempt to escape justifies suspension. Abdus-Sabur v. Department of Corrections, Northern State Prison, 97 N.J.A.R.2d (CSV) 75.

Removal of human services technician for physical abuse of patient justified. Taylor v. Greystone Park Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 71.

Senior parole officer suspended for not properly supervising parolee. Goodman v. Department of Correction, 97 N.J.A.R.2d (CSV) 66.

Removal of nurses aide for excessive absenteeism justified. Hichens v. County Manor, Cumberland County, 97 N.J.A.R.2d (CSV) 61.

Failure to maintain valid driver's license justified dismissal of clerk driver whose position required driver's license. Zayas v. Department, 97 N.J.A.R.2d (CSV) 56.

Suspension of corrections officer for alleged insubordination, disrespect and use of abusive language was not justified where, although it was undisputed that officer and his lieutenant had exchange in parking lot outside prison, exact content of conversation could not be determined. Thomas v. Northern State Prison, 97 N.J.A.R.2d (CSV) 54.

Clerk-typist's refusal to make photocopies constituted insubordination where photocopying was included in job description for that position. Porter v. Department of Human Services, 97 N.J.A.R.2d (CSV) 48.

Developmental center employee who willfully failed to protect client by preventing client from banging his head against wall would be dismissed. Micciche v. New Lisbon Developmental Center, 97 N.J.A.R.2d (CSV) 45.

Security guard supervisor who sought to blame his subordinates for his failure to follow proper procedures for shift changes and for securing all posts during shift would be demoted. Leverett v. State Department of Transportation, 97 N.J.A.R.2d (CSV) 42.

Suspension of Human services attendant for neglect of duty, based upon her alleged failure to exchange client's adult diapers for briefs on day of federal inspection, was not justified. Jesse v. Woodbridge Developmental Center, 97 N.J.A.R.2d (CSV) 40.

Security guard who was absent from work without leave four times, was involved in automobile accident out of his assigned work district with smell of alcohol on his breath, appeared for work with alcohol on his breath on two occasions, and had altercation with his union representative on one of those days was properly dismissed. Hunt v. Newark Board of Education, 97 N.J.A.R.2d (CSV) 37.

Police officer who grabbed buttocks of female colleague at funeral which officers were attending in their official capacity, and who subsequently acted in threatening manner when female officer reported incident, was properly suspended for 180 days. Engel v. Gloucester Township Police Department, 97 N.J.A.R.2d (CSV) 35.

Maintenance worker who shouted and threatened union action when his supervisors, after observing him reading newspaper during his scheduled shift, asked him if he had completed his assigned tasks would be suspended for 45 days. DiAngelo v. Meadowview Hospital, 97 N.J.A.R.2d (CSV) 30.

Corrections officer who maintained relationships with inmates and ex-inmates in violation of employee rules was dismissed. Callanan v. Department of Adult Corrections, 97 N.J.A.R.2d (CSV) 27.

Chronically late corrections officer who had suffered previous dismissal for disciplinary infractions would be removed for single lateness infraction where terms of his reinstatement dictated that any subsequent attendance infraction would so warrant. Calhoun v. Northern State Prison, New Jersey Department of Corrections, 97 N.J.A.R.2d (CSV) 24.

Cottage training technician's chronic absenteeism without notice or permission justified dismissal. Bradley v. New Lisbon Developmental Center, 97 N.J.A.R.2d (CSV) 21.

Dismissal of developmental center employee who physically abused mentally retarded client was warranted. Anderson v. North Princeton Development Center, 97 N.J.A.R.2d (CSV) 19.

Account clerk's failure to obtain authorization or offer explanation for extended absence justified dismissal. Piereschi v. The Passaic Valley Water Commission, 97 N.J.A.R.2d (CSV) 14.

Suspension and demotion of housing inspector for using open flame to test smoke detector was not justified; penalty would be reduced to five-day suspension. Mrozicki v. Hamilton Township, Department of Engineering, 97 N.J.A.R.2d (CSV) 7.

Dismissal of public works employee for being absent without excuse for more than five consecutive days was warranted. Tischio v. Essex County Department of Public Works, 96 N.J.A.R.2d (CSV) 859.

Youth worker's excessive unexcused tardiness warranted 15-day suspension. Reed v. Arthur Brisbane Child Treatment Center, 96 N.J.A.R.2d (CSV) 852.

Dismissal of employee for being absent without permission and for failing to give proper notice of her absences was justified. McArthur v. North Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 850.

Employee's failure to report for work or to obtain approval for absence justified his removal after forty days' absence from work, even though employee maintained that his absence was due to debilitating illness. Kologi v. Division of State Police, 96 N.J.A.R.2d (CSV) 846.

Dismissal of medical security officer for negligently contributing to escape of psychiatric patient was warranted where officer and his partner had each agreed to spend four hours of shift sleeping, rather than guarding patient as two-man team. Blake and Kelsey v. Forensic Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 842.

Corrections officer who brought food to inmates, played cards with inmates, passed notes to inmates, had inmate style her hair, and allowed inmate to sit in prison's control booth would be discharged for indulging in "undue familiarity" with inmates. Perry v. Mercer County Department of Public Safety, 96 N.J.A.R.2d (CSV) 834.

Removal of applicant's name from competitive list for position of assistant public works director was justified where applicant had previously resigned from two public positions at request of his employers and applicant lacked communications skills essential to job. Township of Teaneck v. Nemeth, 96 N.J.A.R.2d (CSV) 832.

Corrections officer who failed to notify prison command center of escape in progress was guilty of neglect of duty warranting 15-day suspension. Tanko v. East Jersey State Prison, 96 N.J.A.R.2d (CSV) 829.

Whistle-blowing employee could not be discharged for failure to follow procedure where there were no written rules, policy statements, or training manuals declaring any such procedure. Reyes v. Department of Public Works, City of Trenton, 96 N.J.A.R.2d (CSV) 827.

Removal of public employee for sleeping on the job was justified where employee had received prior warning about his conduct. Payne v. Camden County Municipal Utilities Authority, 96 N.J.A.R.2d (CSV) 825.

Nurses who attempted to resuscitate nursing home patient and subsequently discontinued CPR and pronounced patient dead were not guilty of incompetency where evidence indicated that continuation of CPR would not have saved patient's life. Pabatao and Gadiano v. Buttonwood Hospital, Burlington County, 96 N.J.A.R.2d (CSV) 823.

Corrections officer who repeatedly failed to complete or call in census count and falsified post log to conceal his failure to carry out assigned duties was properly suspended. Murie v. Atlantic County Detention Center, 96 N.J.A.R.2d (CSV) 819.

Self-serving testimony by accusers alleging police misconduct was insufficient to support disciplinary charges. Moreland v. City of Trenton, 96 N.J.A.R.2d (CSV) 814.

Clinical psychologist's plea of guilty to charges of false swearing, unsworn falsification to authorities, and forgery warranted automatic removal from his position at youth correctional facility. McConlogue v. Department of Corrections, 96 N.J.A.R.2d (CSV) 811.

Court investigator was properly removed for willingness to participate in indicted defendant's scheme to hire professional killer to murder witnesses, contrary to judiciary employees' code of conduct. Marshall v. Middlesex County Superior Court, 96 N.J.A.R.2d (CSV) 809.

Public assistance worker was properly removed for falsifying application in order to receive public assistance benefits. Levi v. Passaic County Board of Social Services, 96 N.J.A.R.2d (CSV) 804.

Corrections officer was properly suspended for willingly disobeying clear employment policy requiring medical proof to support absences. Kovach v. Atlantic County Adult Detention Center, 96 N.J.A.R.2d (CSV) 801.

Developmental center employee's knowing failure to comply with procedures for obtaining authorized extended leave warranted termination. James v. Department of Human Services, Woodbridge Developmental Center, 96 N.J.A.R.2d (CSV) 798.

Developmental center employee who verbally abused and threatened co-worker and client was properly suspended and removed from her position. Jackson v. New Lisbon Developmental Center, 96 N.J.A.R.2d (CSV) 794.

Union shop steward's threats on her supervisor's property and life did not constitute protected activity, and thus steward's subsequent discharge by appointing authority was not unfair labor action. Grafton v. Department of Human Services, 96 N.J.A.R.2d (CSV) 787.

Hospital employee's unauthorized removal of scrap metal, use of state property for personal purposes, and instruction of co-workers to aid him in conversion of state property warranted removal. Gann v. Marlboro Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 782.

Public works employee's persistent absences and tardiness despite numerous disciplinary actions justified removal. Evan v. City of Linden Department of Public Works, 96 N.J.A.R.2d (CSV) 775.

Human services assistant's willful inattentiveness while feeding institutional client, which caused client to gasp for air and choke, warranted 10-day suspension. Clark v. Woodbridge Developmental Center, 96 N.J.A.R.2d (CSV) 773.

Removal of public works employee for excessive absenteeism was justified. Bellamy v. Township of Aberdeen Department of Public Works, 96 N.J.A.R.2d (CSV) 770.

Developmental technician's neglect, which resulted in client's escape, and her falsification of documents in attempt to conceal her involvement in escape justified appointing authority's removal action. Artemus v. New Lisbon Developmental Center, 96 N.J.A.R.2d (CSV) 768.

Human services assistant was reinstated when hiring authority failed to prove client abuse charges by preponderance of evidence. George v. North Jersey Developmental Center, 96 N.J.A.R.2d (CSV) 763.

School custodian's persistent failure to comply with job performance requirements and his public threat to principal justified suspension and demotion. Dent v. State Operated School District of the City of Newark, 96 N.J.A.R.2d (CSV) 757.

Corrections officer was properly suspended for leaving facility after superintendent ordered all staff to stay past end of shift due to inclement weather. Ghilon v. Edna Mahan Correctional Facility for Women and Department of Corrections, 96 N.J.A.R.2d (CSV) 643.

Removal of human services assistant for absence without permission was warranted due to his history of discipline infractions. Henry v. North Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 639.

Removal of police officer for making obscene phone calls, using excessive force on prisoner, improper display of firearms and other charges was warranted. Gallo v. Deptford Police Department, 96 N.J.A.R.2d (CSV) 633.

Corrections officer who drew and posted satirical cartoon depicting superior officer and containing obscene language would face five day suspension. Bunn v. Camden County Department of Corrections, 96 N.J.A.R.2d (CSV) 631.

Allegation that state hospital employee choked patient was undermined by patient's recantation of prior similar allegation. Wright v. Department of Human Services, 96 N.J.A.R.2d (CSV) 622.

Corrections officer who received and cashed two paychecks for same pay period would be removed, particularly in light of officer's history of discipline problems. Taylor v. Hudson County Department of Public Safety, 96 N.J.A.R.2d (CSV) 619.

Evidence supported charge that corrections officer was playing cards with inmates, warranting 30-day suspension. Spearman v. Northern State Prison, 96 N.J.A.R.2d (CSV) 616.

Nurse who used foley inflatable catheter against physician's order was suspended. Smith v. Veterans' Memorial Home, Vineland, 96 N.J.A.R.2d (CSV) 614.

Charge of falsifying time sheet was supported by co-worker's testimony that employee signed out at 1:00 p.m., but indicated on time sheet that he had signed out at 1:30 p.m. Pettit v. Vineland Developmental Center, 96 N.J.A.R.2d (CSV) 613.

Failure to complete assigned deliveries and inability to account for missing items warranted removal of truck driver with poor discipline record. Ogburn v. State-Operated School District of the City of Newark, 96 N.J.A.R.2d (CSV) 610.

Corrections officer was discharged for allowing inmate to meet privately with female visitor in courthouse law library. Nichols v. Salem County Sheriff's Department, 96 N.J.A.R.2d (CSV) 607.

Welfare interviewer who procured money from client and had history of chronic absenteeism and poor job performance was properly discharged. McCray v. City of Camden Welfare Department, 96 N.J.A.R.2d (CSV) 603.

Employee who supplied beeper number rather than home telephone number violated attendance verification policy. Mason v. Department of Corrections, 96 N.J.A.R.2d (CSV) 601.

Juvenile detention officer's failure to make required bed checks warranted removal of officer where officer's neglect resulted in escape. Grant v. Cumberland County Juvenile Detention Center, 96 N.J.A.R.2d (CSV) 591.

Corrections officer's requests for personal leave prior to reporting that she felt ill supported finding that officer's illness was feigned. Epps v. Burlington County Jail, 96 N.J.A.R.2d (CSV) 588.

Nurse who had history of making careless errors was discharged for error in medication administration, even though error in question did not result in danger to patient. Brown v. Department of Human Services, 96 N.J.A.R.2d (CSV) 584.

Custodian who pled guilty to theft of Board of Education property automatically forfeited his position. Brooks v. Newark Board of Education, 96 N.J.A.R.2d (CSV) 583.

Suspension and removal was appropriate for employee whose chronic absenteeism resulted from medical problems. Bass v. Green Brook Regional Center, 96 N.J.A.R.2d (CSV) 572.

Failure of corrections officer to have working radio was not neglect of duty where his request for fresh batteries had been denied. Todd v. East Jersey State Prison, 96 N.J.A.R.2d (CSV) 535.

Civilian corrections employee's use of physical force against uniformed officer constituted conduct unbecoming public employee and warranted 30-day suspension. Viteritto v. Northern State Prison, 96 N.J.A.R.2d (CSV) 533.

Practical nurse's failure to advise registered nurse or physician of patient's elevated pulse and respiration warranted six-month suspension, rather than removal. Stell v. New Jersey Veterans' Memorial Home-Vineland, 96 N.J.A.R.2d (CSV) 529.

Unauthorized absence after vacation day was denied warranted 10 day suspension of residential living specialist. Cain v. Department of Human Services, 96 N.J.A.R.2d (CSV) 526.

Thirty day suspension was appropriate penalty for nurse who pushed patient down into chair with excessive force. Dillsborough v. Buttonwood Hospital, Burlington County, 96 N.J.A.R.2d (CSV) 523.

Painter's refusal to perform minor plaster work constituted insubordination. Santini v. New Jersey Department of the Treasury, 96 N.J.A.R.2d (CSV) 479.

Two six-day suspensions were reasonable penalty for hospital attendant who slept on duty. Richards v. Mercer County Geriatric Center, 96 N.J.A.R.2d (CSV) 477.

Removal of food service worker on charges of client abuse was not justified where only evidence of abuse came from unreliable witness. Jacobs v. Vineland Developmental Center, 96 N.J.A.R.2d (CSV) 469.

Physical abuse of client warranted removal of human services assistant. George v. North Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 463.

Minimal physical contact with psychiatric patient warranted suspension rather than removal for hospital employee who had no prior record of excessive force. Davis v. Marlboro Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 460.

Removal of cottage training technician was reversed where evidence did not support charges of patient abuse. Chin v. Woodbine Development Center, 96 N.J.A.R.2d (CSV) 457.

Nurse's suspension for refusing to provide medication to inmate and neglecting to keep doctor informed of changes in another inmate's condition was increased to 30 days. Bynon v. New Jersey State Department of Corrections, 96 N.J.A.R.2d (CSV) 451.

Court clerk's discussion of pending domestic violence complaint with unauthorized person justifies removal. Boyd v. Middlesex County Superior Court, State Judiciary, 96 N.J.A.R.2d (CSV) 447.

Suspension of senior corrections official for escorting prisoner without handcuffs was reversed after testimony against him was found to be not credible. Thomas v. Northern State Prison, 96 N.J.A.R.2d (CSV) 444.

Cottage training technician was properly ordered reinstated to position where testimony of sole witness to alleged client abuse was not credible. Still v. Vineland Development Center, 96 N.J.A.R.2d (CSV) 438.

Demotion of sheriff's officer was warranted where officer left duty post without permission. Slanika v. Monmouth County Sheriff, 96 N.J.A.R.2d (CSV) 434.

Suspension of public works repairman reduced from 20 days to ten days for involvement in accident which caused property damage and financial liability for the city. Rudolph v. City of Plainfield, Department of Public Works, 96 N.J.A.R.2d (CSV) 430.

Police officer's dismissal was warranted where officer made threatening phone calls to his former wife and beat suspect in retaliation for earlier confrontation. Pache v. Township of Mount Holly Police Department, 96 N.J.A.R.2d (CSV) 427.

Suspension for misuse of government vehicle reversed where evidence insufficient to sustain charges of unauthorized use. Myers v. New Jersey Water Supply Authority, 96 N.J.A.R.2d (CSV) 417.

Insubordination and neglect of duty justify termination of maintenance worker. Harrington v. William Paterson College, 96 N.J.A.R.2d (CSV) 415.

Removal of police officer who failed drug test was sustained after drug screening process was verified as accurate. Gugliotta v. City of Newark Police Department, 96 N.J.A.R.2d (CSV) 409.

Police officer's refusal to take drug test constitutes sufficient cause for termination. Conyers v. City of Newark Police Department, 96 N.J.A.R.2d (CSV) 406.

Off-duty corrections officer's inappropriate touching of his penis in public justifies six-month suspension for conduct unbecoming a public employee. Brady v. Bergen County Sheriff's Department, 96 N.J.A.R.2d (CSV) 403.

Cottage training technician's removal for verbal abuse of client was modified to suspension due to technician's previously unblemished disciplinary record and client's manipulative behavior. Floyd v. Woodbridge Developmental Center, 96 N.J.A.R.2d (CSV) 399.

Removal of state hospital human services technician was warranted for violation of agency policy prohibiting financial transactions with patients where technician sold patient a cup of coffee. Reed v. Ancora Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 385.

Removal of treatment center youth worker with long history of tardiness was not justified after he offered reasonable excuses for latest occurrences. Lofton v. Arthur Brisbane Child Treatment Center, 96 N.J.A.R.2d (CSV) 382.

Hospital aide was properly suspended for failing to maintain monitoring checklist for patient. Lackey v. Ancora Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 378.

Human services assistant's failure to report for duty without permission or notice justified removal. Gbeintor v. North Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 377.

Suspension of emergency communications operator was warranted by her warning to relative of arrival by police; conduct violated agency policy and created dangerous situation. Raymond v. Burlington County, Department of Emergency Management Services, 96 N.J.A.R.2d (CSV) 357.

Nurse's breach of duty in failing to respond to resident's call for help, which resulted in another resident's death, warranted removal. Warren v. John L. Montgomery Medical Center, 96 N.J.A.R.2d (CSV) 350.

Sleeping while on duty in maximum security unit justifies removal of corrections officer with prior discipline record. Stevens v. Atlantic County, 96 N.J.A.R.2d (CSV) 348.

Inconsistent and contradictory testimony on cottage training technician's alleged abuse of client was insufficient to sustain removal action. Roach v. New Lisbon Developmental Center, 96 N.J.A.R.2d (CSV) 345.

Discharging weapon while off-duty warrants dismissal of corrections officer. Rivera v. New Jersey Training School for Boys, 96 N.J.A.R.2d (CSV) 341.

Removal from position of traffic signal repairer was justified where employee violated terms of previous disciplinary settlement. Ringkamp v. City of Trenton, 96 N.J.A.R.2d (CSV) 338.

Police officer's secret taping of promotional interview was not conduct unbecoming public employee warranting dismissal. Oches v. Township of Middleton Police Department, 96 N.J.A.R.2d (CSV) 328.

Dismissal from cottage training technician position on charges of client abuse was not warranted by technician's attention-getting tap on client's face. Harcum v. New Lisbon Developmental Center, 96 N.J.A.R.2d (CSV) 324.

Cottage training supervisor's inattention warranted dismissal where client was left strapped to rocking chair. Carter v. North Jersey Developmental Center, 96 N.J.A.R.2d (CSV) 322.

Positive drug test justifies removal of corrections officer where proper and accurate test procedures were employed. Adams v. New Jersey Department of Corrections, 96 N.J.A.R.2d (CSV) 320.

Emergency police communications clerk in training was properly removed for shutting down emergency call tracking system. DeLeon v. Jersey City Police Department, 96 N.J.A.R.2d (CSV) 316.

Suspension of civilian employee of sheriff's department was warranted by failure to comply with duty rules and lack of respect for authority. Baldwin v. Monmouth County Sheriff's Office, 96 N.J.A.R.2d (CSV) 309.

Department of Corrections failed to prove allegation that corrections officer improperly permitted parolee to reside at his home. Montigue v. Department of Corrections, 96 N.J.A.R.2d (CSV) 305.

Juvenile detention officer's refusal to submit to drug test warranted dismissal. Velez v. Hudson County Department of Public Safety, 96 N.J.A.R.2d (CSV) 293.

Police radio operator was allowed to resign in good standing based on finding that she was medically unfit to perform duties. Pribramsky v. Little Egg Harbor Township Police Department, 96 N.J.A.R.2d (CSV) 282.

Corrections officer properly suspended for being absent from post and for using excessive force on inmate. Okezie v. Burlington County, 96 N.J.A.R.2d (CSV) 280.

Reinstatement of medical security officer ordered after record failed to substantiate charge of patient abuse. Mack v. Forensic Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 269.

Public works laborer's excessive tardies and absences justify termination. Luckey v. Borough of Lindenwold, 96 N.J.A.R.2d (CSV) 266.

Suspension without pay for 15 days and recoupment of three sick days was proper penalty for human services employee who falsified medical report to get three paid days off. Landgraf v. Atlantic County Department of Human Services, 96 N.J.A.R.2d (CSV) 264.

Human service assistant properly removed from position for abusing trust and well-being of mental patients by making them drink hot sauce. Cowen v. New Lisbon Development Center, 96 N.J.A.R.2d (CSV) 257.

Cottage training technician reinstated after allegations of patient abuse not proven. Colvin v. Vineland Development Center, 96 N.J.A.R.2d (CSV) 250.

Police officer was properly removed from position for sexually harassing female employees under his supervision. Cain v. Morris County Sheriff's Office, 96 N.J.A.R.2d (CSV) 244.

Suspension was warranted where employee on medical leave disobeyed order to remain away from facility unless he obtained

supervisor's permission and insulted supervisor. Bright v. Arthur Brisbane Child Treatment Center, 96 N.J.A.R.2d (CSV) 240.

Police officer's failure to report personal crime investigation and loss of off-duty weapon justified suspension for neglect of duty and unbecoming conduct. Sepulveda v. Hudson County Department of Public Safety, 96 N.J.A.R.2d (CSV) 207.

Illness no excuse for development center employee's repeated absenteeism. Parker v. New Lisbon Developmental Center, 96 N.J.A.R.2d (CSV) 205.

Off-duty corrections officer who discharged weapon to threaten another properly removed from position. Lange v. Bergen County Sheriff's Department, 96 N.J.A.R.2d (CSV) 203.

Positive drug test justified corrections officer's dismissal. Gordon v. Department of Corrections, Training Academy, 96 N.J.A.R.2d (CSV) 200.

Unexcused tardiness justified dismissal of child treatment center employee. Cagle v. Arthur Brisbane Child Development Center, 96 N.J.A.R.2d (CSV) 197.

Division of State Police unable to substantiate charges of absenteeism, incompetence, and misuse of public property against terminated electrician. Kelso v. Department of Law and Public Safety, 96 N.J.A.R.2d (CSV) 188.

Institutional attendant's conduct undermining now-deceased resident's quality of life and failing to respond to calls for help justify 8-day suspension. Doggett v. Monmouth County, John L. Montgomery Medical Home, 96 N.J.A.R.2d (CSV) 180.

Corrections officer's refusal to answer warden's questions and subsequent loud, agitated, insolent responses constituted insubordinate conduct which merited 20-day suspension. Woods v. Camden County Correctional Facility, 96 N.J.A.R.2d (CSV) 175.

County corrections officer's chronic excessive absenteeism justifies suspension. Perroth v. Monmouth County Sheriff's Office, 96 N.J.A.R.2d (CSV) 166.

Removal from job for refusal to comply with order of supervisor determined too harsh for employee with only one disciplinary action against him in past five years. Robinson v. Camden County, 96 N.J.A.R.2d (CSV) 159.

Recreation therapy aid's false statements on job application regarding education, work experience, and criminal record justified her removal. Gourdine v. Hudson, Environmental Public Health Department, County of, 96 N.J.A.R.2d (CSV) 151.

Employee's poor judgment in driving state vehicle while intoxicated and in violation of department directive justifies three-month suspension. Manion v. Department of Transportation, 96 N.J.A.R.2d (CSV) 149.

Tax Division's removal of clerk justified when clerk instigated verbal confrontation with co-workers, made threatening gestures with stapler and engineered later confrontation. Taylor v. State Treasury, 96 N.J.A.R.2d (CSV) 138.

State corrections officer dismissed for maintaining improper relationship with inmate. Robinson v. East Jersey State Prison, Department of Corrections, 96 N.J.A.R.2d (CSV) 134.

County corrections officer with history of misconduct suspended for violating departmental policy by informing inmates of their pending transfers to state prison. Ramundo v. Passaic County Sheriff's Department, 96 N.J.A.R.2d (CSV) 131.

Police captain properly disciplined for misconduct at public meeting. Marjarum v. Hamilton Township Police Department, 96 N.J.A.R.2d (CVS) 122.

Suspension of county probation officer imposed pursuant to settlement agreement justified when officer adequately represented by counsel. Kelly v. County of Union, 96 N.J.A.R.2d (CSV) 119.

Psychiatric hospital's removal of medical security officer justified where officer was twice absent without permission and had long history of similar violations. Hearns v. Forensic Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 116.

Care attendant's mistreatment of patient constituted conduct unbecoming public employee and warranted dismissal. Washington v. John L. Montgomery Medical Home, 96 N.J.A.R.2d (CSV) 100.

Corrections officer with history of chronic and persistent absences suffers removal for absence without permission. Smith v. Northern State Prison, 96 N.J.A.R.2d (CSV) 98.

Psychiatric hospital section chief's assault on and threats to co-worker justify removal. O'Lone v. Ancora Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 95.

Developmental center employee's physical abuse of superior and long disciplinary record justify removal. Ingram v. Woodbridge Developmental Center, 96 N.J.A.R.2d (CSV) 94.

Physical disability and absence without leave justify county correction officer's termination. Anderson v. Burlington County Jail, 96 N.J.A.R.2d (CSV) 92.

County social services agency's removal of income maintenance worker justified when mental disorder rendered her unable to perform job duties. Doe v. Morris County Board of Social Services, 96 N.J.A.R.2d (CSV) 65.

Shorter suspensions for partial negligence justified by correction officers' proper performance of other duties and good work records. Craft v. Riverfront State Prison, 96 N.J.A.R.2d (CSV) 63.

Police officer removed for violating numerous department regulations including insubordination and absence from duty. Chiles v. Plainfield City Police Department, 96 N.J.A.R.2d (CSV) 49.

Developmental center human services assistant properly terminated for abusive conduct toward supervisor. Pennoh v. North Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 28.

Correction officer suspended for violating department policy by not seeking medical attention for inmate sprayed with mace. Harris v. Burlington County Jail, 96 N.J.A.R.2d (CSV) 26.

Parking meter repairman's removal for insubordination too severe under principles of progressive discipline. Grosso v. Township of Nutley, 96 N.J.A.R.2d (CSV) 24.

Falsification of medical records and abandonment of position for unauthorized consecutive absences justifies developmental center employee's resignation and suspension. Dortelus v. Woodbridge Developmental Center, 96 N.J.A.R.2d (CSV) 20.

Senior therapy program assistant's threats against coworkers constitute conduct unbecoming public employee but do not warrant removal. Chase v. Marlboro Psychiatric Hospital, 96 N.J.A.R.2d (CSV) 14.

Suspension justified where developmental center licensed practical nurse engages in assaultive conduct on center grounds. Apata v. North Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 10.

Institutional attendant's use of foul language and creation of disturbance on public premises warrants six-month suspension. Robinson v. John L. Montgomery Medical Home, 96 N.J.A.R.2d (CSV) 2.

Obscenities and threats of physical harm to supervisor and co-worker justified state truck driver's suspension. Smith v. Department of Transportation, 95 N.J.A.R.2d (CSV) 691.

Inability to conform to absence and tardiness of police justified public employee's removal. LaBour v. Housing Authority, 95 N.J.A.R.2d (CSV) 682.

Removal of a firefighter was justified after testing positive for cocaine. Hayes v. Plainfield City Fire Department, 95 N.J.A.R.2d (CSV) 679.

Brandishing knife and threatening supervisor warranted correction officer's removal for unbecoming conduct. Brown v. East Jersey State Prison, 95 N.J.A.R.2d (CSV) 671.

Residential live in specialist was justifiably suspended for negligence that caused injury to patient at developmental center. Powell v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 666.

Suspension rather than removal was warranted for refusing to obey directions of superiors. Santana v. City of Perth Amboy, 95 N.J.A.R.2d (CSV) 663.

Insubordination and neglect of duty warranted police officer's termination. Kempton v. Township of Riverside, 95 N.J.A.R.2d (CSV) 661.

Criminal record from activity that occurred before employment did not warrant removal given demonstrated rehabilitation. Ermi v. Department of Public Property, 95 N.J.A.R.2d (CSV) 655.

Chronic and excessive absences in violation of written policy justified removal of juvenile detention officer. Stewart v. Department of Youth Services, 95 N.J.A.R.2d (CSV) 650.

Suspension of correction officer was justified by reason of willing participation in physical altercation inside facility. Wolarik v. Monmouth County Corrections, 95 N.J.A.R.2d (CSV) 626.

Possession of contraband on state property warranted two-day suspension of prison storekeeper. Cooper v. Department of Corrections, 95 N.J.A.R.2d (CSV) 621.

Road repairer was appropriately removed upon failing to obtain required license and for driving while under suspension. Beers v. Township of Byram, 95 N.J.A.R.2d (CSV) 619.

Insubordination, threatening a supervisor, and neglect of duty justified building maintenance worker's removal. Jackson v. City of Passaic Housing Authority, 95 N.J.A.R.2d (CSV) 616.

Removal for insubordination was justified when corrections officer disregarded two direct orders to return to work. Lennon v. New Jersey State Prison, 95 N.J.A.R.2d (CSV) 585.

Short suspension following leave of absence to attend rehabilitation program was appropriate penalty for alcohol problem and good work record. West v. City of East Orange, 95 N.J.A.R.2d (CSV) 570.

Sexual harassment of co-workers and violation of confidentiality rules warranted hospital personnel assistant's removal. Jones v. Marlboro Psychiatric Hospital, 95 N.J.A.R.2d (CSV) 565.

Socializing with a drug offender justified juvenile unit supervisor's 30-day suspension. Tobias v. New Jersey Training School, 95 N.J.A.R.2d (CSV) 523.

Suspension and removal of corrections officer for abuse of emergency leave policy was justified. Randall v. Riverfront State Prison, 95 N.J.A.R.2d (CSV) 519.

Training technician's termination from position at developmental center was justified on resisting arrest and leading law enforcement officers on chase through workplace. Pierce v. Department of Human Services, 95 N.J.A.R.2d (CSV) 517.

Insubordination was not a basis for removal of police officer when not based on a clear and unequivocal lawful order of a superior. Nelson v. Department of Public Safety, 95 N.J.A.R.2d (CSV) 508.

Removal was justifiably based upon road crew maintenance worker's excessive absences. Timmins v. Department of Transportation, 95 N.J.A.R.2d (CSV) 503.

Disrespect to supervisor warranted only one-day suspension when first major disciplinary action against corrections officer. Stith v. Department of Corrections, 95 N.J.A.R.2d (CSV) 499.

Removal of correctional officer was justified by attempt to buy drugs. Salkowski v. State Prison, 95 N.J.A.R.2d (CSV) 495.

Modified suspension was supported by licensed practical nurse's insubordination. Miles v. Woodbridge Developmental Center, 95 N.J.A.R.2d (CSV) 488.

Leaving workplace was without good cause and justified earlier suspension for insubordination. Lyons v. Department of Transportation, 95 N.J.A.R.2d (CSV) 482.

Repeated absenteeism without justifiable cause justified removal of cook at developmental center. Bowman v. Woodbridge Developmental Center, 95 N.J.A.R.2d (CSV) 473.

Falsification of jury service slip for attendance purposes justified public employee's removal. Washington v. Division of Youth and Family Services, 95 N.J.A.R.2d (CSV) 449.

Disruption of office by tax collection cashier justified ten-day suspension. Vecchione v. Township of Middletown, 95 N.J.A.R.2d (CSV) 442.

Suspension of correction officer for refusing mandatory overtime because of carpool was appropriate. Iliopoulos v. Mountainview Youth Correctional, 95 N.J.A.R.2d (CSV) 434.

Unauthorized use of telephones and neglect of duty warranted two 10 day suspensions of security officer at college. Cumaoglu v. Ramapo College, 95 N.J.A.R.2d (CSV) 428.

Use of profanity toward superior officer warranted six-month suspension of police officer. Valese v. Town of Belleville Police, 95 N.J.A.R.2d (CSV) 421.

Negligence that contributed to death of client justified removal of residential living specialist at developmental center. Rittenburg v. Department of Human Services, 95 N.J.A.R.2d (CSV) 415.

Inappropriate examination of client's genital area by child welfare worker warranted removal. Quinones v. Division of Youth and Family Services, 95 N.J.A.R.2d (CSV) 409.

Excessive absenteeism warranted removal of cottage training technician from developmental center. Grant v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 397.

Ten-day suspension of truck driver was justified for loud and unruly conduct toward supervisor. Gibbs v. Department of Highway, 95 N.J.A.R.2d (CSV) 394.

Account clerk was given thirty-day suspension for refusing to submit planned performance objectives. Garofalo v. Morris County, 95 N.J.A.R.2d (CSV) 391, affirmed 96 N.J.A.R.2d (CSV) 302.

Inappropriate name calling warranted six-month suspension of hospital attendant. Bland v. Burlington County, 95 N.J.A.R.2d (CSV) 389.

Absenteeism justified only suspension when verified by employee's doctor as due to medical condition. Coursey v. Department of Human Services, 95 N.J.A.R.2d (CSV) 386.

Suspensions changed to medical leaves when they resulted solely from police officer's medical condition. Candiloro v. Aberdeen Police Department, 95 N.J.A.R.2d (CSV) 374.

Conviction of weapons possession required building maintenance worker's removal. Lopez v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 361.

Threat of violence against superior officer justified removal of corrections officer. Jones v. Hudson County Department, 95 N.J.A.R.2d (CSV) 359.

Excessive absenteeism without permission warranted termination of cottage training technician at developmental center. Costin v. Department of Human Services, 95 N.J.A.R.2d (CSV) 357.

Excessive absenteeism and failure to report to work warranted institutional attendant's removal. Mills v. Montgomery Medical Home, 95 N.J.A.R.2d (CSV) 353.

Overly familiar relationship with inmate warranted correction officer's removal. McDaniel v. Passaic County Sheriff, 95 N.J.A.R.2d (CSV) 348.

Training technician's removal was justified on basis of intentional patient abuse. Witcher v. New Lisbon Developmental Center, 95 N.J.A.R.2d (CSV) 340.

Improper co-worker interaction was established and justified eight-day suspension of human services assistant. Timberlake v. Woodbridge Developmental Center, 95 N.J.A.R.2d (CSV) 332.

Sexual harassment and intimidation warranted police officer's suspension. Sepulveda v. Hudson County, 95 N.J.A.R.2d (CSV) 323.

Two month suspension of health service technician for striking patient was warranted. Joiner v. Department of Human Services, 95 N.J.A.R.2d (CSV) 319.

Display of incompetence as police dispatcher warranted removal. Johnson v. Woodbridge Police Department, 95 N.J.A.R.2d (CSV) 314.

Forged car inspection sticker warranted removal of police department communications operator. Holmes v. City of Camden, 95 N.J.A.R.2d (CSV) 310.

Abusiveness toward police officers at scene of accident warranted 60-day suspension of corrections officer. Finn v. Burlington County Jail, 95 N.J.A.R.2d (CSV) 302.

Removal of juvenile detention officer was warranted upon failure to complete required training course. Dye v. Union County Juvenile, 95 N.J.A.R.2d (CSV) 300.

Refusal to work overtime because of unsubstantiated family illness warranted suspension of corrections officer. Senape v. Middlesex County Adult Jail Facility, 95 N.J.A.R.2d (CSV) 297.

Ineligibility based on lack of required driver's license and vehicle justified housing inspector's removal. Gross v. City of Paterson, 95 N.J.A.R.2d (CSV) 295.

Leaving dangerous client without supervision justified removal of human services technician at psychiatric hospital. Grice v. Department of Human Services, 95 N.J.A.R.2d (CSV) 293.

Mishandling of weapon warranted police officer's termination. Defazio v. Borough of Wildwood Crest, 95 N.J.A.R.2d (CSV) 287.

Failure of firefighter to take drug test warranted removal. Rowe v. City of Newark, 95 N.J.A.R.2d (CSV) 279.

Ten-day suspension of guard for working on prison tower with expired weapons card was justified. Pierce v. New Jersey State Prison, 95 N.J.A.R.2d (CSV) 277.

Suspension of off-duty firefighter for use of racial epithet was not warranted when speech code applicable only to workplace. Karins v. City of Atlantic City, 95 N.J.A.R.2d (CSV) 272.

Reasonable suspicion of illegal drug use, when combined with refusal to submit to urinalysis, justified investigator's removal from police department. Jersey City Police v. Harrison, 95 N.J.A.R.2d (CSV) 269, affirmed 96 N.J.A.R.2d (CSV) 299, certification denied 144 N.J. 174, 675 A.2d 1122.

Removal was appropriate when prison security guard failed to identify or challenge individuals in secured setting. Casey v. Atlantic County, 95 N.J.A.R.2d (CSV) 262.

Removal of prison instructor was justified on basis of illegal drug possession. Campbell v. Riverfront State Prison, 95 N.J.A.R.2d (CSV) 259.

Attendant's suspension for excessive absenteeism warranted in light of lengthy history of poor attendance. Cupid v. Montgomery Medical Home, 95 N.J.A.R.2d (CSV) 251.

Prison employee bringing alcohol to inmate justifies removal of employee. Bostick v. East Jersey State Prison, 95 N.J.A.R.2d (CSV) 247.

Correctional officer suspended for failing to make required call-ins about his status. Elliott v. Wagner Youth Correctional Facility, 95 N.J.A.R.2d (CSV) 244.

Correctional officer was removed for maintaining relationship with inmate. Clemons v. Department of Corrections, 95 N.J.A.R.2d (CSV) 241.

Maintenance worker's suspension for failing to report for duty was supported by poor attendance record. Heyward v. Burlington County Buildings, 95 N.J.A.R.2d (CSV) 236.

Employee's use of profanity and racial slurs warranted maximum suspension. Green v. Department of Human Services, 95 N.J.A.R.2d (CSV) 234.

Harassment of female co-worker warranted removal of male practical nurse for conduct unbecoming a public employee. Brown v. Trenton Psychiatric Hospital, 95 N.J.A.R.2d (CSV) 233.

Neglect of duty by sleeping while monitoring high and moderate risk clients at child treatment center justified removal of human services assistant. Mahajan v. DEPE, 95 N.J.A.R.2d (CSV) 229.

Beating a suspect, when combined with improper use of firearms, warranted police officer's termination for unbecoming conduct. Cruz v. City of Camden, 95 N.J.A.R.2d (CSV) 226.

Signing zoning official's name to zoning permit without approval warranted reprimand, but did not warrant termination. Matter of Olivo, 95 N.J.A.R.2d (CSV) 223.

Refusal to perform regular cleaning duties in restrooms assigned to him warranted 60 day suspension of maintenance worker. Harrington v. William Paterson College, 95 N.J.A.R.2d (CSV) 220.

Unbecoming conduct, improper use of firearm, and use of insulting language warranted thirty day suspension of police officer. Fabian v. North Bergen Police, 95 N.J.A.R.2d (CSV) 216.

Progressive discipline did not preclude removal of employee from public employment under circumstances. Matter of Paul Dietrich v. Newark Housing Authority, 95 N.J.A.R.2d (CSV) 202.

Falsification of time sheets, neglect of duty, and unauthorized absence warranted public employee's removal. Pue v. Department of Human Services, 95 N.J.A.R.2d (CSV) 199.

Chronic or excessive absenteeism warranted 15-day suspension from public employment as senior practical nurse. Warren v. Montgomery Medical Home, 95 N.J.A.R.2d (CSV) 136.

Senior practical nurse suspended; chronic, excessive, and unauthorized absences. Warren v. John L. Montgomery Medical Home, 95 N.J.A.R.2d (CSV) 136.

Checks and counts made by corrections officer on night of escape attempt at youth facility were not so inconsistent with procedure as to warrant suspension for negligence. Taylor v. Garden State Reception and Youth Correctional Facility, 95 N.J.A.R.2d (CSV) 129.

Suspension of senior correction officer not justified; lack of proof of negligence contributing to escape attempt. Taylor v. Garden State Reception and Youth Correctional Facility, 95 N.J.A.R.2d (CSV) 129.

Removal of counselor; failure to notify that I.D. card and keys for jail locks were lost or stolen, failure to report of prior arrest, and becoming unduly familiar with inmate. Robinson v. Burlington County, 95 N.J.A.R.2d (CSV) 127.

Specified conduct of senior counselor at county jail warranted removal for conduct unbecoming an employee in public service. Robinson v. Burlington County, 95 N.J.A.R.2d (CSV) 127.

Failure to follow standard procedures in identification and apprehension of fugitive warranted removal of probation department cashier. Newkirk v. County of Salem, 95 N.J.A.R.2d (CSV) 125.

Removal of bookkeeping machine operator; justified. Newkirk v. County of Salem, 95 N.J.A.R.2d (CSV) 125.

Lack of veracity and communication skills as drug abuse counselor justified termination. Memmott v. Department of Health, 95 N.J.A.R.2d (CSV) 118.

Failure to detect major bypass that allowed untreated sewage to flow into river warranted six-month suspension for sewage plant supervisor. Lowe v. Municipal Utilities Authority, 95 N.J.A.R.2d (CSV) 114.

Supervising sewage plant operator's failure to detect bypass of untreated raw sewage; suspension. Lowe v. Municipal Utilities Authority of the Town of West New York, 95 N.J.A.R.2d (CSV) 114.

Avoidance after agreeing to random testing for drugs warranted dismissal from public employment. Kender v. Passaic Valley Water Commission, 95 N.J.A.R.2d (CSV) 112.

Removal of senior water repairer; refused to submit to drug test mandated by drug policy is justified. Kender v. Passaic Valley Water Commission, 95 N.J.A.R.2d (CSV) 112.

Six-day suspension warranted when absent from work as scheduled without permission and without proper notice. Bucci v. Department of Human Services, 95 N.J.A.R.2d (CSV) 111.

Institutional trade instructor was justifiably removed from public employment for physical abuse of juvenile in his care. Jacobs v. Department of Human Services, 95 N.J.A.R.2d (CSV) 108.

Removal of institutional trade instructor; physical assault of inmate. Jacobs v. Human Services Department, 95 N.J.A.R.2d (CSV) 108.

Reference made to non-ambulatory patient as being without a brain was verbal abuse warranting human service assistant's six-month suspension. Sullivan v. Department of Military & Veterans' Affairs, 95 N.J.A.R.2d (CSV) 106.

Suspension of human services assistant; verbal abuse of patient. Sullivan v. Military & Veterans' Affairs Department, 95 N.J.A.R.2d (CSV) 106.

Removal; employee left assigned work area without notice and permission. Shoultz v. Camden County, 95 N.J.A.R.2d (CSV) 104.

Removal was warranted when laborer left assigned work area without notice and without permission of supervisor. Shoultz v. Camden County, 95 N.J.A.R.2d (CSV) 104.

Termination; employee unable to perform basic functions. Sallie v. Department of Transportation, 95 N.J.A.R.2d (CSV) 100.

Removal of hospital attendant; patient abuse. Edwards v. Buttonwood Hospital, Burlington County, 95 N.J.A.R.2d (CSV) 95.

Using false excuse of staff shortage to refuse toilet assistance to patient was sufficient, with prior record, to warrant attendant's removal. Edwards v. Buttonwood Hospital, 95 N.J.A.R.2d (CSV) 95.

Act of correction officer in shooting a pregnant fellow officer with a stun gun three times was such irresponsibility as to warrant termination. Curry v. Burlington County Jail, 95 N.J.A.R.2d (CSV) 92.

Police officer's incapacity due to mental and physical disability was established by medical evidence and warranted removal. Pitts v. City of Camden Police, 95 N.J.A.R.2d (CSV) 89.

Removal justified; police officer incapacitated due to mental disability. Pitts v. City of Camden Police Department, 95 N.J.A.R.2d (CSV) 89.

Failure to comply with departmental goal that all firefighters become licensed drivers for backup purposes did not warrant removal under circumstances. Whittle v. East Orange Fire, 95 N.J.A.R.2d (CSV) 83.

Suspension of firefighter due to lack of driver's license; not justified. Whittle v. East Orange Fire Department, 95 N.J.A.R.2d (CSV) 83.

Medical security officer improperly removed; pulling hair of runaway patient. Phelps v. Forensic Psychiatric Hospital, 95 N.J.A.R.2d (CSV) 81.

Decision of supervising medical security officer at psychiatric hospital to subdue unruly patient did not warrant removal for physical abuse. Phelps v. Forensic Psychiatric Hospital, 95 N.J.A.R.2d (CSV) 80.

Removal of correction officer; disorderly persons conviction. New Jersey State Department of Corrections v. Gomez, 95 N.J.A.R.2d (CSV) 77.

Allegations against hospital attendant, including chronic and excessive absenteeism and insubordination, were established by evidentiary record and justified 30 day suspension. Dunston v. Buttonwood Hospital, 95 N.J.A.R.2d (CSV) 59.

Hospital attendant suspended; absenteeism, neglect of duty, and other insufficiencies. Dunston v. Buttonwood Hospital, 95 N.J.A.R.2d (CSV) 59.

Excessive absences justified removal of public employee from her position as attendant at hospital. Amador v. Bergen Pines County Hospital, 95 N.J.A.R.2d (CSV) 55.

Hospital attendant terminated; excessive absenteeism. Amador v. Bergen Pines County Hospital, 95 N.J.A.R.2d (CSV) 55.

Reinstatement was required when removal of water plant operator for failure to fulfill overtime requirements was not justified. Onori v. City of Burlington, 95 N.J.A.R.2d (CSV) 53.

County jail employee suspended; refusing mandatory overtime work. Miranda v. Hudson County Public Safety, 95 N.J.A.R.2d (CSV) 50.

Refusal of mandatory overtime at county jail by guard was without effectual excuse and warranted suspension. Miranda v. Hudson County, 95 N.J.A.R.2d (CSV) 50.

Admitted participation in illegal gambling operation did not warrant removal, but did warrant six-month suspension for employee with otherwise impeccable work record. Haggerty v. Hudson County Probation Department, 95 N.J.A.R.2d (CSV) 38, affirmed 95 N.J.A.R.2d (CSV) 240, certification denied 658 A.2d 729, 140 N.J. 329.

Probation officer was suspended; illegal gambling operation. Haggerty v. Hudson County Probation Department, 95 N.J.A.R.2d (CSV) 38, affirmed 95 N.J.A.R.2d (CSV) 240, certification denied 658 A.2d 729, 140 N.J. 329.

Failure of training technician to stop mental patients he was supervising from fighting warranted an admonishment, but did not warrant his termination. Haldeman v. Department of Human Services, 95 N.J.A.R.2d (CSV) 26.

Removal of Cottage Training Technician because of incident occurring under his charge; not justified. Haldeman, v. Department of Human Services, Woodbine, 95 N.J.A.R.2d (CSV) 26.

Failure to obtain driver's license as a condition of employment as youth worker transporting residents in group home was blatant insubordination warranting removal. Livingston v. Department of Human Services, 95 N.J.A.R.2d (CSV) 23.

Worker was removed from position for refusing to obtain drivers' license. Livingston v. Department of Human Services, 95 N.J.A.R.2d (CSV) 23.

Government employee suspended on the basis of shouting and using threatening language and gestures. Sigler v. Trenton State College, 95 N.J.A.R.2d (CSV) 16.

Threatening conduct when combined with remarks about murder warranted six month suspension with counseling. Sigler v. Trenton State College, 95 N.J.A.R.2d (CSV) 16.

Boast by male employee of having "made it" with female co-worker was verbal abuse warranting ten day suspension. Hall v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 12.

Employee suspended for verbal mistreatment of co-worker. Hall v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 12.

The termination of a Human Services Assistant was rescinded; charges of abuse were not substantiated. Gibbons v. Dept. Of Human Services, Vineland Developmental Center, 95 N.J.A.R.2d (CSV) 10.

Repeated absences from work as scheduled without permission and without proper notice warranted removal. Washington v. Department of Human Services, 95 N.J.A.R.2d (CSV) 1.

Removal; employee engaged in willful and continuous disregard of Conflicts of Interest Law and Code of Ethics. In the Matter of White, 94 N.J.A.R.2d (CSV) 713.

Termination; physical abuse of client. Willingham v. Ancora Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 708.

Termination; disclosure of confidential information from taxpayers' file. Petrasek v. New Jersey Department of the Treasury, 94 N.J.A.R.2d (CSV) 679.

Termination; of chronic and excessive absenteeism. Mindillo v. New Jersey State Prison, 94 N.J.A.R.2d (CSV) 673.

Suspension; taking sick leave time to drive fiancee to doctor. Markel v. Burlington County Dept. of Buildings and Grounds, 94 N.J.A.R.2d (CSV) 662.

Leaving pager unattended and not responding to emergency; termination. Hamilton v. Monroe Municipal Utilities Authority, 94 N.J.A.R.2d (CSV) 657.

Conduct during license suspension subject to thirty working day suspension. Carroll v. Ocean County Department of Roads, 94 N.J.A.R.2d (CSV) 654.

Nurse; opportunity to successfully complete training course; termination. Welch v. Preakness Hospital, 94 N.J.A.R.2d (CSV) 651.

Assault of co-worker; suspension. Vereen v. Trenton State College, 94 N.J.A.R.2d (CSV) 645.

Testing positive for controlled substances; terminated. Tanner v. New Jersey Training School, 94 N.J.A.R.2d (CSV) 642.

Termination; abuse of client. Wilson v. North Princeton Developmental Center, 94 N.J.A.R.2d (CSV) 639.

Employee terminated; drug addiction. Lu Sane v. Union County Board of Social Services, 94 N.J.A.R.2d (CSV) 637.

Termination; abuse of client. Camilo v. North Princeton Developmental Center, 94 N.J.A.R.2d (CSV) 633.

Removal; employee unable to perform his duties due to medical condition. Bell v. Hudson County Department of Public Resources, 94 N.J.A.R.2d (CSV) 631.

Suspension of employee was not justified. Arroyo v. Department of Public Safety, Hudson County, 94 N.J.A.R.2d (CSV) 629.

Suspension of prison nurse; guilty of falsification, insubordination and possession of mace on state property. Headen v. East Jersey State Prison, 94 N.J.A.R.2d (CSV) 623.

Employee removed; abuse of client. Stocks v. Department of Human Services, 94 N.J.A.R.2d (CSV) 621.

Suspension and removal; refusal to obey orders of superior, using vulgar and disrespectful language, and threatening fellow employee. Green v. City of Trenton, 94 N.J.A.R.2d (CSV) 594.

Suspension for sleeping on the job was justified. Allgood v. New Jersey Training School, Jamesburg, 94 N.J.A.R.2d (CSV) 592.

Termination of public employee with drinking problem was not justified. Monroe v. Camden County Board of Social Services, 94 N.J.A.R.2d (CSV) 590.

Rehabilitation according to terms of settlement agreement; reinstatement. Credle v. Marlboro Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 585, remanded 96 N.J.A.R.2d (CSV) 163.

Insubordination and vulgar language; suspension. Ellis v. Essex County Department of Citizen Services, 94 N.J.A.R.2d (CSV) 580.

Failure to ensure that client was properly received at destination; dismissal. Clark v. North Princeton Development Center, 94 N.J.A.R.2d (CSV) 576.

Unbecoming conduct toward a superior and insubordination; penalties. Cioffi v. City of Long Branch, 94 N.J.A.R.2d (CSV) 573.

Dismissal of employee was not justified; drug rehabilitation program. Ogburn v. East Orange Housing Authority, 94 N.J.A.R.2d (CSV) 567.

Ten day suspension of employee was justified. Ward v. Greystone Park Psychiatric Hospital, Department of Human Services, 94 N.J.A.R.2d (CSV) 565.

Dismissal of employee; justified. Simmons v. New Jersey State Prison, State Department of Corrections, 94 N.J.A.R.2d (CSV) 561, affirmed 96 N.J.A.R.2d (CSV) 165.

Dismissal; employee was justified when employee failed to return to work after leave of absence. Mercado v. Human Services Department, Commission for the Blind and Visually Impaired, 94 N.J.A.R.2d (CSV) 557.

Suspension of youth worker not justified. Bright v. Department of Human Services, Arthur Brisbane Child Treatment Center, 94 N.J.A.R.2d (CSV) 542.

Suspension of nurse for insubordination was justified. Fleming v. Edna Mahan Correctional Facility, 94 N.J.A.R.2d (CSV) 537.

Suspension of prison employee for thirty (30) days for insubordination was justified. Balkaran v. Department of Correction, Northern State Prison, 94 N.J.A.R.2d (CSV) 534.

Fine imposed on police officer who was involved in car accident was excessive. Durham v. City of Camden, Police Department, 94 N.J.A.R.2d (CSV) 531.

Suspension was proper; perusing private files. Rambo v. Rowan College of New Jersey, 94 N.J.A.R.2d (CSV) 517.

Termination; job performance consistently substandard. Bryant v. Passaic County Superior Court, 94 N.J.A.R.2d (CSV) 512.

Termination; employee repeatedly and excessively absent. Jones v. Buttonwood Hospital, 94 N.J.A.R.2d (CSV) 504.

Suspension was proper; removing a gun from security without permission, failing to report the loss of gun, and violating administrative regulations relative to safety and security. Jehn v. Monmouth County Correctional Institution, 94 N.J.A.R.2d (CSV) 502.

Termination; drug use. Bryant v. New Jersey Fire Department, 94 N.J.A.R.2d (CSV) 497.

Termination for assaulting a patient was justified. Bennett v. Forensic Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 494.

Sixty-day suspension and completion of sensitivity training program was proper. Grimaldi v. Vineland Developmental Center, 94 N.J.A.R.2d (CSV) 491.

Termination; abuse of a client. Harris v. North Jersey Developmental Center, 94 N.J.A.R.2d (CSV) 483.

Termination; employee not able to fulfill his job requirements. Brown v. Freehold Township Department of Public Utilities, 94 N.J.A.R.2d (CSV) 481.

Two-day suspension was proper when firefighter called in sick in order to work for another employer. Shoemaker v. South Orange Village Department of Public Safety, 94 N.J.A.R.2d (CSV) 472.

Suspension; escape of three inmates. Mayes v. New Jersey Training School, 94 N.J.A.R.2d (CSV) 469.

Termination of nurse; mitigating factors existed. Lockett v. Trenton Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 454.

Termination of correction officer for conduct unbecoming a public employee was proper. Yannuzzi v. East Jersey State Prison, 94 N.J.A.R.2d (CSV) 448.

Termination of regional staff nurse was appropriate. Spector Estate v. DMAHS, 94 N.J.A.R.2d (CSV) 445.

Equal suspensions; responsibility for fighting or creating a disturbance. Smith v. Vineland Developmental Center, 94 N.J.A.R.2d (CSV) 441.

Suspension for conduct unbecoming a public employee was appropriate. Rinnier v. Department of Transportation, 94 N.J.A.R.2d (CSV) 440.

Termination; insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. Ricchezza v. Maple Shade Township, 94 N.J.A.R.2d (CSV) 437.

Termination of truck driver; working test period. Moheban v. Teaneck Township Department of Public Works, 94 N.J.A.R.2d (CSV) 434.

Termination; procedure regarding extended leave. Hiteshew v. Buttonwood Hospital, 94 N.J.A.R.2d (CSV) 430.

Suspension for conduct unbecoming a public employee was appropriate. Brown v. Department of Labor, 94 N.J.A.R.2d (CSV) 428.

Termination for physical abuse of a patient was proper. Strozier v. Forensic Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 423.

Suspension of clerk-typist for conduct unbecoming a public employee was appropriate sanction. Selph v. Newark Housing Authority, 94 N.J.A.R.2d (CSV) 420.

Police officer did not neglect his duty by failing to respond to a stabbing. Lewis v. Jersey City Police Department, 94 N.J.A.R.2d (CSV) 407.

Termination of cottage training technician was appropriate. Childs v. Vineland Developmental Center, 94 N.J.A.R.2d (CSV) 405.

Suspension of police officer; absent from work without authorization. Ward v. Atlantic City Police Department, 94 N.J.A.R.2d (CSV) 399.

Custodian was properly terminated; excessive absenteeism. In the Matter of the Tenure Hearing of Derrick Exum, 94 N.J.A.R.2d (EDU) 390.

Providing residents of juvenile corrections facility with screwdriver; youth worker's removal. Treat v. Ocean Residential Group, 94 N.J.A.R.2d (CSV) 384.

Removal; testing positive for drug use. Damion v. Lacey Township Department of Public Works, 94 N.J.A.R.2d (CSV) 379.

Suspension; verbal and mental abuse. Cooper v. Warran County Welfare Board, 94 N.J.A.R.2d (CSV) 373.

Absenteeism; termination. Carmichael v. Mercer County Youth Detention Center, 94 N.J.A.R.2d (CSV) 371.

Spanking of child of welfare client constituted conduct unbecoming a public employee; suspension. Bryant v. Cumberland County Welfare Agency, 94 N.J.A.R.2d (CSV) 369.

Suspension; disruptive behavior. Brooks v. Brisbane Child Treatment Center, 94 N.J.A.R.2d (CSV) 361.

Security guard's use of derogatory language towards police captain was not conduct unbecoming a public employee; suspension not justified. Belfiore v. Union County Department of Public Safety, 94 N.J.A.R.2d (CSV) 356.

Unexcused absence; removal. Thomas v. Camden County Sheriff's Department, 94 N.J.A.R.2d (CSV) 354.

Failure to file tardiness slip upon late arrival was justified precluding suspension. Silverman v. Adult Diagnostic and Treatment Center, 94 N.J.A.R.2d (CSV) 351.

Neglect of duty warranted removal. Hall v. Department of Human Services, 94 N.J.A.R.2d (CSV) 339.

Training technician created disturbance on state property; suspension. Duncan v. New Lisbon Developmental Center, 94 N.J.A.R.2d (CSV) 336.

Psychiatric hospital employee's suspension was reasonable; common decency. Cochrane v. Greystone Park Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 334.

Psychiatric hospital employee properly removed; physical abuse. Butler v. Marlboro Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 328.

Threatening retaliation for suspension constituted conduct unbecoming a public employee; removal. Brown v. Department of Corrections, 94 N.J.A.R.2d (CSV) 324.

Leaving clients unsupervised was neglect of duty; suspension. Boyd v. Vineland Developmental Center, 94 N.J.A.R.2d (CSV) 322.

Assistant comptroller's demotion to senior account clerk for incomplete or inaccurate accounting procedures was not justified. Berg v. Bergen County Sheriff's Department, 94 N.J.A.R.2d (CSV) 305.

Removal of case worker not justified; alleged failure to diligently supervise a client. Minor v. New Lisbon Development Center, 94 N.J.A.R.2d (CSV) 282.

Demotion from police sergeant to police officer was warranted. Lloyd v. Atlantic City Police Department, 94 N.J.A.R.2d (CSV) 277.

Juvenile inmate's escape was not solely result of youth worker's neglect; suspension. Ingrum v. Southern Regional Group Center, 94 N.J.A.R.2d (CSV) 275.

Thirty-day suspension of cottage training technician for neglect of duty was not justified. Rudolph v. New Lisbon Developmental Center, 94 N.J.A.R.2d (CSV) 252.

Neglect of assigned post; dismissal of senior corrections officer. Rodriguez v. Adult Diagnostic and Treatment Center, 94 N.J.A.R.2d (CSV) 248.

Drowning death of client; negligence warranting dismissal. McGhee v. New Lisbon Developmental Center, 94 N.J.A.R.2d (CSV) 224.

Developmental center training technician was not negligent. Lloyd v. New Lisbon Developmental Center, 94 N.J.A.R.2d (CSV) 202.

Equipment operator could safely perform job duties despite neurological injuries. James v. Department of Transportation, 94 N.J.A.R.2d (CSV) 197.

Suspension; refusal of mandatory overtime and neglect of duty. Gloster v. Ramapo College, 94 N.J.A.R.2d (CSV) 193.

Reinstatement of developmental center employee was warranted. Emmons v. New Lisbon Developmental Center, 94 N.J.A.R.2d (CSV) 186.

Drivers' license suspension; termination without accommodation. Dean v. Treasure Department, 94 N.J.A.R.2d (CSV) 177.

Accidental drowning involved no negligence. Castillo v. New Lisbon Developmental Center, 94 N.J.A.R.2d (CSV) 150.

Termination; negligence in accidental death. Bozzarello v. North Princeton Developmental Center, 94 N.J.A.R.2d (CSV) 147.

Prior work history justified reduction of suspension. Ball v. Woodbridge Developmental Center, 94 N.J.A.R.2d (CSV) 145.

Drug use; dismissal. Ayers v. New Jersey Training School, 94 N.J.A.R.2d (CSV) 141.

Dismissal; excessive absenteeism. Webb v. Camden County Health Services, 94 N.J.A.R.2d (CSV) 140.

Assault and conduct unbecoming a public employee warranted dismissal. Jolcoeur v. Morris View Nursing Home, 94 N.J.A.R.2d (CSV) 132.

Heroin addiction not a mitigating factor; conditional reinstatement following suspension. Fisher v. Union County Division of Social Services, 94 N.J.A.R.2d (CSV) 125.

Conditional reinstatement following suspension of firefighter was proper penalty. Ward v. Elizabeth City Fire Department, 94 N.J.A.R.2d (CSV) 122.

Dismissal of residential living specialist was justified. Johnson v. North Princeton Developmental Center, 94 N.J.A.R.2d (CSV) 119.

Termination of sanitation worker for neglect of duties, chronic or excessive absenteeism, and inability to perform duties was justified. Jurkiewicz v. Sayreville Borough Road and Sanitation Department, 94 N.J.A.R.2d (CSV) 114.

Termination of correction officer for conduct unbecoming a public employee was justified. Calzaretta v. East Jersey State Prison, 94 N.J.A.R.2d (CSV) 106.

Termination of chronically absent or late laborer was justified. Bonham v. Brick Township Public Works Department, 94 N.J.A.R.2d (CSV) 103.

Termination of employee was justified when employee assaulted co-employee. Bogon v. Woodbine Developmental Center, 94 N.J.A.R.2d (CSV) 101.

Termination of correction officer for insubordination, assaulting or resisting authority, disrespect or use of insulting or abusive language to a supervisor, and conduct unbecoming a public employee was justified. Bayan v. Garden State Reception and Youth Correctional Facility, 94 N.J.A.R.2d (CSV) 98.

Suspension of building maintenance worker for neglect of duties, insubordination, and conduct unbecoming a public employee was justified. Richards v. Camden County Health Services Center, 94 N.J.A.R.2d (CSV) 90.

Termination of hospital attendant was justified. Halpin v. Bergen Pines County Hospital, 94 N.J.A.R.2d (CSV) 83.

Indefinite suspension of pharmacist without pay pending disposition of criminal charges was appropriate. Grillo v. Bergen Pines County Hospital, 94 N.J.A.R.2d (CSV) 81.

Neglect of duty, insubordination and conduct unbecoming a public employee; removal. Donnelly v. Hudson County Department of Public Safety, 94 N.J.A.R.2d (CSV) 75.

Termination of correction officer for conduct unbecoming a public employee, neglect of duty, insubordination, and attendance violations was justified. Donnelly v. Hudson County Department of Public Safety, 94 N.J.A.R.2d (CSV) 75.

Termination of security guard was justified. Babbs v. Newark Board of Education, 94 N.J.A.R.2d (CSV) 71.

Illegal entry; insubordination; maximum suspension penalty. Babbs v. Newark Board of Education, 94 N.J.A.R.2d (CSV) 71.

Neglect of duty and improper performance established good cause for removal. Jackson Township v. McKenna, 94 N.J.A.R.2d (CAF) 69.

Thirty-day suspension of correction officer was reasonable. Taylor v. Adult Diagnostic and Treatment Center, 94 N.J.A.R.2d (CSV) 62.

Termination of sheriff's officer for neglect of duty was justified. McClellan v. Passaic County Sheriff's Department, 94 N.J.A.R.2d (CSV) 59.

Termination of institutional attendant for conduct unbecoming a public employee was justified. Marcelus v. Geraldine L. Thompson Medical Home, 94 N.J.A.R.2d (CSV) 57.

Termination of heavy laborer was justified. Hommel v. Woodbridge Township Public Works Department, 94 N.J.A.R.2d (CSV) 52.

Correction officer was properly removed from position for conduct unbecoming a public employee. Harrison v. Northern State Prison, 94 N.J.A.R.2d (CSV) 51.

Termination of building maintenance worker was justified. Hammond v. Hunterdon County Department of Building and Maintenance, 94 N.J.A.R.2d (CSV) 47, affirmed 96 N.J.A.R.2d (CSV) 163.

Thirty-day suspension without pay of gardener charged with conduct unbecoming a public employee was justified. Duckworth v. Lawrence Township Department of Public Works, 94 N.J.A.R.2d (CSV) 45.

Termination of licensed practical nurse for conduct unbecoming a public employee was justified. Brown v. Trenton Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 41.

Termination of garbage truck driver was justified. Brewington v. Ridgewood Village, 94 N.J.A.R.2d (CSV) 39.

Reinstatement following four-month suspension upon completion of an alcohol rehabilitation program was appropriate sanction. McGill v. Essex County Public Safety Department, 94 N.J.A.R.2d (CSV) 31.

Conviction of simple assault; insufficient to support senior correction officer's termination. Ross v. Riverfront State Prison, 94 N.J.A.R.2d (CSV) 27.

Suspension; insubordination, conduct unbecoming a public employee, and neglect of duty. Lipski v. Meadowview Hospital, 94 N.J.A.R.2d (CSV) 17.

Termination not justified; insubordination, conduct unbecoming a public employee, conduct unbecoming to a public official, and neglect of duty. Olivo v. Town of Newton, 94 N.J.A.R.2d (CSV) 7, affirmed 95 N.J.A.R.2d (CSV) 223.

Employee of psychiatric hospital was properly suspended for neglect of duty. Scott v. Trenton Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 777.

Removal of employee for inability to perform his duties was justified. Nagy v. Bergen County Utilities Authority, 93 N.J.A.R.2d (CSV) 773.

Removal of maintenance worker was warranted for conduct unbecoming a public employee. Dixon v. Newark Housing Authority, 93 N.J.A.R.2d (CSV) 771.

Removal of Housing Authority security chief was warranted. Dietrich v. Newark Housing Authority, 93 N.J.A.R.2d (CSV) 767.

Termination of sheriff's officer was warranted. Davenport v. Passaic County Sheriff's Office, 93 N.J.A.R.2d (CSV) 763.

Fifteen-day, rather than twenty-day, suspension of hospital ward clerk was justified. Ravello v. Meadowview Hospital, 93 N.J.A.R.2d (CSV) 761.

Removal of veterans' home employee was justified. Pryce v. Veterans' Memorial Home, 93 N.J.A.R.2d (CSV) 759.

Tenured chief school custodian was guilty of charges of neglect, insubordination, and inappropriate behavior. Paterson School District v. Cox, 93 N.J.A.R.2d (EDU) 748.

Evidence failed to show that police lieutenant obtained favors by reason of his position. Grasso v. Sea Isle City, 93 N.J.A.R.2d (CSV) 747.

Prison employee's possession of controlled substance justified his termination. Williams v. Wagner Youth Correctional Center, 93 N.J.A.R.2d (CSV) 745.

Force used by human services technician against patient was not unreasonable. Love v. Marlboro Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 738.

Termination of employee was warranted. James v. Department of Human Services, North Princeton Development Center, 93 N.J.A.R.2d (CSV) 734.

Termination of food service worker was warranted. Goins v. New Jersey Veterans' Memorial Home, 93 N.J.A.R.2d (CSV) 732.

County employee was properly suspended for unauthorized absence. Gfroehrer v. Meadowview Hospital, 93 N.J.A.R.2d (CSV) 727.

Nurse was properly terminated for incompetency, inefficiency, failure to perform duties, and neglect of duty. Caldwell v. B.S. Pollak Hospital, 93 N.J.A.R.2d (CSV) 722.

Removal of nurse warranted. Caldwell v. U.S. Pollak Hospital, 93 N.J.A.R.2d (CSV) 722.

Use, possession, or sale of controlled substance warranted the sanction of removal. Troutman v. East Jersey State Prison, 93 N.J.A.R.2d (CSV) 710.

Termination for absenteeism. Williams v. Bergen Pines County Hospital, 93 N.J.A.R.2d (CSV) 700.

Religious slur constituted conduct unbecoming public employee; 15-day suspension. Tress v. Burlington County Department of Health, 93 N.J.A.R.2d (CSV) 698.

Maintenance worker properly removed for conduct unbecoming a public employee. Shetter v. Burlington County Department of Buildings and Grounds, 93 N.J.A.R.2d (CSV) 696.

Conservation officer was properly suspended for conduct unbecoming a state employee. Oates v. Division of Fish, Game, and Wildlife, 93 N.J.A.R.2d (CSV) 686.

Abuse of patients warranted employee's removal. Moore v. New Jersey Veterans Memorial Home, 93 N.J.A.R.2d (CSV) 680.

Employee properly removed for conduct unbecoming a public employee and insubordination. McCorry v. Hudson County, 93 N.J.A.R.2d (CSV) 677.

Six-month suspension appropriate for abuse of nursing home patient. Lyew v. Morris View Nursing Home, 93 N.J.A.R.2d (CSV) 673, affirmed 94 N.J.A.R.2d (CSV) 718.

Police officer guilty of chronic or excessive absenteeism. Gugliotta v. Newark Police Department, 93 N.J.A.R.2d (CSV) 667.

Six-month suspension appropriate for insubordination. Grant v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 663.

Accident occurred, not an intentional infliction of harm to a resident; removal not justified. Dozier v. Woodbine Developmental Center, 93 N.J.A.R.2d (CSV) 660.

Removal of truck driver; absenteeism. Cottrell v. North Brunswick Township Department of Public Works, 93 N.J.A.R.2d (CSV) 659.

Three-month suspension was appropriate penalty for hospital employee's inattention to duties. Bland v. Buttonwood Hospital, 93 N.J.A.R.2d (CSV) 611.

Thirty-day suspension of correction officer was warranted. Abercrombie v. New Jersey Training School, 93 N.J.A.R.2d (CSV) 608.

Cook properly suspended for failing to secure and account for knives. Gonshor v. Edna Mahan Correctional Facility, 93 N.J.A.R.2d (CSV) 603.

Twenty-day suspension of correction officer; unsatisfactory attendance. Epps v. Burlington County Jail, 93 N.J.A.R.2d (CSV) 601.

Removal of social service aid was warranted. Wright v. Passaic County Board of Social Services, 93 N.J.A.R.2d (CSV) 596.

Removal of court clerk was warranted. Marshall v. City of Millville, 93 N.J.A.R.2d (CSV) 590.

Removal of psychiatric hospital employee; beating patient. Edmonds v. Ancora Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 582.

Six-month suspension; failure to follow orders. Bolden v. Hudson County Office on Aging, 93 N.J.A.R.2d (CSV) 574.

Conduct unbecoming an officer and a gentleman warranted a 30-day suspension. Biernacki v. Harrison Police Department, 93 N.J.A.R.2d (CSV) 567.

Refusal to remain in presence of superior officer for purpose of investigating inferior officer's intoxication; termination. Snyder v. Atlantic County Sheriff's Office, 93 N.J.A.R.2d (CSV) 551.

Removal warranted for leaving client without supervision or permission. Scott v. Trenton Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 549.

Employee properly removed; threatening harm to supervisor. Liddle v. Morristown Department of Public Works, 93 N.J.A.R.2d (CSV) 536.

Physical and verbal abuse justified removal. Forman v. Woodbine Developmental Center, 93 N.J.A.R.2d (CSV) 525.

Six-month suspension; hitting client with shoe. Bates v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 507.

Removal of police officer warranted; warrants against his girlfriend. Williams v. Camden Police Department, 93 N.J.A.R.2d (CSV) 497.

Ten-day suspension was appropriate penalty for conduct unbecoming officer. Shoudt v. Mountainview Youth Correctional Facility, 93 N.J.A.R.2d (CSV) 491.

Suspension was appropriate sanction for failure to timely submit medical documentation. Long v. Wagner Correctional Facility, 93 N.J.A.R.2d (CSV) 477.

Corrections captain divulged confidential information without authority. Johnson v. Wagner Correctional Facility, 93 N.J.A.R.2d (CSV) 474.

File clerk was improperly suspended for insubordination for expressing concerns about transfer. DeRois v. Burlington County Prosecutor's Office, 93 N.J.A.R.2d (CSV) 472.

Termination not excessive for habitual tardiness and absenteeism. Davenport v. Bergen County Pines Hospital, 93 N.J.A.R.2d (CSV) 469.

Removal of firefighter warranted. Corbin v. City of Asbury Park, 93 N.J.A.R.2d (CSV) 466.

Corrections officer at youth facility removed. Bazemore v. Wagner Youth Correctional Facility, 93 N.J.A.R.2d (CSV) 461.

Six-day suspension warranted for time card violation. Pinkerton v. Burlington County Department of Buildings and Grounds, 93 N.J.A.R.2d (CSV) 455.

Carelessness in bathing client warranted official reprimand rather than suspension. Taylor v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 450.

Neglect of duty and violation of policy regarding key accountability warranted a six-day suspension. Rudrow v. Burlington County Juvenile Detention Center, 93 N.J.A.R.2d (CSV) 447.

Correction lieutenant committed conduct unbecoming a public employee; 20-day suspension. Heaney v. Edna Mahan Correctional Facility, 93 N.J.A.R.2d (CSV) 444.

Removal warranted for act of neglect of duty resulting in serious injury and for intentional misstatement in connection with investigation. Jones v. Monmouth County Personnel Department, 93 N.J.A.R.2d (CSV) 436.

Fifteen-day suspension was warranted for failing to report to work after the end of prior suspension. Finn v. Burlington County Jail, 93 N.J.A.R.2d (CSV) 430.

Unauthorized absence warranted removal. Carr v. East Jersey State Prison, 93 N.J.A.R.2d (CSV) 426.

Verbal abuse of client did not warrant suspension; training of staff of the institution ordered. Onaiwa v. Green Brook Regional Center, 93 N.J.A.R.2d (CSV) 423.

Detention center; 20-second confrontation; neglect of duty. N.J.S.A. 11A:2-21. Singletary v. Passaic County Juvenile Detention Center, 93 N.J.A.R.2d (CSV) 418.

Officer's conduct was not neglect of duty. Singletary v. Passaic County Juvenile Detention Center, 93 N.J.A.R.2d (CSV) 418.

Suspension of motor broom laborer for conduct unbecoming a public employee was justified. Grant v. Department of Engineering, City of Newark, 93 N.J.A.R.2d (CSV) 415.

Conduct unbecoming public employee warranted a 20-day suspension. Grant v. Newark Department of Engineering, 93 N.J.A.R.2d (CSV) 415.

Removal of fire alarm operator was justified. Docherty v. Fire Dept., City of Paterson, 93 N.J.A.R.2d (CSV) 403.

Failure to perform duties, insubordination, conduct unbecoming public employee, and neglect of duty warranted removal. Docherty v. Paterson Fire Department, 93 N.J.A.R.2d (CSV) 403.

Medical unfitness warranted removal of correction officer trainee. Abreu v. Passaic County Sheriff's Department, 93 N.J.A.R.2d (CSV) 377.

School custodial worker's conduct constituted sexual harassment warranting removal. Williams v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 371.

School custodial worker was properly removed. Spencer v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 368.

Removal of municipal employee warranted. Larkin v. Atlantic City, 93 N.J.A.R.2d (CSV) 362.

Removal of correction officers warranted. Higgins v. Department of Corrections, 93 N.J.A.R.2d (CSV) 358.

Evidence did not show physical abuse of client; removal not warranted. Gadson v. Ancora Developmental Center, 93 N.J.A.R.2d (CSV) 354.

Absence from work and delay in producing doctor's note did not justify disciplinary action. Davis v. Hudson County, 93 N.J.A.R.2d (CSV) 352.

Removal of female correction officer was warranted. Barksdale v. Edna Mahan Correctional Facility, 93 N.J.A.R.2d (CSV) 347.

Removal of nurse was warranted for neglect of duty. Thompson v. Hunterdon Developmental Center, 93 N.J.A.R.2d (CSV) 342.

Fighting and creating disturbance on state property, and insubordination, warranted removal. Holmes v. North Princeton Development Center, 93 N.J.A.R.2d (CSV) 335.

Absenteeism warranted removal. Christian v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 326.

City public housing manager's failure to enforce regulation warranted removal. Young v. Camden Housing Authority, 93 N.J.A.R.2d (CSV) 322.

Abuse of patient warranted removal. Williams v. Marlboro Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 320.

Failure to provide medical documentation for absences warranted removal. Junna v. Atlantic County Department of Public Works, 93 N.J.A.R.2d (CSV) 310.

Lateness, sleeping on duty, and neglect of duty warranted removal. Washington v. Camden Police Department, 93 N.J.A.R.2d (CSV) 306.

Failure to obey supervisor warranted written reprimand. Senape v. Middlesex County Adult Corrections, 93 N.J.A.R.2d (CSV) 305.

Failure to cooperate with an investigation warranted suspension. Simmons v. Essex County Jail, 93 N.J.A.R.2d (CSV) 300.

Failure to complete training course warranted removal of county correction officer. Schmeltz v. Bergen County Sheriff's Department, 93 N.J.A.R.2d (CSV) 297.

Absenteeism warranted removal of hospital worker. Scarborough v. Bergen Pines County Hospital, 93 N.J.A.R.2d (CSV) 295.

Removal of correction officer warranted. Reed v. Department of Adult Corrections, 93 N.J.A.R.2d (CSV) 293.

Removal of incapacitated correction officer unable to discharge his duties. Pittman v. Mid-State Correctional Facility, 93 N.J.A.R.2d (CSV) 291.

Physical contact with client, even if improper, did not warrant termination of youth worker. Blair v. Arthur Brisbane Child Treatment Center, 93 N.J.A.R.2d (CSV) 285.

Dismissal of corrections officer unable to complete training course was unreasonable and arbitrary. Abate v. Passaic County Sheriff's Department, 93 N.J.A.R.2d (CSV) 283.

Corrections officer not shown to have violated video camera policy; suspension was unwarranted. Reynolds v. Albert C. Wagner Youth Correctional Facility, 93 N.J.A.R.2d (CSV) 278.

Conduct unbecoming a public employee, insubordination, and neglect of duty warranted twenty-day suspension. Grimsley v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 276.

Fifteen-day suspension was warranted for bus attendant's failure to discover child left on assigned bus. Utsey v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 265.

Leave without pay and reinstatement subject to random drug testing appropriate for admitted drug use followed by completion of rehabilitation program. Sims v. Garden State Reception and Youth Correctional Facility, 93 N.J.A.R.2d (CSV) 262.

Neglect of duty warranted thirty-day suspension. Billington v. Department of Corrections, 93 N.J.A.R.2d (CSV) 259.

Fifteen-day suspension appropriate for police officer's interference with paramedic. Villane v. Aberdeen Township Police Department, 93 N.J.A.R.2d (CSV) 255.

Absenteeism warranted removal. Smith v. John L. Montgomery Medical Home, 93 N.J.A.R.2d (CSV) 253.

Termination for argument was not warranted. Johnson v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 250.

Twenty-day suspension of correction officer warranted for insubordination. Jackson v. New Jersey State Prison, 93 N.J.A.R.2d (CSV) 247.

Suspension warranted for obscenities and refusing order. Felton v. Department of Environmental Protection and Energy, 93 N.J.A.R.2d (CSV) 244.

Removal warranted for purchase and possession of cocaine. Cottan v. Paterson Public Works Department, 93 N.J.A.R.2d (CSV) 239.

Twenty-day suspension warranted; unauthorized absences. Richardson v. North Princeton Developmental Center, 93 N.J.A.R.2d (CSV) 217.

Removal was warranted for insubordination and for incapability of performing duties. McTernan v. Belmar Borough Municipal Court, 93 N.J.A.R.2d (CSV) 203.

Removal of human services assistant was warranted. Jackson v. E.R. Johnstone Training and Research Center, 93 N.J.A.R.2d (CSV) 195.

Use of state vehicle could not be characterized as unauthorized. Fritze v. State Department of Health, 93 N.J.A.R.2d (CSV) 191.

Removal of institutional attendant was warranted. Baker v. Cumberland County, 93 N.J.A.R.2d (CSV) 189.

Three-day suspension of private plan hearing officer was justified. Morley v. New Jersey Department of Labor, 93 N.J.A.R.2d (CSV) 174.

Removal of hospital employees was justified. Ellis v. B.S. Pollak Hospital, 93 N.J.A.R.2d (CSV) 170.

Twenty-day suspension of Division of Motor Vehicles supervisor was warranted. Carluccio v. Division of Motor Vehicles, 93 N.J.A.R.2d (CSV) 167.

Physical abuse of client warranted suspension. Ruzicka v. Hunterdon Developmental Center, 93 N.J.A.R.2d (CSV) 160.

Removal warranted for driving public vehicle without permission when driver's license was suspended. Bailey v. Montclair State College, 93 N.J.A.R.2d (CSV) 158.

Removal of correction officer was warranted. Tyre v. Passaic County Jail, 93 N.J.A.R.2d (CSV) 155.

Four-month suspension; insubordination. Ramos v. Preakness Hospital, 93 N.J.A.R.2d (CSV) 152.

Patient abuse warranted removal. Felthoff v. New Lisbon Developmental Center, 93 N.J.A.R.2d (CSV) 149.

Absence warranted suspension. McHugh v. Maurice River Board of Education, 93 N.J.A.R.2d (CSV) 145.

Removal warranted for absenteeism. Davis v. Jersey City School District, 93 N.J.A.R.2d (CSV) 135.

Negotiating pay check twice warranted removal. Costello v. Ocean County Board of Social Security, 93 N.J.A.R.2d (CSV) 129.

Suspension was warranted for theft of public property. Christian v. Newark Housing Authority, 93 N.J.A.R.2d (CSV) 124.

Repeated tardiness warranted removal. Brooks v. Woodbine Developmental Center, 93 N.J.A.R.2d (CSV) 123.

Demotion following a six-month suspension was appropriate penalty. Brogel v. Mercer County Department of Public Works, 93 N.J.A.R.2d (CSV) 117.

Sleeping on duty warranted thirty-day suspension. Allison v. New Jersey State Prison, 93 N.J.A.R.2d (CSV) 114.

Indefinite suspension appropriate for purchase of controlled substance. Mecouch v. Rowan College of New Jersey, 93 N.J.A.R.2d (CSV) 106.

Written reprimand and counseling was appropriate for failure to timely appear at hearing. Scrutchins v. Division of Youth and Family Services, 93 N.J.A.R.2d (CSV) 89.

Patient abuse warranted four-month suspension. Milton v. Trenton Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 87.

Termination warranted. Sapp v. Department of Corrections, 93 N.J.A.R.2d (CSV) 79.

Suspension warranted for drug offense. Rakus v. Department of Public Works, 93 N.J.A.R.2d (CSV) 75.

Suspension warranted for fighting. Perez v. City of Newark, 93 N.J.A.R.2d (CSV) 73.

Ten-day suspension warranted. Herman v. City of Trenton, 93 N.J.A.R.2d (CSV) 70.

Removal of employee warranted for insubordination. Green v. Paramus New Jersey Veterans' Memorial Home, 93 N.J.A.R.2d (CSV) 66.

Psychiatric hospital failed to prove abuse of patient. Carter v. Ancora Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 58.

Patient abuse warranted removal. Boone v. North Princeton Developmental Center, 93 N.J.A.R.2d (CSV) 52.

Alleged violation of domestic restraining order did not constitute conduct unbecoming a public employee. Boston v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 26.

Discipline warranted for conduct at the work site during suspension. Scott v. City of Newark, Department of General Services, 93 N.J.A.R.2d (CSV) 21.

Removal was warranted for failure to perform duties and insubordination. Mixon v. Cumberland Manor, Cumberland County, 93 N.J.A.R.2d (CSV) 19.

Demotion of clerk was warranted. Davion v. Middlesex County Board of Social Services, 93 N.J.A.R.2d (CSV) 13.

Demotion was improper for violation of sick leave policy where officer submitted proof of his illness when asked for proof. Beiker v. Camden County Sheriff's Office, 93 N.J.A.R.2d (CSV) 5.

Suspension was appropriate sanction for failure to notify employer of absence from work. Miller v. State Department of Health, 93 N.J.A.R.2d (CSV) 1.

Removal; sleeping on duty. Tindall v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 830.

Removal; excessive use of sick time. Slaughter v. Southern State Correctional Facility, 92 N.J.A.R.2d (CSV) 814.

Performance assessment review; not racially motivated. Sallie v. New Jersey Department of Transportation, 92 N.J.A.R.2d (CSV) 811.

Removal; abuse of a patient. Ruiz v. Greystone Park Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 808.

Twenty-day subsequent removal; insubordination. Newark Board of Education v. Khalifa, 92 N.J.A.R.2d (CSV) 804.

Removal; missing eight days without permission. Johnson v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 800.

Random drug testing; constitutional rights. Delli Santi v. Fire Department, City of New York, 92 N.J.A.R.2d (CSV) 785.

Conduct did not constitute physical abuse of a client; removal not justified. Allen v. Woodbine Developmental Center, 92 N.J.A.R.2d (CSV) 776.

Eight-day suspension; violations of sick leave policy. Gugliotta v. Newark Police Department, 92 N.J.A.R.2d (CSV) 772.

Six-day suspension of county correction officer was warranted. Smith v. Burlington County Jail, 92 N.J.A.R.2d (CSV) 766.

Removal; improper or unauthorized contact with inmate. Fariello v. New Jersey State Prison, 92 N.J.A.R.2d (CSV) 755.

Removal; excessive absenteeism and lateness. Terrell v. Newark Housing Authority, 92 N.J.A.R.2d (CSV) 750.

Removal of correction officer was warranted. Edwards v. East Jersey State Prison, Department of Corrections, 92 N.J.A.R.2d (CSV) 734.

Fine of 15 days' pay; failure to deliver medications. Dye v. Union County Division of Youth Services, 92 N.J.A.R.2d (CSV) 729.

Six-month suspension; poor attendance. Dukes v. Buttonwood Hospital, Burlington County, 92 N.J.A.R.2d (CSV) 726.

Removal; testing positive for marijuana and cocaine. Drake v. Essex County Jail, 92 N.J.A.R.2d (CSV) 724.

Removal; threatening, intimidating, and verbally abusing supervisor. Chester v. Department of Human Services, 92 N.J.A.R.2d (CSV) 720.

Removal; falsification of records and excessive absenteeism. Ascione v. North Bergen Housing Authority, 92 N.J.A.R.2d (CSV) 716.

Removal; absence without leave. Abdul v. City of Newark Board of Education, 92 N.J.A.R.2d (CSV) 714.

Refusal to answer questions during interrogation was not insubordination. Zitzman v. Mountainview Youth Correctional Facility, 92 N.J.A.R.2d (CSV) 711.

Removal; criminal sexual assault. Slater v. Bergen County Sheriff's Office, 92 N.J.A.R.2d (CSV) 699.

Corrections officer who voluntarily sought treatment would not be removed. Register v. Lloyd McCorkle Training School, 92 N.J.A.R.2d (CSV) 697.

Removal warranted; shattering window of city vehicle. Murtha v. Bayonne Engineering Department, 92 N.J.A.R.2d (CSV) 694.

Suspension rather than removal; neglect of duties. Lowe v. E.R. Johnstone Training and Research Center, 92 N.J.A.R.2d (CSV) 688.

Ten-day suspension; absence from work. Love v. Marlboro Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 686.

City was not justified in removing accrued vacation. Kredatus v. City of Clifton, 92 N.J.A.R.2d (CSV) 682.

Twenty-one day suspension; sleeping on duty. Dukich v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 671.

Thirty-day suspension; negligent inattentiveness to duties. Curtis v. Riverfront State Prison, 92 N.J.A.R.2d (CSV) 669.

Removal of correction officer recruit; testing positive for cocaine. Bethea v. Department of Corrections, 92 N.J.A.R.2d (CSV) 655.

Thirty-day suspension; striking inmate. Abercrombie v. Department of Corrections, 92 N.J.A.R.2d (CSV) 652.

Dismissal of police officer trainee; insubordination and a positive drug test. Holmes v. Passaic County Police Academy and William Paterson College, 92 N.J.A.R.2d (CSV) 647.

Removal warranted; repeated inmate abuse. Signorile v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 623.

Misconduct of youth worker; removal justified. Sapp v. Department of Corrections, 92 N.J.A.R.2d (CSV) 611.

Police officer's intoxication while on duty; removal justified. Rutkowski v. Police Department, Borough of Elmwood Park, 92 N.J.A.R.2d (CSV) 605.

Insubordination; neglect of duty; 60-day suspension justified. Henry v. Preakness Hospital, Passaic County, 92 N.J.A.R.2d (CSV) 600.

Removal warranted for insubordination. Davis v. Edna Mahan Correctional Facility, 92 N.J.A.R.2d (CSV) 590.

Removal for second failure to make required call-in unwarranted. Boayue v. New Jersey State Prison, 92 N.J.A.R.2d (CSV) 586.

Improper dismissal on basis of job abandonment. Victor v. North Princeton Developmental Center, 92 N.J.A.R.2d (CSV) 584.

Suspension of officer warranted for improper outbursts. Nance v. City of Newark Police Department, 92 N.J.A.R.2d (CSV) 577.

Suspension of developmental center employee was not justified. Corin v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 575.

Removal warranted for insubordination. Benjamin v. Hudson County Probation Department, 92 N.J.A.R.2d (CSV) 572.

Six-month suspension for reporting for duty while impaired by alcohol; removal because of revocation of driving privilege. Tyrrell v. State Department of Transportation, 92 N.J.A.R.2d (CSV) 565.

Removal warranted; falsification of time sheets and unauthorized absence. Pue v. New Jersey State Department of Human Services, 92 N.J.A.R.2d (CSV) 561.

Removal of part-time supervisor of emergency medical technicians for police department was warranted. Kroll v. Police Department, City of Passaic, 92 N.J.A.R.2d (CSV) 555.

Departmental employee chasing and throwing shoes at an easily agitated client warranted a suspension for 15 days. Davis-Jones v. North Princeton Developmental Center, 92 N.J.A.R.2d (CSV) 552.

Removal of correction officer was warranted. Bennett v. Department of Corrections, East Jersey State Prison, 92 N.J.A.R.2d (CSV) 549.

Veterans' home failed to establish that employee was physically incapable of performing her duties as a human services assistant, and removal was not justified. Negron v. New Jersey Veterans' Memorial Home, 92 N.J.A.R.2d (CSV) 544.

Removal of maintenance worker was warranted for a fifth offense of absence without authorization. Wilson v. Department of Transportation, 92 N.J.A.R.2d (CSV) 541.

Ten-day suspension, rather than 30-day suspension, was appropriate punishment for jail employee's neglect of duty. Harris v. Burlington County Jail, 92 N.J.A.R.2d (CSV) 522.

Police officer engaged in use of excessive force and violated rules regarding conduct in public and private and suspension of officer was appropriate. Gonzalez v. Police Department, City of Newark, 92 N.J.A.R.2d (CSV) 518.

Suspension and removal of family service worker was warranted. Behl v. Essex County Welfare Board, 92 N.J.A.R.2d (CSV) 507.

Written reprimand, rather than a fine of 15 days' pay, was appropriate punishment for a police officer's neglect of duty. Lamb v. City of Camden, 92 N.J.A.R.2d (CSV) 505.

Six-week suspension of prison storekeeper, rather than termination, was appropriate for intentionally misusing or abusing his position. Wilson v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 500.

Thirty-day suspension of correction officer was warranted for paying inmate with alcoholic beverages. Johnson v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 495.

Psychiatric hospital failed to prove that employee physically abused a client. Hasty v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 493.

Five-day suspension of police officer, rather than nine-day suspension, was warranted. Elbertson v. Dept. of Public Safety, City of Trenton, 92 N.J.A.R.2d (CSV) 485.

Removal of township employee was warranted. Carnoval v. Florence Township Water and Sewer Department, 92 N.J.A.R.2d (CSV) 483.

Removal of computer operator was warranted for allowing acquisition of access codes. Timpone v. Glassboro State College, 92 N.J.A.R.2d (CSV) 477.

Suspension of developmental center employee was warranted. Artemus v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 474.

Senior medical security officer of Department of Human Services was properly suspended for ten days for being absent from work. Slaughter v. Department of Human Services, Forensic Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 472.

Thirty-day suspension, rather than four-month suspension of Motor Vehicles Safety Specialist, was warranted. Thomas v. Division of Motor Vehicles, 92 N.J.A.R.2d (CSV) 469.

Supervisor of Division of Motor Vehicles was properly suspended for ten days. Hall v. Division of Motor Vehicles, 92 N.J.A.R.2d (CSV) 465.

Developmental center employee was properly suspended for 20 days without pay. Price v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 463.

Police sergeant's demotion was warranted for his failure to perform his assigned duties, engaging in conduct unbecoming a public employee, and neglect of duty. Marasco v. Berkeley Township Police Department, 92 N.J.A.R.2d (CSV) 458.

Mechanic's driving privilege suspension constituted conduct unbecoming an employee in public service and warranted removal. Holman v. Newark Board of Education, 92 N.J.A.R.2d (CSV) 454.

Suspension and demotion of a police sergeant was warranted. Fagan v. Point Pleasant Beach Police Department, 92 N.J.A.R.2d (CSV) 445.

Correction officer was guilty of conduct unbecoming a public employee and removal was warranted. Cherry v. Monmouth County Personnel Department, 92 N.J.A.R.2d (CSV) 438.

Removal of fire fighter was warranted for violation of departmental order regarding sick leave and for insubordination. Butler v. Fire Department, City of Jersey City, 92 N.J.A.R.2d (CSV) 434.

Removal of developmental center employee was warranted. Williams v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 427.

Removal of correction officer was warranted. Valentine v. Northern State Prison, 92 N.J.A.R.2d (CSV) 424.

Removal of maintenance worker was warranted after his driver's license was suspended. Smith v. Department of Transportation, 92 N.J.A.R.2d (CSV) 422.

Termination of police officer was warranted for working outside employment. Kline v. Department of Law and Public Safety, 92 N.J.A.R.2d (CSV) 414.

Training school failed to prove that suspension of correction officer was unwarranted. Wilson v. Lloyd McCorkle Training School, 92 N.J.A.R.2d (CSV) 408.

Excessive absenteeism warranted removal. Williams v. Department of Public Works, Winslow Twp., 92 N.J.A.R.2d (CSV) 405.

Correction officer's failure constituted neglect of duty warranting ten-day suspension. Rodriguez v. Edna Mahan Correctional Facility, 92 N.J.A.R.2d (CSV) 391.

Removal of building maintenance worker was warranted. Miller v. Cape May County, 92 N.J.A.R.2d (CSV) 387.

Urinalysis warranted removal of police officer. Jersey City Police Dept. v. Torres, 92 N.J.A.R.2d (CSV) 383.

Evidence failed to establish that removal of developmental center employee was justified. Jackson v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 381.

Ten-day suspension of shop steward was justified for insubordination and neglect of duty. Carroll v. Camden County Health Services Center, 92 N.J.A.R.2d (CSV) 369.

Removal of correction officer justified by his failure to meet the probationary drug rehabilitation terms. Rivera v. Essex County Jail, 92 N.J.A.R.2d (CSV) 365.

Suspension; improper food handling. Flowers v. Buttonwood Hospital, 92 N.J.A.R.2d (CSV) 351.

Suspension; unlawful "tapping" of student. Essex Day Training Center v. Dugger, 92 N.J.A.R.2d (CSV) 349.

Suspension; verbal abuse of client. Caine v. New Jersey Department of Human Services, 92 N.J.A.R.2d (CSV) 347.

Unexcused absences and failure to call in warranted removal. Taylor v. Forensic Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 342.

Suspension; misstatement in medical history when applying for employment. Nobles v. Police Department, City of Camden, 92 N.J.A.R.2d (CSV) 336.

Removal; selling drugs to inmates. Clark v. Mid-State Correctional Facility, 92 N.J.A.R.2d (CSV) 326.

Removal; intercourse with a patient. Johnson v. Camden County, 92 N.J.A.R.2d (CSV) 321.

Removal; scheme to defraud Housing Authority. Willis v. Newark Housing Authority, 92 N.J.A.R.2d (CSV) 312.

Suspensions and removal; insubordination, neglect of duty and conduct unbecoming public employee. Ranjbaran v. Ramapo College of New Jersey, 92 N.J.A.R.2d (CSV) 304.

Removal; insubordination. Polhamus v. Southern State Correctional Facility, 92 N.J.A.R.2d (CSV) 298.

Suspension; unauthorized use of physical and chemical restraints. Kelly v. Burlington County Buttonwood Hospital, 92 N.J.A.R.2d (CSV) 294.

Removal; use of cocaine. Clark v. Albert C. Wagner Youth Correctional Facility, 92 N.J.A.R.2d (CSV) 284.

Suspension; insubordination. Barksdale v. Edna Mahan Correctional Facility, 92 N.J.A.R.2d (CSV) 280.

Suspension; passing a marked state police vehicle at excessive rate of speed and causing chase to ensue and failing to identify himself when stopped. Fuller v. Newark Police Department, 92 N.J.A.R.2d (CSV) 277.

Suspension; gambling with inmates and paying off debts with cigarettes. Bowden v. Bayside State Prison, 92 N.J.A.R.2d (CSV) 273, reversed 268 N.J.Super 301, 633 A.2d 577, certification denied 135 N.J. 469, 640 A.2d 850.

Removal; absenteeism. Hester v. Evergreen Manor, Camden County, 92 N.J.A.R.2d (CSV) 259.

Suspension; neglect of duty, conduct unbecoming a public employee and insubordination. Gallo v. Township of Berkeley, 92 N.J.A.R.2d (CSV) 256.

Suspension; permitting client's continued self-abuse. Forde v. Hunterdon Developmental Center, 92 N.J.A.R.2d (CSV) 251.

Removal; selling cocaine. Cameron v. Preakness Hospital, Passaic County, 92 N.J.A.R.2d (CSV) 247.

Insubordination; suspension without pay. Ramos v. Preakness Hospital, Passaic County, 92 N.J.A.R.2d (CSV) 244.

Officer medically unfit to perform his duties; resignation in good standing. Muller v. Public Safety, Atlantic County, 92 N.J.A.R.2d (CSV) 242.

Resignation in good standing; employee medically unfit to fully perform his duties. Hall v. Ocean County Road Department, 92 N.J.A.R.2d (CSV) 240.

Suspension; improper touching of clients. Warrelmann v. North Princeton Developmental Center, 92 N.J.A.R.2d (CSV) 225.

Suspension; neglect of duty. Van Buskirk v. New Jersey State Prison, 92 N.J.A.R.2d (CSV) 220.

Suspension; failure to respond to a burglary alarm. Ruggiero v. Jackson Township Department of Law and Public Safety, 92 N.J.A.R.2d (CSV) 214.

Removal; incompetency and inefficiency. Kistner v. Department of Transportation, 92 N.J.A.R.2d (CSV) 207.

Removal; insubordination; incidental duties. Junna v. Department of Parks and Recreation, Atlantic County, 92 N.J.A.R.2d (CSV) 205.

Suspension; hitting client in face with wet washcloth. Hunterdon Developmental Center v. Isak, 92 N.J.A.R.2d (CSV) 203.

Removal for malingering. Hudak v. Department of Treasury, Div. of General Services, 92 N.J.A.R.2d (CSV) 201.

Removal; physical inability to perform duties. Hanna v. Township of South Orange Village, 92 N.J.A.R.2d (CSV) 198.

Removal not justified; nephrotic syndrome condition. Crews v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 188.

Patient abuse; removal. Buratt v. Marlboro Psychiatric Hospital, State Department of Human Services, 92 N.J.A.R.2d (CSV) 184.

Fine; conduct subversive to good order and discipline and failure to submit timely, properly written report. Bollettieri v. Camden Police Department, 92 N.J.A.R.2d (CSV) 181.

Suspension; call-in procedures for absences. Wewer v. Burlington County, 92 N.J.A.R.2d (CSV) 174.

Suspension; rough treatment of patient. McFadden v. John L. Montgomery Medical Center, 92 N.J.A.R.2d (CSV) 171.

Discharge; assaulting inmate and filing false report. Gant v. Salem County Jail, 92 N.J.A.R.2d (CSV) 168.

Developmental center worker slapped patient; dismissal. Peters v. North Princeton Developmental Center, 92 N.J.A.R.2d (CSV) 149.

Employee was guilty of conduct unbecoming a state employee; suspension. Lawson v. Department of Human Services, Ancora Psychiatric Hosp., 92 N.J.A.R.2d (CSV) 145.

Human services assistant was guilty of physically and verbally abusing a patient; removal. Goldsboro v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 143.

Bridge repairer engaged in conduct unbecoming an employee in public service; removal. Fox v. Monmouth County Bridge Dept., 92 N.J.A.R.2d (CSV) 137.

Truck driver was not physically unable to perform job duties; demotion was not warranted. DeLorenzo v. Camden County, 92 N.J.A.R.2d (CSV) 134.

Corrections officer was not guilty of neglect of duty. Casey v. Mountainview Youth Correctional Facility, 92 N.J.A.R.2d (CSV) 129.

Employee late for work twice; suspended from employment for six months. Carter v. Riverfront State Prison, 92 N.J.A.R.2d (CSV) 126.

Chronic and excessive absenteeism and tardiness; removal. Boone v. Camden County Health Services Center, 92 N.J.A.R.2d (CSV) 125.

Removal; tardiness on two occasions. N.J.S.A. 18A:2-6, 11:2A-6. Borja v. Newark Board of Educ., 92 N.J.A.R.2d (CSV) 114.

Physical restraint of a patient did not constitute abuse of a patient. N.J.S.A. 11A:1-1 et seq., 11A:1-2, 11A:2-6, 11A:2-20. Summers v. Marlboro Psychiatric Hosp., 92 N.J.A.R.2d (CSV) 113.

Officer late two days in a row properly removed from employment. Shareef v. Northern State Prison, 92 N.J.A.R.2d (CSV) 108.

Worker would be suspended for six months rather than removed from employment. Russ v. Arthur Bresbain Child Treatment Center, 92 N.J.A.R.2d (CSV) 105.

Employee was guilty of harassment and intimidation, conduct unbecoming a public employee, justifying removal. Muhammad v. State Dept. of Corrections, 92 N.J.A.R.2d (CSV) 103.

Conduct unbecoming a public employee; suspension. Borchester v. Public Works of Lacey Township, 92 N.J.A.R.2d (CSV) 89.

Proper use of defense maneuver on patient; removal not justified. Blair v. Ancora Psychiatric Hosp., 92 N.J.A.R.2d (CSV) 87.

Use of word "nigger"; removal. Graziano v. Monmouth County Sheriff's Dept., 92 N.J.A.R.2d (CSV) 73.

Theft of two dollars of public funds; removal. Carter v. Cumberland County Welfare, 92 N.J.A.R.2d (CSV) 71.

Willfully and with intent performing duties in an inferior manner; suspension for 28 days. Huesser v. Camden County Mun. Utility Authority, 92 N.J.A.R.2d (CSV) 48.

Attempt to put arms around another employee; removal from employment. Fine v. Department of Public Property of Middlesex County, 92 N.J.A.R.2d (CSV) 45.

Striking client on head; suspension. Cobb v. Woodbridge Development Center, 92 N.J.A.R.2d (CSV) 43.

There was no inappropriate physical contact or mistreatment of a resident; suspension not justified. Rease v. Division of Youth and Family Services, 92 N.J.A.R.2d (CSV) 35.

Testing positive for drug use; conduct unbecoming a public employee; removal. Hamilton v. Department of Corrections, 92 N.J.A.R.2d (CSV) 31.

Testing positive for cocaine use; removal. Brevard v. Training School for Boys, 92 N.J.A.R.2d (CSV) 28.

Insubordination, conduct unbecoming a public employee, neglect of duty, and violation of township rules and regulations; removal. Zara v. Township of Hamilton, Water Pollution Control, 92 N.J.A.R.2d (CSV) 25.

Patient abuse and intentional misuse of authority justified suspension. Williams v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 23.

Corrections officer properly suspended for 30 days. Barksdale v. Edna M. Mahan Correctional Facility, 92 N.J.A.R.2d (CSV) 3.

Officer tricked into smoking marijuana; not conduct unbecoming public employee. N.J.S.A. 2C:2-1. Cox v. Bayside State Prison, 92 N.J.A.R.2d (CSV) 1.

Reporting for work while intoxicated; suspension. Rucinski v. Department of Fire & Emergency Services, City of Jersey City, 91 N.J.A.R.2d (CSV) 97.

Suspension; insubordination based on refusal to take drug test. Bryant v. Fire & Emergency Services Department, Jersey City, 91 N.J.A.R.2d (CSV) 95.

Failing random drug test; removal. Mitchell v. County of Camden, Sheriff's Department, 91 N.J.A.R.2d (CSV) 89.

Conduct unbecoming public official; removal. N.J.S.A. 2C:35-10, 2C:51-1. Jones v. Ancora Psychiatric Hospital, 91 N.J.A.R.2d (CSV) 83.

Corrections officer was medically unfit to perform his job. Gerace v. Adult Detention, Atlantic County, 91 N.J.A.R.2d (CSV) 81.

Negligent conduct unbecoming a public employee; suspension. Grier v. Department of Transportation, 91 N.J.A.R.2d (CSV) 63.

Absence from work without notice; suspension without pay. Dean v. Marlboro Psychiatric Hospital, 91 N.J.A.R.2d (CSV) 57.

Officer was guilty of conduct unbecoming an employee and public service. N.J.S.A. 2a:156A-3. Engi v. State Department of Corrections, 91 N.J.A.R.2d (CSV) 53.

Ten-day suspension was too harsh given employee's long work history and lack of prior disciplinary record. Thomas v. Vineland Developmental Center, 91 N.J.A.R.2d (CSV) 47.

Removal; cocaine. White v. Mercer County, Dept. of Public Care and Safety, 91 N.J.A.R.2d (CSV) 25.

Neglect of duty and intentional misstatement of material facts; discharge. Kinnard v. Mountainview Youth Correctional Facility, 91 N.J.A.R.2d (CSV) 17.

Termination; unauthorized five-week leave of absence. Harp v. Ancora Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 11.

Employee was properly terminated for absenteeism and falsification of official records. Goodman v. N. Jersey Dept. of Human Services, 91 N.J.A.R.2d (CSV) 9.

Thirty-day suspension with no demotion was appropriate penalty. Allegar v. Lacey Dept. of Public Works, 91 N.J.A.R.2d (CSV) 1.

Dismissal of teaching staff member for unbecoming conduct modified. In the Matter of Tenure Hearing of Theresa Lucarelli, Board of Education of the Borough of Brielle, Monmouth County, 97 N.J.A.R.2d (EDU) 537.

Commission lacks jurisdiction over school employment termination petition if termination based on civil service laws. Lo Russo v. State Operated School District of Jersey City, Hudson County, 97 N.J.A.R.2d (EDU) 505.

Dismissal of special education teacher for unbecoming conduct due to falsification of grades modified. In the Matter of the Tenure Hearing of Andrew Phillips, 97 N.J.A.R.2d (EDU) 447.

Removal of school custodian justified. In the Matter of the Tenure Hearing of Gwinnett, 93 N.J.A.R.2d (EDU) 563.

Removal of employee due to job abandonment affirmed. Cugler v. Pep Boys, 97 N.J.A.R.2d (LBR) 62.

Employee failing to demonstrate pretextual reasons for termination fails to meet burden in claim of discrimination. Lynch v. Trenton Iron and Metal Corporation, 97 N.J.A.R.2d (LBR) 58.

Employee's poor discipline history defeats claim of retaliatory termination. Smith v. Borough of Eatontown, 97 N.J.A.R.2d (LBR) 50.

Former state police officer's discharge for drug addiction defeats later application for campus police commission if evidence fails to show rehabilitation. Stengel v. New Jersey Division of State Police, 97 N.J.A.R.2d (POL) 15.

Termination; use of unjustified and excessive force on a prisoner. Division of State Police v. Jiras, 94 N.J.A.R.2d (POL) 1, remanded 96 N.J.A.R.2d (POL) 1.

State trooper dismissed for drug violations and violations of regulations relating to use of troop transportation, consumption of alcoholic beverages and solicitation of funds. Division of State Police v. Hall, 93 N.J.A.R.2d (POL) 33.

State trooper suspended for six months. Division of State Police v. Buhan, 93 N.J.A.R.2d (POL) 23.

Appellant removed from position as drawbridge operator on disciplinary charges for possessing, consuming and being under the influence of an alcoholic beverage while on duty. Varga v. Union Co. Dep't of Public Works, 11 N.J.A.R. 546 (1989).

Removal of police officer from position for neglect of duty, serious breach of discipline and conduct unbecoming an employee in public service (citing former N.J.A.C. 4:1-16.9). Simone v. Borough of Elmwood Park, 7 N.J.A.R. 72 (1983).

Civil Service Commission has the authority to order removal based on term of the forfeiture statute. Forfeiture following the conviction of a crime of a third degree is automatic (citing former N.J.A.C. 4:1-16.9). Dinkins v. Cape May Cty., 6 N.J.A.R. 202 (1983).

Discretion with regard to removal: the State is not precluded from using the normal regulatory removal machinery even though petitioner's forfeiture of office, as a consequence of conviction, was immediate and automatic (citing former N.J.A.C. 4:1-16.9). Schonwald v. Dep't of Transportation, 5 N.J.A.R. 473 (1982).

Suspension based on failure to dress in a manner appropriate to his position: insubordination (citing former N.J.A.C. 4:1-16.7). Koehler v. Dep't of Community Affairs, 5 N.J.A.R. 318 (1981).

4A:2-2.4 Limitations on suspensions and fines

(a) No suspension or fine shall exceed six months except for suspensions pending criminal complaint or indictment. See N.J.A.C. 4A:2-2.7.

(b) In local service, the appointing authority may provide that a suspension be with or without pay. In State service, suspensions shall be without pay unless directly authorized to be with pay by the department head. In both local and State service, a suspension on the record may be imposed in accordance with (e) below.

(c) An appointing authority may only impose a fine as follows:

1. As a form of restitution;

2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or

3. Where an employee has agreed to a fine as a disciplinary option.

(d) An employee may pay a fine of more than five days salary in a lump sum or through installments. Unless otherwise agreed to by the employee, an installment may not be more than five percent of the gross salary per pay for a fine under $500.00; 10 percent of gross salary per pay period for a fine between $500.00 and $1,000; or 15 percent of gross salary per pay period for a fine over $1,000.

(e) An appointing authority may impose a suspension on the record when the appointing authority and the employee, or, where the employee is covered by a collective negotiations agreement, the employee's majority representative, agree in writing that, for purposes of progressive discipline, the employee will receive a suspension on the record and that

it will have the same force and effect for purposes of future disciplinary actions as a suspension actually served by the employee.

Petition for Rulemaking.
See: 30 N.J.R. 3103(a), 30 N.J.R. 3552(a).
Petition for Rulemaking: Notice of Receipt; General Rules and Department Organization Appeals, Discipline and Separations Suspensions on the Record.
See: 38 N.J.R. 1085(a).
Amended by R.2006 d.386, effective November 6, 2006.
See: 38 N.J.R. 2773(a), 38 N.J.R. 4690(a).
In (b), inserted the last sentence; and added (e).

Case Notes

Dismissal of police officer was supported by officer's intentional avoidance of communication with police chief prior to taking unauthorized vacation; officer's conduct was so egregious as to warrant suspension of greater than six months, and civil service rules require dismissal of employee whose offense dictates such suspension. Cosme v. Borough of East Newark Tp. Committee, 304 N.J.Super. 191, 698 A.2d 1287 (A.D. 1997).

Though a police officer's request for interim relief from a continuing suspension was mooted when he returned to work, the record indicated that while the appointing authority had a valid basis per N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1 to immediately suspend the officer based on pending charges of driving while under the influence and failure to maintain lane while on duty, the officer's indefinite suspension was not appropriate. That is because the offenses with which the officer was charged were not crimes of the first, second, or third degree, or a crime of the fourth degree if committed on the job or directly related to the job. Rather, the charges against the officer were violations of the Motor Vehicle and Traffic Control law. That being so, to the extent that the suspension imposed upon the officer lasted more than six months, the suspension was contrary to N.J.S.A. 11A:2-20 and N.J.A.C. 4A:2-2.4(a) and the officer was entitled to relief including mitigated back pay and a revision of his personnel records. In re Ricca, Newark, CSC Docket No. 2013-1485, 2013 N.J. CSC LEXIS 1202, Decision on Motion for Interim Relief (December 5, 2013).

An Administrative Law Judge concluded, based on conflicting testimony, that an employee serving as a Judiciary Clerk in fact committed misconduct in relation to his confrontation with his supervisor and that such misconduct was conduct unbecoming a public employee within the meaning of N.J.A.C. 4A:2-2.3(a)6. However, though the penalty proposed by the appointing authority, which was a 10-day suspension without pay, was authorized by law including N.J.A.C. 4A:2-2.2 and N.J.A.C. 4A:2-2.4, it was unduly harsh given these facts. The Administrative Law Judge thereupon concluded that an unpaid five day suspension was more appropriate and represented a proper response where, as here, proper workplace decorum had not been maintained. In re Moran, Superior Court of New Jersey — Union Vicinage, OAL Dkt. No. CSV 08100-12, Initial Decision (October 4, 2013).

Employee's finite suspension on charges of conduct unbecoming a public employee and other sufficient cause for violation of Atlantic City policy and procedures that exceeded the statutory maximum of six months was improper under N.J.S.A. 11A:2-20 and N.J.A.C. 4A:2-2.4(a). In re Rasheema Hansen, Atlantic City, CSC Dkt. No. 2013-1808, 2013 N.J. CSC LEXIS 955, Civil Service Comm'n Decision (October 3, 2013).

Finite period of suspension of an employee that spanned more than 11 months was improper under N.J.S.A. 11A:20 and N.J.A.C. 4A:2-2.4(a) because it spanned more than six months. The appointing authority should have issued a Final Notice of Disciplinary Action pursuant to N.J.A.C. 4A:2-2.7(a)1 and (a)3 indicating that the employee had been indefinitely suspended pending disposition of a criminal complaint against him, but that did not occur. Due to this procedural error, the Civil Service Commission ordered that the employee's County and Municipal Personnel System record be revised to indicate that he was suspended for a period of six months. In re Dennis McReynolds, Atlantic City, CSC Dkt. No. 2013-3117, 2013 N.J. CSC LEXIS 583, Referred for Hearing (June 27, 2013).

Appointing authority did not have the right to fine a correction officer in lieu of suspension where the appointing authority did no more than provide conclusory testimony that a suspension would have created a public safety threat in light of the facility's staffing shortage, without also providing supporting statistics, such as the absentee rate and the number of unsecured posts; rather, it was clear that the appointing authority improperly continued its policy to impose fines rather than suspensions as a routine form of discipline, which was improper (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 231). In re Baldwin, OAL Dkt. No. CSV 2838-08, 2009 N.J. CSC LEXIS 405, Final Decision (August 19, 2009), reconsideration denied, OAL Dkt. No. CSV 2010-1124, 2010 N.J. CSC LEXIS 570 (Civil Service Comm'n January 15, 2010).

Contrary to the ALJ's determination, an appointing authority could not have issued a fine in place of the 120-working day suspension where there was no showing that the correction officer's specific suspension would have created a public health, safety, or welfare emergency (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1028). In re Copling, OAL Dkt. No. CSV 4275-07, 2009 N.J. AGEN LEXIS 983, Final Decision (February 11, 2009).

Where a county correction officer was charged with chronic and excessive absenteeism, the appointing authority failed to demonstrate that the officer's specific suspension created a public health, safety or welfare emergency which would have justified imposing fines in lieu of suspensions; rather, the appointing authority made it a policy to impose fines rather than suspensions to address staffing shortages, which was improper and could not be used as a routine form of discipline (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 981). In re Cliver, OAL Dkt. No. CSV 919-08, 2009 N.J. AGEN LEXIS 1002, Final Decision (January 14, 2009).

Correction officer was properly fined in lieu of suspension because his attendance was so critical to the operation of the correction center that a disciplinary suspension could not have been imposed without creating a risk to public health, safety, or welfare; absenteeism had already caused reduction of staff, involuntary overtime, and morale problems and the officer's suspension would have caused further disruption of the operations of the center, which would have been detrimental to public safety (adopting 2008 N.J. AGEN LEXIS 840). In re Di Memmo, OAL Dkt. No. CSV 920-08, 2008 N.J. AGEN LEXIS 1068, Final Decision (November 6, 2008).

Cottage training technician's failure to drive a state vehicle safely supported a charge of neglect of duty; since the technician's neglect caused property damage (in the amount of $1,700), the appropriate form of penalty should have been a fine, providing partial restitution for her actions. However, while the technician's actions caused significant property damage, they were not so egregious as to warrant a fine equivalent to either a 15-day suspension or $1,700; instead, the proper penalty was a fine equivalent to three days' pay. In re McCrary, OAL Dkt. No. CSV 4540-07, 2008 N.J. AGEN LEXIS 1223, Final Decision (October 8, 2008).

A police officer who was the union steward for the rank and file members of a city police department was acting in the latter role when he attended an interview of another officer (union member) at the union member's request. It was during that interview that the officer/steward had sought clarification of a question asked of the union member and the officer's refusal to remain silent and to leave the room when ordered to do so was not constitute conduct for which he was properly disciplined. The officer's participation in the interview was well within the accepted bounds, which was to attempt to clarify facts or to identify other employees who may have knowledge of them. Because the officer's actions were within the bounds of allowable behavior, his actions were neither insubordinate nor unbecoming a police officer and there was no basis for discipline under N.J.A.C. 4A:2.2.4(a). That being so, the Administrative Law Judge concluded that the entirety of the 180-day suspension that the department had imposed should be reversed, the officer's record expunged, and the officer made whole for salary, benefits and seniority, attorneys' fees and costs. In re Rowe, City of East

Orange, OAL DKT. NO. CSV07535-07, AGENCY DKT. NO. 2007-3373-I, 2008 N.J. AGEN LEXIS 1511, Initial Decision (January 28, 2008).

When an employee paid a fine in lieu of suspension, the employee was not separated from employment; a fine in lieu of suspension under N.J.A.C. 4A:2-2.4 was recorded in the employee's personnel record as "*x* number of days' pay fined in lieu of *x* number of days suspended." Consequently, the number of days' pay fined was the number to be considered for progressive disciplinary purposes since that was the actual disciplinary penalty imposed (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 406). In re Sims, OAL Dkt. No. CSV 4103-04, 2005 N.J. AGEN LEXIS 1258, Final Decision (September 7, 2005), aff'd per curiam, Docket No. A-4396-05T3, 2007 N.J. Super. Unpub. LEXIS 1514 (App.Div. November 27, 2007).

Traffic signal repairer removed for falsifying application for employment with regard to criminal convictions. Florenzo v. Bergen County Department of Public Works, 96 N.J.A.R.2d (CSV) 22.

Police officer who lost police radio through carelessness was appropriately fined. Przybyszewski v. Gloucester Township Police Department, 95 N.J.A.R.2d (CSV) 623.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. An employee who has been appointed on or after September 1, 2011, who does not have a principal residence in New Jersey and who has not received a residency exemption in accordance with P.L. 2011, c. 70, within one year of appointment, is defined by that statute as illegally holding and unqualified for employment, and therefore subject to immediate suspension as unfit for duty. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.

(b) Where suspension is immediate under (a)1 and 2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties. See N.J.A.C. 4A:2-2.13 for hearings regarding removal appeals by certain law enforcement officers and firefighters.

(e) Appeals concerning violations of this section may be presented to the Civil Service Commission through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

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 (e).
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (a).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
In (d), inserted the last sentence; and in (e), substituted "Civil Service Commission" for "Commissioner".
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.
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)1, inserted the second sentence; and in (b), substituted "2" for "(a)2".

Law Review and Journal Commentaries

Discrimination—Collateral Estoppel—Police Officers. Judith Nallin, 138 N.J.L.J. No. 1, 49 (1994).

Case Notes

Former city police officer's claim that the city and two officials violated the officer's procedural due process rights in disciplining the officer survived summary judgment in part given fact issues as to whether the final disciplinary decision was made by the person authorized to do so for purposes of N.J.A.C. 4A:2-2.5 and 4A:2-2.6; it was unclear whether the decision was made by the "appointing authority" under N.J.A.C. 4A:1-1.3. Reilly v. City of Atl. City, 427 F.Supp.2d 507, 2006 U.S. Dist. LEXIS 17208 (D.N.J. 2006).

The requirement of holding departmental hearing within 30 days of service of preliminary notice of disciplinary action against career service public employee was not jurisdictional, and thus, an appointing authority may proceed with disciplinary charges even if it fails to conduct a departmental hearing within the statutorily mandated period. Goodman v. Department of Corrections, 367 N.J.Super. 591, 844 A.2d 543.

Ordinarily, permanent civil service employees can be discharged or demoted only for cause, and they have pre-termination appeal and hearing rights; however, provisional employees can be terminated at any time at the discretion of the employer. Melani v. County of Passaic, 345 A.2d 579.

Adequate consideration given provisions of Law Against Discrimination. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Procedural irregularities at departmental level; cured by hearing at agency level. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Waiver of hearing. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Departmental hearing required within thirty days of preliminary notice of disciplinary action. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Due process rights of corrections officers who were dismissed for failure to comply with mandatory drug test order were violated. 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.

Lack of entitlement to post termination hearing. Grexa v. State, 168 N.J.Super. 202, 402 A.2d 938 (App.Div.1978).

Due process: right to post termination hearing (statutory). Nicoletta v. No. Jersey District Water Supply Commission, 77 N.J. 145, 390 A.2d 90 (1978). Concurring and dissenting opinions.

Right to hearing. Cunningham v. Dept. of Civil Service, 69 N.J. 13, 350 A.2d 58 (1975).

Though a police officer's request for interim relief from a continuing suspension was mooted when he returned to work, the record indicated that while the appointing authority had a valid basis per N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1 to immediately suspend the officer based on pending charges of driving while under the influence and failure to maintain lane while on duty, the officer's indefinite suspension was not appropriate. That is because the offenses with which the officer was charged were not crimes of the first, second, or third degree, or a crime of the fourth degree if committed on the job or directly related to the job. Rather, the charges against the officer were violations of the Motor Vehicle and Traffic Control law. That being so, to the extent that the suspension imposed upon the officer lasted more than six months, the suspension was contrary to N.J.S.A. 11A:2-20 and N.J.A.C. 4A:2-2.4(a) and the officer was entitled to relief including mitigated back pay and a revision of his personnel records. In re Ricca, Newark, CSC Docket No. 2013-1485, 2013 N.J. CSC LEXIS 1202, Decision on Motion for Interim Relief (December 5, 2013).

Police officer failed to establish that he was entitled to interim relief from the action of the appointing authority suspending him as unfit for duty within the meaning of N.J.A.C. 4A:2-2.5(a)1, which suspension was based on the department's charges that the office falsified a police report relating to a burglary of the officer's vehicle in which a semi-automatic handgun was stolen. Specifically, claiming that the officer had falsely stated in that report that he did not know who had stolen the gun when in fact the officer knew that it had been taken by a drug dealer, the department had charged the officer with neglect of duty, incompetence, conduct unbecoming a public employee, and inability to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a). The nature and seriousness of the charges supported the necessity for an immediate suspension. Moreover, the officer did not establish that he had satisfied the criteria for interim relief in N.J.A.C. 4A:2-1.2. In re Johnson, City of Long Branch, CSC Docket No. 2013-1912, 2013 N.J. CSC LEXIS 1155, Decision on Request for Interim Relief (November 26, 2013).

Police officer's indefinite suspension was warranted under N.J.A.C. 4A:2-2.5(a)2. The pendency of a criminal indictment on charges of second degree aggravated arson, second degree insurance fraud, and second degree conspiracy to commit insurance fraud against the officer, who was employed to promote adherence to the law and serve the public, rendered his indefinite suspension necessary in order to maintain the safety of the public and to ensure effective direction of services. To allow him to continue to perform his duties could also impugn the integrity of the police department. In re Johnathan Taylor, City of Newark, CSC Dkt. No. 2013-3570, 2013 N.J. CSC LEXIS 943, Final Decision (October 16, 2013).

Police officer who was immediately suspended from employment as permitted by N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1 after being charged with offenses including violating sick leave polices, failing to timely notify of a change in residence, falsifying official records and failing to update recall information despite the fact that he was on sick leave at the time did not establish that there were grounds for relief under N.J.A.C. 4A:2-1.2(c). The nature and seriousness of the charges supported the imposition of an immediate suspension from employment because the officer, as a police officer, held a highly visible and sensitive position in the community so that such an officer's failure to follow all applicable rules clearly impacted the proper function of the police department. Nor was the fact that the officer was out on sick leave on the date of his suspension provide any basis for relief from the immediate suspension. In re Glen Green, CSC Dkt. No. 2013-1446, 2013 N.J. CSC LEXIS 585, Final Order (June 26, 2013).

Civil Service Commission denied a former Institutional Trade Instructor's appeal of his indefinite suspension under N.J.A.C. 4A:2-2.5(a)2. The final Notice of Disciplinary Action clearly indicated that the instructor was charged with multiple third degree offenses. Specifically, Possession of Controlled Dangerous Substance (CDS) or Analog and Obtaining CDS by Fraud were both third degree offenses. The charges of Forgery and Forged Writing were typically third degree offenses depending on the instrument being forged. On this basis alone, an immediate and indefinite suspension was a permissible action by the appointing authority. In re Jared Stemetzki, Dep't. of Corr., CSC Dkt. No. 2013-456, 2013 N.J. CSC LEXIS 596, Final Decision (June 6, 2013).

County correction officer was not entitled to interim relief of his immediate suspension pursuant to N.J.A.C. 4A:2-1.2(c) because the nature and seriousness of the charges of violating departmental rules regarding the possession of cellular phones supported the necessity for an immediate suspension under N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1. If the charges were ultimately sustained on appeal, the officer subjected the correctional facility and the public to possible harm by bringing a cellular phone into a secured facility. In re Christopher Chin, Cnty. of Cape May, CSC Dkt. No. 2013-1264, 2013 N.J. CSC LEXIS 348, Request For Interim Relief (April 4, 2013).

Police officer was not entitled to interim relief of his immediate suspension without pay under N.J.A.C. 4A:2-1.2(c). There was no dispute that the appointing authority possessed a valid basis to impose an immediate suspension pursuant to N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(a)1. The harm he was suffering was monetary in nature and could be remedied, and it was clearly potentially harmful to the appointing authority and the public if an employee who was alleged to be unfit was allowed to remain on the job. In re Michael Watts, West Orange, CSC Dkt. No. 2013-1967, 2013 N.J. CSC LEXIS 271, Final Decision (April 4, 2013).

Administrative law judge recommended the dismissal of a police officer's appeal of his removal for charges including neglect of duty, concluding that because the officer had not yet been official sworn in, he was not reemployed by the City and thus did not have standing. The Civil Service Commission disagreed and determined that the removals were proper. Even if there were procedural violations regarding Preliminary Notices of Disciplinary Action, the provisions of N.J.A.C. 4A:2-2.5(d) did not state that the remedy for violation was the dismissal of the underlying charges. In re Robert Bayard, OAL Dkt. No. CSR 3546-12, 2013 N.J. CSC LEXIS 111, Final Decision (March 6, 2013).

Charges that a now-former county employee was breaching the county's policies regarding accessing on-line services and misusing county equipment and information were such that the employee's immediate suspension from employment pending disciplinary action and prior to the convening of a hearing was authorized by N.J.A.C. 4A:2-2.5(a)1 because if the employee in fact was engaging in the charged conduct, her continued employment would have negatively impacted the order and effective direction of public services and would have compromised the integrity of the appointing authority's computer system. In the Matter of Cheryl Goins, Essex County, CSC Dkt. No. 2013-274, 2013 N.J. CSC LEXIS 118, Final Decision (February 20, 2013).

Civil Service Commission lacked the authority to review the claims made by a now-former county employee that the appointing authority failed to call several witnesses at a departmental hearing convened following her suspension because the scope of the Commission's review of such hearings as established by N.J.A.C. 4A:2-2.5 and N.J.A.C. 4A:2-2.6 was limited and did not extend to such matters. In the Matter of Cheryl Goins, Essex County, CSC Dkt. No. 2013-274, 2013 N.J. CSC LEXIS 118, Final Decision (February 20, 2013).

Policeman's demand that charges against him be dismissed on the ground that he was never served with preliminary notices of disciplinary action and thus was wrongfully denied of the opportunity to request or obtain a departmental hearing contrary to N.J.A.C. 4A:2-2.5(d) lacked merit. The policeman's appeal of the adverse determinations entered in connection therewith, which resulted in a de novo proceeding in which all evidence bearing on the case would be considered, constituted a waiver of any and all procedural irregularities below. In re Bayard, OAL Dkt. No. CSR 3546-12, 2013 N.J. AGEN LEXIS 11, Initial Decision (January 17, 2013).

Immediate and indefinite suspension of a supervisor in the Division of Sanitation pending disposition of a criminal complaint was proper. The supervisor was arrested for using his official position to facilitate the theft of gasoline for his personal benefit. Because the charge involved the supervisor's job, it fell within the scope of N.J.A.C. 4A:2-2.5(a)2, making the immediate suspension proper. The indefinite suspension pending disposition of the criminal complaint under N.J.A.C. 4A:2-2.7(a) were necessary to maintain order and effective direction of public services. The charges raised the concerns that he might steal city property or that his presences might send the wrong message to other employees. In re Paul Drayton, City of Newark, OAL Dkt. No. CSV03780-08, 2008 N.J. AGEN LEXIS 1547, Initial Decision (November 21, 2008).

Failure to hold a disciplinary hearing within 30 days, though a procedural irregularity, does not preclude an appointing authority from proceeding with the disciplinary process, since N.J.S.A. 11A:2-13 does not expressly indicate that the disciplinary charges are to be dismissed in the event that the appointing authority does not comply with the 30-day requirement. In re Leach, OAL Dkt. No. CSV 6373-07 and CSV 6745-07 (Consolidated), 2008 N.J. AGEN LEXIS 1230, Civil Service Comm'n Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 228) adopted, which concluded that the appointing authority had the right to impose an indefinite suspension without pay under N.J.A.C. 4A:2-2.5(a)2 on a correction officer until June 26, the date when the officer pleaded guilty to downgraded charges, rather than only until March 7, the date when the County Prosecutor chose to downgrade the indictable offense, as the downgrade was specifically conditioned on a guilty plea. In re Paris, OAL Dkt. No. CSV 12208-06, 2008 N.J. AGEN LEXIS 708, Final Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 51) adopted, which found that where the specifications in the appointing authority's complaint against a fire alarm operator included his absences, but not his failure to provide additional information regarding the pertinent doctor's notes, the latter could not be the basis of any discipline in light of the fact that it was not referenced in the specifications; an employee must be served with a Preliminary Notice setting forth the charges and a statement of facts supporting them and must be given an opportunity for hearing prior to imposition of major discipline. In re Bugg, OAL Dkt. No. CSV 3975-05, 2008 N.J. AGEN LEXIS 542, Final Decision (February 27, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 963) adopted, which found that the appointing authority was authorized to suspend a senior correction officer indefinitely without pay pending the outcome of his criminal charges because it was alleged that the officer sold a cellular phone to an inmate for $300; if permitted to remain on the job, the officer's presence would have been a hazard, requiring an immediate suspension to maintain order and effective public service. In re Mangual, OAL Dkt. No. CSV 4032-06, 2006 N.J. AGEN LEXIS 1110, Final Decision (December 6, 2006).

Youth worker's immediate and indefinite suspension was appropriate pursuant to N.J.A.C. 4A:2-2.5 and 4A:2-2.7 after he was charged with a third-degree crime; however, because the worker's subsequent removal was unrelated to the criminal charges, he was still entitled to a determination as to whether he was owed back wages for the time between his immediate suspension and the resolution of the criminal charges against him (adopting result in 2006 N.J. AGEN LEXIS 828 on other grounds). In re Smith, OAL Dkt. No. CSV 2147-05, 2006 N.J. AGEN LEXIS 1100, Final Decision (November 15, 2006).

Forty-five day rule of N.J.S.A. 40A:14-147 did not apply where the appointing authority sought a police officer's removal on the basis of his inability to perform his duties; the appointing authority did not charge the officer with a violation of the internal rules and regulations established for the conduct of a law enforcement unit. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final Decision (February 8, 2006), aff'd per curiam, Docket No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

Appointing authority's failure to hold a police officer's departmental hearing within 30 days of service of the preliminary notice of disciplinary action (PNDA) did not require dismissal of the charge because the officer was not unduly prejudiced by having his departmental hearing occur 39 days after service of the PNDA; the 30-day provision is not an absolute and inflexible requirement, nor is it a jurisdictional requirement that prohibits an appointing authority from proceeding with bringing the charges even though it fails to conduct the hearing within the statutorily mandated period. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final Decision (February 8, 2006), aff'd per curiam, Docket No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

When a building maintenance employee was sent home upon arriving late to work, it constituted an immediate suspension for which he was entitled to oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity to review the charges and evidence and to respond; because the employer failed to comply with these requirements, the employee was entitled to back pay for the day he reported to work and was sent home. In re Wilson, OAL Dkt. No. CSV 2162-05, 2005 N.J. AGEN LEXIS 1046, Final Decision (December 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 337) adopted, which found that immediate suspension of a county correction sergeant was proper upon a finding that his suspension was necessary to maintain the safety and effective direction of the prison; the officer's actions as a supervisor and prison official in directing his subordinates to violate rules and procedures, and causing posts to be unmanned resulting in mandated inmate checks not being conducted, were putting the facility, staff, and inmates at risk. In re Matza, OAL Dkt. No. CSV 1967-01, 2005 N.J. AGEN LEXIS 1045, Final Decision (November 22, 2005), aff'd per curiam, No. A-2481-05T1, 2007 N.J. Super. Unpub. LEXIS 907 (App.Div. June 19, 2007).

Hearing de novo on appeal to Merit System Board corrected alleged inadequate notice. Coley v. Rowan College, 94 N.J.A.R.2d (CSV) 4.

Absence of timely hearing required dismissal of disciplinary charges. Marjarum v. Hamilton Township Division of Police, 93 N.J.A.R.2d (CSV) 143.

Failure to comply with appropriate regulations in seeking to discipline employee. Hamilton v. Camden Housing Authority, 93 N.J.A.R.2d (CSV) 85.

Failure to provide employee with notice of dismissal; acts following meeting were not void pursuant to N.J.S.A. 10:4-15. McManus v. Housing Authority of the City of Englewood, 92 N.J.A.R.2d (CSV) 747.

Preliminary notice of disciplinary action met minimum discovery requirements. N.J.S.A. 40A:14-147, 11A:2-13. Gabbianelli v. Monroe Township Police Department, 91 N.J.A.R.2d (CSV) 79.

4A:2-2.6 Hearings before the appointing authority

(a) The hearing shall be held before the appointing authority or its designated representative.

(b) The employee may be represented by an attorney or authorized union representative.

(c) The parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. The employee shall not be required to testify, but an employee who does testify will be subject to cross-examination.

(d) Within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action. See N.J.A.C. 4A:2-2.13 for the issuance of a Final Notice in removal appeals by certain law enforcement officers and firefighters.

Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
In (d), inserted the last sentence.
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

Case Notes

Due process. Carr v. Sharp, C.A., 454 F.2d 271 (1971).

Requirement of exhaustion of administrative remedies. City of New Brunswick v. Speights, 157 N.J.Super. 9, 384 A.2d 225 (Co.1978).

Res judicata: delay in hearing: limits on de novo hearing. In re Darcy, 114 N.J.Super. 454, 277 A.2d 226 (1971).

Civil Service Commission lacked the authority to review the claims made by a now-former county employee that the appointing authority failed to call several witnesses at a departmental hearing convened following her suspension because the scope of the Commission's review of such hearings as established by N.J.A.C. 4A:2-2.5 and N.J.A.C. 4A:2-2.6 was limited and did not extend to such matters. In the Matter of Cheryl Goins, Essex County, CSC Dkt. No. 2013-274, 2013 N.J. CSC LEXIS 118, Final Decision (February 20, 2013).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

Public employee voluntarily and deliberately planned his nonappearance at hearing and was not entitled to further hearing. Cue v. Camden County, 92 N.J.A.R.2d (CSV) 131.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include a statement that N.J.S.A. 2C:51-2 may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

i. Where an employee who has been indefinitely suspended enters Pre-Trial Intervention (PTI) or has received a conditional discharge, the criminal complaint or indictment shall not be deemed disposed of until completion of PTI or until dismissal of the charges due to the employee's satisfaction of the conditions in a conditional discharge, as the case may be.

ii. An appointing authority may continue an indefinite suspension until completion of PTI or until satisfaction of the conditions imposed in a conditional discharge. If an appointing authority chooses not to continue an indefinite suspension during the PTI period or during the period of conditional discharge, it may restore the employee to employment or initiate disciplinary action against the employee.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) When a court has entered an order of forfeiture pursuant to N.J.S.A. 2C:51-2, the appointing authority shall notify the employee in writing of the forfeiture and record the forfeiture in the employee's personnel records. The appointing authority shall also forward a copy of this notification to appropriate Civil Service Commission staff.

1. If the criminal action does not result in an order of forfeiture issued by the court pursuant to N.J.S.A. 2C:51-2, the appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense that is cause for forfeiture of employment under N.J.S.A. 2C:51-2 but the court has not entered an order of forfeiture, the appointing authority may seek for-

feiture by applying to the court for an order of forfeiture. The appointing authority shall not hold a departmental hearing regarding the issue of the applicability of N.J.S.A. 2C:51-2. If the court declines to enter an order of forfeiture in response to the appointing authority's application, the appointing authority may hold a departmental hearing regarding other disciplinary charges, if any, as provided in (b)1 above.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
In (a)1: added text, "The standard ... public services."
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (a).
Public Notice: Notice of Receipt of a Petition for Rulemaking.
See: 29 N.J.R. 5333(a).
Amended by R.2000 d.433, effective October 16, 2000.
See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).
Rewrote (b) and (c).
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Added (a)2i and (a)2ii.
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a)1, inserted a comma following "order"; in (b), substituted "appropriate Civil Service Commission staff" for "the Department of Personnel"; and in (c), substituted "that" for "which".

Case Notes

Forfeiture of public office was not unconstitutional. State v. Timoldi, 277 N.J.Super. 297, 649 A.2d 872 (A.D.1994), certification denied 142 N.J. 449, 663 A.2d 1356.

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).

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. 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.

Finite period of suspension of an employee that spanned more than 11 months was improper under N.J.S.A. 11A:20 and N.J.A.C. 4A:2-2.4(a) because it spanned more than six months. The appointing authority should have issued a Final Notice of Disciplinary Action pursuant to N.J.A.C. 4A:2-2.7(a)1 and (a)3 indicating that the employee had been indefinitely suspended pending disposition of a criminal complaint against him, but that did not occur. Due to this procedural error, the Civil Service Commission ordered that the employee's County and Municipal Personnel System record be revised to indicate that he was suspended for a period of six months. In re Dennis McReynolds, Atlantic City, CSC Dkt. No. 2013-3117, 2013 N.J. CSC LEXIS 583, Referred for Hearing (June 27, 2013).

Initial Decision (2010 N.J. AGEN LEXIS 537) adopted, which found that although a senior correction officer was properly removed for conduct unbecoming after she shoplifted on two occasions, the charge of criminal matters under N.J.A.C. 4A:2-2.7 was dismissed because there was no criminal conviction as of the date of the disciplinary proceedings. N.J.A.C. 4A:2-2.7 involved pre-conviction procedural actions including an indefinite suspension pending the disposition criminal case; the municipal court shoplifting charges were dismissed or downgraded to a municipal ordinance. In re Noseworthy, OAL Dkt. No. CSR 12158-09 and CSR 12159-09 (Consolidated), 2010 N.J. AGEN LEXIS 691, Final Decision (April 28, 2010).

Immediate and indefinite suspension of a supervisor in the Division of Sanitation pending disposition of a criminal complaint was proper. The supervisor was arrested for using his official position to facilitate the theft of gasoline for his personal benefit. Because the charge involved the supervisor's job, it fell within the scope of N.J.A.C. 4A:2-2.5(a)2, making the immediate suspension proper. The indefinite suspension pending disposition of the criminal complaint under N.J.A.C. 4A:2-2.7(a) were necessary to maintain order and effective direction of public services. The charges raised the concerns that he might steal city property or that his presences might send the wrong message to other employees. In re Paul Drayton, City of Newark, OAL Dkt. No. CSV03780-08, 2008 N.J. AGEN LEXIS 1547, Initial Decision (November 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 108) adopted, which concluded that a campus police officer was properly suspended upon allegations that he used university equipment to send numerous e-mails to a fellow employee whom he was pursuing romantically, e-mailed a confidential police report to her, and posted an offensive and menacing MySpace.com profile in her name after being rejected; the officer's misconduct involved, and directly touched upon, his employment. In re Mandi, OAL Dkt. No. CSV 4824-07, 2008 N.J. AGEN LEXIS 559, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 85) adopted, which concluded that a police officer was properly indefinitely suspended from his position pending the outcome of criminal charges against him after it was alleged that he was stealing items from impounded vehicles; the charges against him not only involved dishonesty but also a breach of the public trust by the very police officer whose duty it was to protect and preserve the property he allegedly appropriated for his own use. In re Halpern, OAL Dkt. No. CSV 7414-07, 2008 N.J. AGEN LEXIS 516, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 60) adopted, which dismissed a police officer's appeal from his indefinite suspension; the township appropriately suspended the officer indefinitely after he was charged with second-degree crimes and the case was inactive for years at the officer's request. In re Nemes, OAL Dkt. No. CSV 8464-00, 2008 N.J. AGEN LEXIS 522, Final Decision (February 27, 2008).

Employee's highly inappropriate comment advocating violence to a developmentally challenged student coupled with the employee's prior history of an alleged altercation with a fellow employee provided a sufficient basis for the appointing authority to order a fitness for duty psychological examination. However, the indefinite suspension of the employee for refusing to take the psychological examination was improper, as indefinite suspension is limited by N.J.A.C. 4A:2-2.7 to matters in which there is a pending criminal complaint or indictment (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli, OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

A corrections officer who was suspended per N.J.A.C. 4A:2-2.7 and thereafter removed from his position for conduct unbecoming a public employee after he was charged with possessing cocaine and gave a voluntary statement confessing that he indeed did possess cocaine and had been buying and using cocaine for six years was not entitled to participate in a County Early Retirement Incentive Program (CERIP). CERIP eligibility relied on a participant being a current employee who agreed to retire on July 1, 2002. Because the officer had been removed effective February 1, 2002, he was not eligible for participation. In re Ferreira, Union Cty. Dep't of Public Safety, OAL DKT. NO. CSV3771-02, 2007 N.J. AGEN LEXIS 1305, Initial Decision (September 25, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 963) adopted, which found that the appointing authority was authorized to suspend a senior correction officer indefinitely without pay pending the outcome of his criminal charges; it was alleged that the officer sold a cellular phone to an inmate for $300 and the criminal charges were, therefore, directly

related to his job. In re Mangual, OAL Dkt. No. CSV 4032-06, 2006 N.J. AGEN LEXIS 1110, Final Decision (December 6, 2006).

Youth worker's immediate and indefinite suspension was appropriate pursuant to N.J.A.C. 4A:2-2.5 and 4A:2-2.7 after he was charged with a third-degree crime; however, because the worker's subsequent removal was unrelated to the criminal charges, he was still entitled to a determination as to whether he was owed back wages for the time between his immediate suspension and the resolution of the criminal charges against him (adopting result in 2006 N.J. AGEN LEXIS 828 on other grounds). In re Smith, OAL Dkt. No. CSV 2147-05, 2006 N.J. AGEN LEXIS 1100, Final Decision (November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 72) adopted, which found that deceased motor vehicle employee's appeal was moot, and employee's indefinite suspension under N.J.A.C. 4A:2-2.7 would have been upheld; the employee's access to records in her daily functions aided her ability to perpetuate the crime and subverted the normal system for obtaining licenses and undermined the public trust in the Motor Vehicle Commission's ability to serve the public. In re Love, OAL Dkt. No. CSV 2232-04, 2006 N.J. AGEN LEXIS 1102, Final Decision (March 22, 2006).

Automatic termination of correction sergeant based on conviction for crime of dishonesty affirmed. Christian v. Department of Corrections, Northern State Prison, 97 N.J.A.R.2d (CSV) 636.

Arrest for possession of illegal drugs provides grounds for blood test and removal. Pickett v. Department of Corrections, 97 N.J.A.R.2d (CSV) 546.

Corrections officer's illegal purchase of ammunition justifies removal. Nelsen v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 347.

Corrections officer with drugs in car suffers removal even though criminal action acquits. Reinhardt v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 166.

School district employee removed for arrest on charges of possessing illegal drugs. Hargrove v. State Operated School District of Newark, 97 N.J.A.R.2d (CSV) 112.

Corrections officer was not entitled to back pay for period of suspension pending resolution of criminal charges. Auberzinsky v. Cumberland County Sheriff's Department, 96 N.J.A.R.2d (CSV) 372.

Public works truck driver dismissed after conviction for offense involving minor child. Furde v. Hamilton Township Department of Public Works, 96 N.J.A.R.2d (CSV) 262.

No entitlement to continued employment in sensitive position for employee facing criminal and narcotics charges. Spellman v. Township of Parsippany-Troy Hills Police Department, 96 N.J.A.R.2d (CSV) 214.

Where corrections officer's off-duty simple assault on supervisor related to on-duty events, assault constituted insubordination and conduct unbecoming a public employee and warranted dismissal. Melillo v. Department of Corrections, East Jersey State Prison, 96 N.J.A.R.2d (CSV) 184.

Corrections officer's conviction for obstruction of justice and driving while under the influence justifies 78-day suspension. Scott v. Burlington County Jail, 96 N.J.A.R.2d (CSV) 171.

Criminal convictions result in summary forfeiture of school custodian's position. Turner v. State-Operated School District of the City of Newark, 96 N.J.A.R.2d (CSV) 146.

State corrections officer terminated for firing gun during off-duty argument. Dunns v. Department of Corrections, 96 N.J.A.R.2d (CSV) 108.

Park maintenance worker forfeits position due to conviction for disorderly persons offense involving dishonesty. Alsheimer v. County of Middlesex, 96 N.J.A.R.2d (CSV) 7.

Conviction on plea of guilty to drug offense warranted correction officer's termination. Ricks v. Department of Corrections, 95 N.J.A.R.2d (CSV) 441.

Filing of criminal charges directly relating to employment warranted indefinite suspension of safety specialist. Washington v. Division of Motor Vehicles, 95 N.J.A.R.2d (CSV) 336.

Indefinite suspension of police officer pending disposition of criminal indictment was not warranted absent evidence that public interest would be served. Nagy v. Borough of Carteret, 95 N.J.A.R.2d (CSV) 224.

Correction officer's termination justified; shooting of companion with stun gun. Curry v. Burlington County Jail, 95 N.J.A.R.2d (CSV) 92.

Conviction on plea of guilty to charge of conspiring to sell a false document of age was cause for forfeiture of correction officer's public employment. State Department of Corrections v. Gomez, 95 N.J.A.R.2d (CSV) 77.

Suspension; pendency of criminal charges. Abdunafi v. East Jersey State Prison. 94 N.J.A.R.2d (CSV) 653.

Suspension and removal of public employee convicted of a crime was justified. DeLeone v. Essex County, 94 N.J.A.R.2d (CSV) 544.

Automatic forfeiture of employment upon conviction. Hudson County v. Seinfeld, 94 N.J.A.R.2d (CSV) 516.

Suspension pending disposition of criminal complaint was in the public's interest. Lordi v. Woodbridge Township, 94 N.J.A.R.2d (CSV) 540.

Automatic forfeiture of employment upon conviction. City of Bayonne Department of Public Works v. Timoldi, 94 N.J.A.R.2d (CSV) 511.

Indefinite suspension was justified pending disposition of criminal charges. Gonzalez v. Essex County Welfare Board, 94 N.J.A.R.2d (CSV) 451.

Conviction on federal drug-related charges effected a forfeiture of positions. Roman v. Atlantic City Police Department, 94 N.J.A.R.2d (CSV) 250.

Automatic forfeiture of public employment upon criminal conviction of the third degree under N.J.S.A. 2C:51-2. Coxson v. Newark Board of Education, 94 N.J.A.R.2d (CSV) 129.

Pharmacist suspended indefinitely without pay pending disposition of criminal charges. Grillo v. Bergen Pines County Hospital, 94 N.J.A.R.2d (CSV) 81.

Guilty plea; however consideration of mitigating factors warranted the maximum suspension rather than permanent removal. Walcott v. City of Plainfield, 94 N.J.A.R.2d (CSV) 65.

Suspension pending resolution of criminal charges was appropriate; however, termination was not justified. Walcott v. City of Plainfield, 94 N.J.A.R.2d (CSV) 65.

Indictment justified suspension of welfare supervisor. Jersey City Welfare Board v. Miller, 94 N.J.A.R.2d (CSV) 55.

Forfeit of public employment; conviction of drug and alcohol-related offenses. Greystone Park Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 14.

Termination; conduct unbecoming a public employee; physical attack by two employees on another employee. Bryson v. Division of Motor Vehicles, 94 N.J.A.R.2d (CSV) 1.

Hospital employee was entitled to back pay, seniority and benefits following dismissal of indictment. Gillard v. Trenton Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 730.

Employee forfeited employment upon pleading guilty to criminal charges. Martin v. North Princeton Developmental Center, 93 N.J.A.R.2d (CSV) 675.

Police officer automatically forfeited position; criminal conviction. Lehman v. Woodbridge Township Police Department, 93 N.J.A.R.2d (CSV) 599.

Indefinite suspension pending disposition of sexual assault charges. Vengenock v. Salem County, 93 N.J.A.R.2d (CSV) 558.

Six-month suspension was warranted for conviction of a motor vehicle violation. Turner v. Department of Higher Education, 93 N.J.A.R.2d (CSV) 440.

Public employment; convictions of third-degree crimes. N.J.S.A. 2C:51-2. Williams v. Marlboro Psychiatric Hosp., State Dept. of Human Services, 93 N.J.A.R.2d (CSV) 421.

Convictions forfeited public employment. Williams v. Marlboro Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 421.

Suspended employee did not resign by failure to report dismissal of criminal charges. McCray v. Department of the Treasury, 93 N.J.A.R.2d (CSV) 363.

Possession of controlled dangerous substance warranted removal. Hickman v. Marlboro Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 356.

Indefinite suspension of employee pending disposition of criminal charges was proper. Simeone v. Woodbridge Township Department of Public Works, 93 N.J.A.R.2d (CSV) 340.

Continuation of suspension of correction officer until disposition of criminal charges ordered. Rivera v. New Jersey Training School for Boys—Jamesburg, 93 N.J.A.R.2d (CSV) 219.

Guilty plea constituted a forfeiture of position. Watkins v. Bergen Pines County Hospital, 92 N.J.A.R.2d (CSV) 768.

Issue of whether suspension was in the public interest was rendered moot by resignation. Coleman v. Dept. of Public Works, Borough of Ringwood, 92 N.J.A.R.2d (CSV) 510.

Guard was properly suspended pending outcome of charges. Alton v. Newark Board of Education, 92 N.J.A.R.2d (CSV) 478.

Suspension of youth worker was warranted pending disposition of criminal charge. Moore v. Division of Youth and Family Services, 92 N.J.A.R.2d (CSV) 433.

County employee forfeited her office as a result of conviction. Starling v. Essex County Citizen Services, Division of Welfare, 92 N.J.A.R.2d (CSV) 431.

Indefinite suspension of police officer was warranted. Beck v. City of Trenton, 92 N.J.A.R.2d (CSV) 411.

Forfeit of position; criminal conviction. Rivera v. City of Bridgeton, 92 N.J.A.R.2d (CSV) 311.

Indefinite suspension; criminal charges. Smith v. Essex County Judiciary, 92 N.J.A.R.2d (CSV) 271.

Indefinite suspension; disposition of charges. Naro v. The Fire Division of the Department of Public Safety of the City of Trenton, 92 N.J.A.R.2d (CSV) 211.

School bus driver disqualified from school employment due to drug offense. Kovalak v. New Jersey State Department of Education, 97 N.J.A.R.2d (EDU) 456.

School superintendent dismissed due to unbecoming conduct. In the Matter of the Tenure Hearing of Robert R. Vitacco, 97 N.J.A.R.2d (EDU) 449.

Acquitted school custodian was entitled to back pay but agreement with counsel for reimbursement of attorney fees was not binding on the school board. Griffin v. Board of Education of the City of Paterson, 93 N.J.A.R.2d (EDU) 882.

4A:2-2.8 Appeals to Civil Service Commission

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.

(b) If the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Commission within a reasonable time.

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;

2. The employee's name, mailing address and telephone number; and

3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above shall delay processing of the appeal until the required information is provided, may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4, or may result in dismissal of the appeal after notice of and a reasonable opportunity to provide the missing information.

(f) See N.J.A.C. 4A:2-2.13 for removal appeals by certain law enforcement officers and firefighters.

Amended by R.1995 d.416, effective August 7, 1995.
See: 27 N.J.R. 1837(b), 27 N.J.R. 2884(b).
In (a), added the provision governing receipt of notice by the employee's attorney or union representative.
Amended by R.1998 d.518, effective November 2, 1998.
See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).
Added (c) through (e).

Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Section was "Appeals to Merit System Board". In (b), substituted "Commission" for "Board"; and added (f).
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.
Amended by R.2012 d.008, effective January 3, 2012.
See: 43 N.J.R. 2396(a), 44 N.J.R. 65(b).
Rewrote (e).

Case Notes

Director of county board of social services possessed final authority regarding the board's personnel and discipline decisions, as required for municipal liability under § 1983 based upon former county employee's First Amendment retaliation claims. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983; N.J.Admin. Code tit. 4A, §§ 2-2.8, 2-3.2. Marrero v. Camden County Board of Social Services, 164 F.Supp.2d 455 (D.N.J. 2001).

Administrative code section providing the receipt of Final Notice of Disciplinary Action on a different date by the employee's attorney or union representative shall not affect the appeal period did not conflict with the legislative intent of the Civil Service Act. Mesghali v. Bayside State Prison, 334 N.J.Super 617, 760 A.2d 805 (N.J.Super.A.D. 2000).

Remand to Commission for supplemental hearing. Dept. of Law and Public Safety v. Miller, 115 N.J.Super. 122, 278 A.2d 495 (App.Div. 1971).

Former Senior Medical Security Officer was not entitled to a hearing regarding his removal because he did not file his appeal in the 20-day timeframe required by N.J.A.C. 4A:2-2.8(a). Although the former officer claimed that he thought his union filed an appeal on his behalf, receipt of the Final Notice of Disciplinary Action (FDNA) on a different date by his attorney or union representative did not affect the appeal period. Even if he did not receive the FNDA, filing the appeal five months later was not reasonable. In re Langston Burrell, Ann Klein Forensic Center, Dep't. of Human Services, CSC Dkt. No. 2014-330, 2013 N.J. CSC LEXIS 727, Final Decision (October 16, 2013).

After an employee serving as a Juvenile Detention Office was removed from her position, she was not entitled to a hearing of her appeal because she did not file the appeal to the Civil Service Commission within a reasonable time after her departmental hearing in accordance with N.J.A.C. 4A:2-2.8(b). While the Final Notice of Disciplinary Action (FNDA) sent by certified mail was returned to the appointing authority as undeliverable, there is no evidence that the FNDA mailed via regular mail was returned as undeliverable. Also, the employee did not rebut the appointing authority's assertion that the copy of FNDA it mailed via regular mail was not returned as undeliverable. In addition, the employee provided no explanation as to why she waited more than eight months to petition the Commission for a hearing. In re Tamika Session, Hudson Cnty., Dep't. of Corr., CSC Dkt. No. 2013-3547, 2013 N.J. CSC LEXIS 776, Final Decision (September 18, 2013).

Ex-police officer's failure to file an appeal with the Civil Service Commission within 20 days of the date on which a Final Notice of Disciplinary Action (FNDA) was served on him by certified mail in accord with N.J.A.C. 4A:2-2.8(a) foreclosed review by the Commission. It was irrelevant whether the Police Department knew that the officer was represented by a particular lawyer because the FNDA had been served on the officer as required and it was the officer's obligation to ensure that his appeal was filed within the 20-day period described therein. In re Lawrence Furlow, City of Newark, CSC Docket No. 2013-2277, 2013 N.J. CSC LEXIS 355, Final Decision (April 3, 2013).

Human Services Assistant's working test period appeal was moot because the assistant's separate appeal of her removal on disciplinary charges was untimely filed and therefore dismissed; the denial of a hearing due to the late filing was not subject to an appeal before the OAL but had to be appealed to the Superior Court, Appellate Division. In re Black, OAL Dkt. No. CSV 8953-06, 2007 N.J. AGEN LEXIS 1176, Final Decision (June 20, 2007).

Where an employee appealed from the appointing authority's decision to remove her from her position, but failed to appeal other disciplinary actions taken against her within 20 days, the Merit System Board had jurisdiction over the issue of whether the employee was properly removed, but did not have jurisdiction to render a decision on the other disciplinary actions (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 734). In re Small, OAL Dkt. No. CSV 3331-03, 2007 N.J. AGEN LEXIS 1106, Final Decision (January 17, 2007).

Administrative Law Judge may only review an employee's discipline if the matter is transmitted by the Merit System Board; an ALJ does not have the authority to determine whether an appeal has been filed (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 734). In re Small, OAL Dkt. No. CSV 3331-03, 2007 N.J. AGEN LEXIS 1106, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 991) adopted, which found that a cottage training technician's appeal from a disciplinary action in which he was removed from his employment was moot where the technician failed to timely appeal from a second disciplinary action that also resulted in his removal. In re Clarke, OAL Dkt. No. CSV 2040-06, 2006 N.J. AGEN LEXIS 1098, Final Decision (December 20, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 528) adopted, which concluded that a judiciary clerk's appeal from her removal was dismissed as untimely where neither the Merit System Board, the appointing authority, or the Office of Administrative Law received any notice of appeal. In re Keels, OAL Dkt. No. CSV 9883-03, 2005 N.J. AGEN LEXIS 1226, Final Decision (October 19, 2005).

Where an employee received pertinent disciplinary notices in which he was specifically advised of the applicable 20-day time period for appealing, but failed to do so, the appeal was dismissed; the applicable time limit is jurisdictional and mandatory. In re Floyd, OAL Dkt. No. CSV 5660-03, 2005 N.J. AGEN LEXIS 427, Initial Decision (August 19, 2005), adopted (Merit System Board September 21, 2005).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

Terminated employee did not file an objection to the employer's action in terminating her employment within reasonable period of time. Gibbons v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 491.

Charges against psychiatric hospital worker would be dismissed where alleged victim left the state and could not be located. Godwin v. Marlboro Psychiatric Hosp., 92 N.J.A.R.2d (CSV) 96.

4A:2-2.9 Commission hearings

(a) Requests for a Commission hearing will be reviewed and determined by the Chairperson or the Chairperson's designee.

(b) Major discipline hearings will be heard by the Commission or referred to the Office of Administrative Law for hearing before an administrative law judge, except that an appeal by certain law enforcement officers or firefighters of a removal shall be heard as provided in N.J.A.C. 4A:2-2.13. Minor discipline matters will be heard by the Commission or referred to the Office of Administrative Law for a hearing before an administrative law judge for an employee's last suspension or fine for five working days or less where the aggregate number of days the employee has been suspended or fined in a calendar year, including the last suspension or

fine, is 15 working days or more, or for an employee's last suspension or fine where the employee receives more than three suspensions or fines of five working days or less in a calendar year. See N.J.A.C. 1:1 for OAL hearing procedures.

1. Where an employee has pled guilty to or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, but the court has not issued an order of forfeiture, the Commission shall not refer the employee's appeal for a hearing regarding the applicability of N.J.S.A. 2C:51-2 nor make a determination on that issue. See N.J.A.C. 4A:2-2.7.

2. Where a court has entered an order of forfeiture, and the appointing authority has so notified the employee, but the employee disputes whether an order of forfeiture was actually entered, the Commission may make a determination on the issue of whether the order was actually entered. See N.J.A.C. 4A:2-2.7.

3. Notwithstanding (b)1 and 2 above, the Commission may determine whether an individual must be discharged from a State or local government position due to a permanent disqualification from public employment based upon the prior conviction of a crime or offense involving or touching on a previously held public office or employment, provided, however, that the Attorney General or county prosecutor has not sought or received a court order waiving the disqualification provision. See N.J.S.A. 2C:51-2(d) and (e).

(c) The Commission may adopt, reject or modify the recommended report and decision of an administrative law judge. Copies of all Commission decisions shall be served personally or by regular mail upon the parties.

(d) The Commission may reverse or modify the action of the appointing authority, except that removal shall not be substituted for a lesser penalty.

Amended by R.1995 d.417, effective August 7, 1995.
See: 27 N.J.R. 1838(a), 27 N.J.R. 2885(a).
In (a), substituted the Commissioner or the Commissioner's designee for the Board as the party that does the review.
Amended by R.2000 d.433, effective October 16, 2000.
See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).
In (b), amended the N.J.A.C. reference in the introductory paragraph, and added 1 through 3.
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (b), added the second sentence.
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Section was "Board hearings". Substituted "Commission" for "Board" throughout; in (a), substituted "Chairperson or the Chairperson's" for "Commissioner or Commissioner's"; and in the introductory paragraph of (b), inserted ", except that an appeal by certain law enforcement officers or firefighters of a removal shall be heard as provided in N.J.A.C. 4A:2-2.13".
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

Case Notes

Civil Service Commission's duty to review findings of administrative law judge prior to acceptance or rejection of judge's recommendations (citing former rule N.J.A.C. 4:1-5.4). In the Matter of Morrison, 216 N.J.Super. 143, 523 A.2d 238 (App.Div.1987).

Removal hearing—employee service record must be in evidence (citing former N.J.A.C. 4:1-16.9). In the Matter of Parlow, 192 N.J.Super. 247, 469 A.2d 940 (App.Div.1983).

Entitlement to hearing as matter of fundamental fairness. Cunningham v. Dept. of Civil Service, 69 N.J. 13, 350 A.2d 58 (1975).

Civil Service Commission reduced the penalty imposed on a police lieutenant from a 21 working day suspension to a 10 working day suspension pursuant to N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) after an administrative law judge concluded that the lieutenant failed to report an incident in which an intoxicated off-duty officer disrupted roll call with repeated acts of lewd behavior, which was a violation of the Police Department's rules on accountability and performance and a neglect of duty as reflected in N.J.A.C. 4A:2-2.3(a)7. The penalty was reduced due to the lieutenant's lack of significant disciplinary history. In re Jaime Colon, Police Dep't., City of Elizabeth, OAL Dkt. No. CSB 00894-13, 2014 N.J. CSC LEXIS 1, Final Decision (February 14, 2014).

A county's determination that a county correction officer was properly allowed to resign not in good standing, thus to be removed from her position, on the ground that her excessive unauthorized absences constituted an abandonment of her position was rejected by the Civil Service Commission, as was the recommendation of an Administrative Law Judge (ALJ) that the discipline be modified to a 30-day working suspension, though the Commission found merit in the ALJ's determination that the county should have considered the officer's request for a leave of absence during which she could address some chronic medical issues. Given these facts, and as permitted by N.J.A.C. 4A:2-2.9(d), the penalty imposed by the county was properly modified to a 60-working day suspension. Though the officer thus was entitled to back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, she was not entitled to counsel fees per N.J.A.C. 4A:2-2.12(a) because she had been found guilty of the charges and had only prevailed on her challenge to the penalty imposed therefor. In re Linda Tisby, Camden Cnty., CSC Dkt. No. 2013-1166, OAL Dkt. Nos. CSV 16033-12 and CSR 1202-13, 2013 N.J. CSC LEXIS 580, Final Decision (July 22, 2013).

In light of the fact that the police officers' removals were not specifically performance-related or based on misconduct, but rather, based on their failure to meet the mandatory training requirements for their positions, the disciplinary penalties of removal were unduly harsh and were therefore modified to resignations in good standing. In re Reid, OAL Dkt. No. CSR 7477-10 and CSR 7481-10, 2011 N.J. CSC LEXIS 754, Final Decision (April 20, 2011).

While an Administrative Law Judge properly concluded that a correction officer did not verbally abuse inmates or other officers when, in a justifiably agitated condition, he randomly yelled in the presence of a fellow officer and inmates, and that such conduct constituted, at most, a disturbance on State property, the ALJ could not simply order that a 10-day suspension be modified to an oral reprimand. An oral reprimand was not minor discipline within the meaning of N.J.A.C. 4A:2-3.1(a); therefore, the Commission modified the officer's discipline to an official written reprimand (adopting in part and rejecting in part 2010 N.J. AGEN LEXIS 45). In re Desmond, OAL Dkt. No. CSV 8989-08, 2010 N.J. CSC LEXIS 584, Final Decision (March 10, 2010).

Although an employee may have acted in self-defense when physically provoked by her supervisor, the employee should not have continued with the physical exchange by pulling her supervisor's hair. Such conduct warranted major discipline; however, removal was too harsh a penalty given that the employee was not the instigator of the fight and had no prior disciplinary history in her 11 years of State service. A 30 working day suspension was appropriate under the circumstances. In re Owens, OAL Dkt. No. CSV 386-09S, 2009 N.J. CSC LEXIS 1435, Civil Service Comm'n Decision (October 7, 2009).

Five-day, rather than 10-day, suspension of a county correction officer was appropriate where the officer violated the appointing authority's rules by failing to ask for and secure the trailer keys from a fellow officer he was relieving; the officer was required to "maintain control of all equipment, keys, and logbook" and was guilty of incompetency, conduct unbecoming a public employee, and neglect of duty in failing to secure the proper equipment (rejecting 2009 N.J. AGEN LEXIS 290). In re Rosario, OAL Dkt. No. CSV 5829-08, 2009 N.J. AGEN LEXIS 1006, Final Decision (July 8, 2009).

Where an ALJ found, on conflicting evidence, that a former correction sergeant had a conversation with officers under his supervision in which he made sexually explicit comments towards one of them, the sergeant clearly violated of the New Jersey State Policy Prohibiting Discrimination in the Workplace; however, the sergeant had a 24-year career with the Department with only one minor discipline of an official reprimand in the 10 years prior to the incident, justifying a modification of the 10-day suspension imposed by the appointing authority to a 6-day suspension (adopting 2008 N.J. AGEN LEXIS 1258). In re Ross, OAL Dkt. No. CSV 8839-07, 2009 N.J. AGEN LEXIS 1001, Civil Service Comm'n Decision (April 15, 2009).

A police officer's presence in his police uniform while conducting personal business as a property manager may have coerced a resident into signing an agreement that she would not have necessarily signed; and the officer clearly conducted private business while on duty and even engaged other officers while pursing his personal interest. The officer was originally fined 15 days' pay relating to three specifications, but because only one of the specifications was upheld, the officer's penalty was modified to 5 days' pay. In re Sampson, OAL Dkt. No. CSV 126-08, 2009 N.J. AGEN LEXIS 968, Final Decision (February 25, 2009).

While a senior correction officer's conduct in refusing to provide the log book to a superior officer and making the statement that he would hand it over when he was "good and ready" were clearly insubordinate, the ALJ should not have modified his penalty from a 15-day suspension to a 120-day suspension where the alleged misconduct occurred in 2005 and the officer had been employed since May 1990, with his last disciplinary infraction occurring in 1995; the officer's actions, while inappropriate and insubordinate, were not so inherently egregious that they warranted an increase of the penalty in light of his long record of service and disciplinary history and the fact that the appointing authority chose a 15-day penalty (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1028). In re Copling, OAL Dkt. No. CSV 4275-07, 2009 N.J. AGEN LEXIS 983, Final Decision (February 11, 2009).

Deputy fire chief was entitled to appeal seven-day suspension as "major disciplinary action," notwithstanding appointing authority's argument that since deputy's normal work schedule was to work one 24-hour shift and then have three 24-hour tours off duty, with the 24-hour tour of duty being divided into two 12-hour shifts, therefore the deputy was effectively suspended for only two 24-hour tours of duty or a four-day suspension during the seven calendar day suspension. The five-day standard for major disciplinary action refers to five working days of not more than 40 hours of pay and since the deputy was suspended for 48 hours, his suspension was considered a major disciplinary action equal to six days and entitled him to a hearing on the discipline. In re Crowder, OAL Dkt. No. CSV 2998-08, 2008 N.J. AGEN LEXIS 1053, Final Decision (October 22, 2008).

Based on a library assistant's disciplinary record, including a recent 10-day suspension, and the nature of the incident, in which the assistant was argumentative and loud to the public information officer, resulting in the officer asking the assistant to leave her office five times before he finally left, a 30-day suspension, rather than 15 days as recommended by the ALJ, was the appropriate penalty. In re Daughtry, OAL Dkt. No. CSV 10171-06, 2008 N.J. AGEN LEXIS 586, Final Decision (May 7, 2008).

Although a prison cooking instructor had valid, substantiated excuses as to why she was absent from work one day and why she did not call her supervisor in a timely manner on another, she failed to present a convincing reason for failing to abide by the appointing authority's call-on and call-off policy for a third absence, even in light of the accommodations the instructor received under the FMLA; however, removal was not consistent with the principles of progressive discipline, considering that the instructor's prior record consisted of only minor discipline and her medical condition mitigated the offense. In re Debias, OAL Dkt. No. CSV 6114-07, 2008 N.J. AGEN LEXIS 508, Merit System Board Decision (May 7, 2008).

Removal of a high school security guard for chronic or excessive absenteeism and violation of Consent Order was modified to a resignation in good standing, where the employee's absences were due to her disability, domestic violence incidents, and/or child care concerns; although the employee may not have provided timely documentation for her absences, she did eventually present documentation. In re Sanders, OAL Dkt. No. CSV 11115-07, 2008 N.J. AGEN LEXIS 591, Final Decision (April 23, 2008).

Removal modified to resignation in good standing for a nursing home Institutional Attendant whose medical condition rendered her incapable of performing the essential lifting functions of the position; in light of the fact that the employee's problems were not specifically performance related or based on misconduct, and were based instead on a documented medical condition, the disciplinary penalty of removal was unduly harsh. In re Clarke, OAL Dkt. No. CSV 4495-07, 2008 N.J. AGEN LEXIS 551, Final Decision (April 23, 2008).

Senior alcoholism counselor who failed to comply with repeated directives to complete the mandatory coursework required to obtain the proper license/certification for her position could not perform the essential functions of her job and separation from employment was required; however, in light of the fact that the counselor's problems were not specifically performance related or based on misconduct, but were based instead on a change in the qualifications needed to hold her title, the disciplinary penalty of removal was modified to a resignation in good standing. In re VanDerveer, OAL Dkt. No. CSV 6265-07, 2008 N.J. AGEN LEXIS 511, Final Decision (February 27, 2008).

Based on divergent testimony and a credibility determination regarding certain critical facts, Fire Alarm Operator (also known as a dispatcher) falsely represented himself as a firefighter to a police officer during a motor vehicle stop, constituting conduct unbecoming a public employee, and left his confinement during sick leave without first contacting his tour commander; Merit System Board increased 30-working day suspension to 120-working day suspension (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 3). In re McFadden, OAL Dkt. No. CSV 07267-07, 2008 N.J. AGEN LEXIS 579, Final Decision (February 13, 2008).

Penalty increased to a 45 working day suspension for a School Clerk who was found, on conflicting evidence, to have engaged in such conduct as leaving her post without authorization and making defiant and disrespectful comments to a supervisor. The employee's infractions were consistent with a prior pattern of similar misconduct and served as a significant disruption to the smooth functioning of the appointing authority, and the employee's apparent disrespectful attitude was especially a concern given the educational setting (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 735). In re Ramos, OAL Dkt. No. CSV 3883-07, 2008 N.J. AGEN LEXIS 541, Final Decision (February 13, 2008).

Where police officer was charged with violating order to attend a pistol range for weapons qualifications by failing to attend or notify his supervisor of his absence, ALJ's imposition of eight-day suspension (forfeiture of eight vacation days) was improper and penalty was increased to a 120 working day suspension. It was implausible that an experienced police officer could have mistakenly thought that the mandatory firearms training conducted twice per year under the guidelines of the State Attorney General would be optional for him, and in light of the officer's extensive disciplinary record, his actions were egregious and worthy of a severe sanction, placing him on notice that any future infraction might lead to his removal from employment. In re Martin, OAL Dkt. No. CSV 1303-06, 2008 N.J. AGEN LEXIS 528, Final Decision (January 16, 2008).

Eight-day suspension for unauthorized absences was not warranted where the evidence showed that supervisors condoned the practice of leaving work early upon completion of an inspection and the supervisors themselves received six and eight-day suspensions; nonetheless, the ALJ's recommendation of a one-day suspension was not sufficient, and a more appropriate penalty was a five-day suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 732). In re Thompson, OAL Dkt. No. CSV 774-07, 2007 N.J. AGEN LEXIS 1017, Final Decision (December 19, 2007).

Removal of county correction officer, based on the charge of inability to perform duties, was unduly harsh where the officer's problems were the result of a medical condition, permanent uncontrolled glaucoma in the right eye, and it was undisputed that there was no history of disciplinary actions against the officer; the circumstances provided a sufficient basis to modify the removal to a resignation in good standing, pursuant to N.J.A.C. 4A:2-2.9(d) (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 705). In re Gore-Bell, OAL Dkt. No. CSV 3975-06, 2007 N.J. AGEN LEXIS 1024, Final Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 701) adopted, which increased the penalty from a 35-day suspension to a 90-day suspension, where a food service employee called in sick because he was not granted vacation leave he thought he was entitled to and where he had a significant disciplinary history for similar conduct. In re Frederick, OAL Dkt. No. CSV 784-07, 2007 N.J. AGEN LEXIS 1158, Final Decision (December 5, 2007).

Where a police officer was untruthful in providing testimony during a deposition in a civil matter and changed his testimony at the trial more than a year later without notifying the city attorney, such conduct was egregious enough to warrant an increased penalty of a 60-working day suspension, notwithstanding his relatively unblemished disciplinary history. In re Hubbs, OAL Dkt. No. CSV 6528-06, 2007 N.J. AGEN LEXIS 1148, Final Decision (October 10, 2007).

Although a police officer had only a minor disciplinary history, he attempted to use his position as a police officer to intimidate fellow police officers and members of the public in order to secure advantages for himself to which he would not otherwise be entitled; such egregious conduct warranted an increased suspension of 120 working days, rather than a 60-working day suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 615). In re Joyce, OAL Dkt. No. CSV 9145-06, 2007 N.J. AGEN LEXIS 1177, Final Decision (September 26, 2007), aff'd per curiam, No. A-1038-07T2, 2008 N.J. Super. Unpub. LEXIS 2882 (App.Div. December 4, 2008).

In light of the concept of progressive discipline, as well as consideration of the seriousness of the underlying incident in which the truck driver tested positive for alcohol and at a level above the legal limit for commercial driver license holders, removal was too harsh a remedy; considering the driver's disciplinary history and that the DOT policy clearly contemplated rehabilitation rather than automatic removal, the appropriate penalty was a 4-month suspension. For non-law enforcement officers, who are not held to the stricter standard of conduct expected of law enforcement officers, a "second chance" is generally provided by appointing authorities in similar situations (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 248). In re Steiger, OAL Dkt. No. CSV 5463-05, 2007 N.J. AGEN LEXIS 1054, Merit System Board Decision (July 11, 2007).

Where a senior correction officer was a passenger in a car that was stopped by a police officer for having a burnt headlight and the ALJ found that the correction officer committed falsification regarding the identity of the driver, the correction officer's actions violated her obligation to respond truthfully to a law enforcement officer and the penalty was increased from a 20-day suspension to a 30-day suspension (adopting in part and modifying in part 2007 N.J. AGEN LEXIS 277). In re Manay, OAL Dkt. No. CSV 8342-06, 2007 N.J. AGEN LEXIS 1162, Final Decision (June 20, 2007).

Determination that an electrician's failure to replace and properly dispose of multiple electrical light ballasts known to contain dangerous polychlorinated biphenyls was understandable due to his lack of supervision did not mandate a finding that his actions did not constitute a neglect of duty, but such a finding was relevant in determining the electrician's penalty; a four-month suspension, rather than removal, was appropriate in light of the circumstances of the case as well as the electrician's long record of service (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 276). In re Gatewood, OAL Dkt. No. CSV 7812-06, 2007 N.J. AGEN LEXIS 1169, Merit System Board Decision (June 20, 2007).

Six-month suspension rather than 20-day suspension was appropriate for a police sergeant found on conflicting testimony to have blamed a totally emotional and distraught woman for causing her son's death, used profanity towards her, and punched the woman, who was half his size. In re Ricciardi, OAL Dkt. No. CSV 1851-06, 2007 N.J. AGEN LEXIS 1043, Final Decision (April 25, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 795) adopted, which concluded that 10-day and 20-day suspensions were justified for a correction officer's two unexcused absences after the officer's sick leave was exhausted, despite the officer's family issues; furthermore, in the determination of the appropriate penalty, the Merit System Board is not bound by the provisions of a collective bargaining agreement. In re Bahm, OAL Dkt. No. CSV 00468-05, Final Decision (December 20, 2006).

Clerk's separation from employment was necessary where she had a history of unexcused absences and tardiness; although she was suffering from a legitimate psychological disorder, her medical problems did not excuse her failure to abide by the appointing authority's policies and procedures governing attendance, such as providing medical documentation to justify absences and submitting timely requests to extend leaves of absence. However, in light of the clerk's genuine psychological disorder, the disciplinary penalty of removal was unduly harsh and was modified to a resignation in good standing (adopting 2006 N.J. AGEN LEXIS 431). In re Martinez, OAL Dkt. No. CSV 6550-05, 2006 N.J. AGEN LEXIS 909, Final Decision (October 19, 2006).

Although an off-duty police officer may have been provoked during an altercation outside of a bar, the situation did not call for the officer to display his firearm unless he was going to effectuate an arrest, which the officer failed to do, instead leaving the man lying on the ground; however, the penalty of removal was excessive and was modified to a 60-day suspension. In re Salensky, OAL Dkt. No. CSV 7734-05, 2006 N.J. AGEN LEXIS 910, Merit System Board Decision (October 19, 2006).

Forty-five day suspension, rather than removal or a 90-day suspension, was appropriate discipline where a psychiatric hospital employee was found to have used inappropriate physical contact in restraining a patient; a charge of abuse was not sustainable because the evidence demonstrated that the employee was only attempting to restrain the patient after the patient first made physical contact with the employee (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 400). In re Graves, OAL Dkt. No. CSV 226-06, 2006 N.J. AGEN LEXIS 770, Merit System Board Decision (August 9, 2006).

Reduced penalty of 60-day suspension was appropriate for a police officer who failed to remain available to department physicians and superiors during sick leave. ALJ had found that officer's testimony that it took him 20 minutes to dress after department officers had knocked on his door was not credible (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 405). In re Rosado, OAL Dkt. No. CSV 9431-04, 2006 N.J. AGEN LEXIS 778, Merit System Board Decision (July 19, 2006).

Police officer's separation from employment was justified after she failed to successfully complete training; however, in light of the fact that the officer's problems were, in large part, medically based, and the fact that she had not been found guilty of any willful misconduct, the disciplinary penalty of removal was modified to a resignation in good standing. In re Hidalgo, OAL Dkt. No. CSV 6327-00, 2006 N.J. AGEN LEXIS 542, Final Decision (April 26, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 162) adopted, which found that resignation in good standing, rather than removal, was appropriate for a Sheriff's Officer who was dismissed from the county Firefighters and Police Training Academy for missing physical conditioning sessions. In re McGorty, OAL Dkt. No. CSV 9567-05, 2006 N.J. AGEN LEXIS 636, Final Decision (April 26, 2006).

Where a police officer disobeyed lawful orders, disregarded police department policies and procedures, and embarked on a high-speed vehicle pursuit without notifying police headquarters and without authorization, a 20-day suspension did not convey to the officer the seriousness of his infractions and was, therefore, increased to a 30-day suspension; the police chase could have had tragic consequences and the officer had received counseling for similar behavior in the past (adopting in part and modifying in part 2006 N.J. AGEN LEXIS 69). In re McConnell, OAL Dkt. No. CSV 9430-04, 2006 N.J. AGEN LEXIS 547, Final Decision (April 5, 2006).

Increased suspension of 45 days was appropriate for a police officer who failed to immediately report to Internal Affairs as ordered in connection with an incident in which he lost his service weapon. The officer had contended that the delay was in part because he was awaiting legal counsel (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 71). In re Ortiz, OAL Dkt. No. CSV 12056-04, 2006 N.J. AGEN LEXIS 613, Final Decision (March 22, 2006).

Three-month suspension, rather than removal, was the appropriate discipline for a nurse's aide who was accused of neglecting a patient after she refused to care for a male patient on two occasions, assuming other aides would see to his care; although the aide was pregnant and feared the often combative patient, she never made a formal request to be re-assigned, nor did she provide medical documentation for special accommodation. In re Snyder, OAL Dkt. No. CSV 554-05, 2006 N.J. AGEN LEXIS 623, Final Decision (March 8, 2006).

Six-month, rather than 15-day, suspension was warranted where the ALJ found, on conflicting evidence, that a township truck driver sexually harassed a fellow employee; it was of no consequence that the complaining employee did not request more discipline for the driver because such conduct could not be tolerated (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 952). In re Washington, OAL Dkt. No. CSV 6778-04, 2006 N.J. AGEN LEXIS 216, Final Decision (February 8, 2006).

In its de novo review of a disciplinary matter, the Merit System Board has exclusive jurisdiction to determine the proper penalty and is not bound by any provision contained in a collective bargaining agreement. In re Hayes, OAL Dkt. No. CSV 5089-05, 2006 N.J. AGEN LEXIS 210, Merit System Board Decision (January 25, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 635) adopted, which found that where a plumber's driver's license was suspended for a period of 10 years, requiring the appointing authority to either change the plumber's duties or utilize additional personnel to drive him to specified locations, would have been an unreasonable burden to place on an employer for 10 years; because the plumber was unable to perform his duties the appointing authority had good cause to conclude that his return to work was not appropriate. Nevertheless, termination was modified to a resignation in good standing where the parties agreed that the plumber was a good plumber, had satisfactory evaluations, and never had a problem with his work or attendance, and termination would have precluded the plumber from seeking future public employment. In re Seitz, OAL Dkt. No. CSV 2889-05, 2005 N.J. AGEN LEXIS 1083, Final Decision (December 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 338) adopted, which found that 30 working-day suspension, rather than 12 working-day suspension, was warranted where a correction officer failed to follow policies, procedures, and rules when he permitted an unauthorized transfer from a prisoner's assigned cell to permit him to share a cell with another prisoner. In re Miller, OAL Dkt. No. CSV 2033-04, 2005 N.J. AGEN LEXIS 1181, Final Decision (September 7, 2005), aff'd per curiam, No. A-0653-05T1, 2006 N.J. Super. Unpub. LEXIS 2123 (App.Div. Oct. 18, 2006).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

County sheriff's officer was required by settlement agreement to submit to psychiatric examinations. Petescia v. County of Essex, 92 N.J.A.R.2d (CSV) 388.

4A:2-2.10 Back pay, benefits and seniority

(a) Where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

(b) Where a municipal police officer has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the officer shall receive back pay, benefits and seniority pursuant to N.J.S.A. 40A:14-149.1 et seq.

(c) Where an employee, other than a municipal police officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated.

1. Such items shall not be awarded when the complaint or indictment is disposed of through Conditional Discharge, N.J.S.A. 2C:36A-1, or Pre-Trial Intervention (PTI), N.J.S.A. 2C:43-12 et seq.

2. Where disciplinary action has been taken following disposition of the complaint or indictment, such items shall not be awarded in case of removal. In case of suspension, where the employee has already been suspended for more than six months pending disposition of the complaint or indictment, the disciplinary suspension shall be applied against the period of indefinite suspension. The employee shall receive back pay for the period of suspension beyond six months, but the appointing authority may for good cause deny back pay for the period beyond the disciplinary suspension up to a maximum of six months.

(d) Back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. Back pay shall not include items such as overtime pay, holiday premium pay and retroactive clothing, uniform or equipment allowances for periods in which the employee was not working.

2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

3. Where a removal or suspension has been reversed or modified, an indefinite suspension pending the disposition of criminal charges has been reversed, the award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4 below.

4. Where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

i. "Underemployed" shall mean employment during a period of separation from the employee's public employment that does not constitute suitable employment.

ii. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or online job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes.

iii. "Suitable employment" or "suitable position" shall mean employment that is comparable to the employee's permanent career service position with respect to job duties, responsibilities, functions, location, and salary.

iv. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter.

v. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment.

5. An employee shall not be required to mitigate back pay for any period between the issue date of a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension and the date of actual reinstatement. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

6. Should a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension subsequently be stayed, an individual shall be required to mitigate an award of back pay from the date of the stay through the date of actual reinstatement, in accordance with (d)4i through v above.

7. If an employee also held other employment at the time of the adverse action, the back pay award shall not be reduced by earnings from such other employment. However, if the employee increased his or her work hours at the other employment during the back pay period, the back pay award shall be reduced by the earnings from such additional hours.

8. A back pay award is subject to reduction by any period of unreasonable delay of the appeal proceedings directly attributable to the employee. Delays caused by an employee's representative may not be considered in reducing the award of back pay.

9. A back pay award is subject to reduction for any period of time during which the employee was disabled from working.

10. Funds that must be repaid by the employee shall not be considered when calculating back pay.

(e) Unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

(f) When the Commission awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

(g) If settlement on an amount cannot be reached, either party may request, in writing, Commission review of the outstanding issue. In a Commission review:

1. The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and

2. The employee shall submit an affidavit setting forth all income received during the separation.

(h) See N.J.A.C. 4A:2-2.13 for situations in which certain law enforcement officers or firefighters have appealed a removal that has been reversed or modified.

Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Redesignated part of existing text in (a) to (d); added new (b)-(c); redesignated existing (b)-(d) to (e)-(g).
Amended by R.1997 d.435, effective October 20, 1997.
See: 29 N.J.R. 3102(a), 29 N.J.R. 4455(b).
Inserted new (d)4; and recodified existing (d)4 as (d)5.

Amended by R.2008 d.215, effective August 4, 2008.
See: 40 N.J.R. 1402(a), 40 N.J.R. 4520(a).
Rewrote (d)3 and (d)4; added new (d)5 through (d)9; and recodified former (d)5 as (d)10.
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Substituted "Commission" for "Board" and "Civil Service Commission" for "Merit System Board" throughout; and added (h).
Amended by R.2010 d.068, effective May 17, 2010.
See: 42 N.J.R. 116(a), 42 N.J.R. 928(a).
In (d)1, substituted a comma for "and" following the second occurrence of "pay" and inserted "and retroactive clothing, uniform or equipment allowances for periods in which the employee was not working".
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

Case Notes

On a backpay claim where a State employee has been removed from employment due to his or her own misconduct but is later reinstated, the availability of substitute employment is relevant to the establishment of a failure-to-mitigate defense by the appointing agency, and the employee's failure to seek substitute employment during separation is not a sufficient basis to deny the claim without any consideration of the availability of such employment. O'Lone v. Department of Human Services, 357 N.J. Super. 170, 814 A.2d 665.

Regulation applies in those circumstances where employee has been completely exonerated of the criminal charges, yet there is basis for disciplinary suspension despite employee's exoneration. Walcott v. City of Plainfield, 282 N.J.Super. 121, 659 A.2d 532 (A.D.1995).

Merit System Board's adoption of rules regarding back pay for police officers during periods of nondisciplinary suspension requires public notice of anticipated action. DelRossi v. Department of Human Services (Police), 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Police officer was not entitled to back pay and benefits during period of nondisciplinary suspension resulting from criminal charges. DelRossi v. Department of Human Services (Police), 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Merit System Board must exercise power to award back pay for periods of nondisciplinary suspension through rule making. DelRossi v. Department of Human Services (Police), 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Corrections officers who were dismissed for violation of mandatory drug test order were not entitled to award of back pay as remedy for due process violations at pretermination hearings. 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.

Where discharge of employee was in error, back pay could be awarded (citing former N.J.A.C. 4:1-5.5). In the Matter of Williams, 198 N.J.Super. 75, 486 A.2d 858 (App.Div.1984).

Determination of back pay—prior disciplinary record not a consideration (citing former N.J.A.C. 4:1-5.17). Steinal v. City of Jersey City, 193 N.J.Super. 629, 475 A.2d 640 (App.Div.1984) affirmed 99 N.J. 1, 489 A.2d 1145 (1985).

Civil Service Commission adopted the recommendation of an administrative law judge (ALJ) that an appointing authority failed to sustain its burden of proof with regard to charges of other sufficient cause, unauthorized use of force pursuant to N.J.A.C. 4A:2-2.3(a)11 and conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6 filed against a County Correction Officer. The officer was justified in his use of force because an inmate was acting in a violent manner and had to be subdued. However, the Commission did not agree with the ALJ's determination that the officer did not file a use-of-force report and reversed the removal. Because the charges were dismissed, the officer was entitled to mitigated back pay, benefits, seniority, and reasonable counsel feels pursuant to N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Joseph Graffagnino, Middlesex Cnty., OAL Dkt. No. CSR 9216-13, 2013 N.J. CSC LEXIS 1147, Final Decision (December 18, 2013).

After the Superior Court of New Jersey, Appellate Division, reversed a Civil Service Commission's decision modifying the removal of a County Correction Officer to a 10 working day suspension, the Commission, on remand, concluded that the officer was entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 for the 10 working day suspension that was reversed less any monies actually earned during that time. Because all charges were dismissed, the officer was also entitled to counsel fees solely for those incurred in furtherance of her appeal to the Commission under N.J.A.C. 4A:2-2.12(f). In re Donna Jackson, Hudson Cnty., CSC DKT. No. 2014-1226, 2013 N.J. CSC LEXIS 1101, Civil Service Comm'n. Decision (December 6, 2013).

County corrections officer who had been removed from his position with a county department of adult corrections on findings that the officer had engaged in conduct unbecoming an officer, had filed a false police report, and had been negligent in the performance of his duties was entitled to recover back pay under N.J.A.C. 4A:2-2.10 and attorney's fees under N.J.A.C. 4A:2-2.12 based on a determination of the Civil Service Commission that the charges were unproven and that he should be reinstated immediately. In re Reedinger, Middlesex Cnty., Dep't. of Adult Corr., CSC Dkt. No. 2013-3155, 2013 N.J. CSC LEXIS 1146, Decision of the Civil Serv. Comm'n (November 20, 2013).

The Civil Service Commission approved of an initial decision by an Administrative Law Judge (ALJ) that a county, as the appointing authority for an employee who was a Senior Carpenter in the Department of Public Works and Engineering, had established that the employee was guilty of incompetency, inefficiency or failure to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a)1 as well as conduct that was "unbecoming a public employee" within the meaning of N.J.A.C. 4A:2-2.3(a)6 as a result of his having fallen asleep in his county-owned vehicle when it was parked in a public parking lot. However, given the employee's decent employment and disciplinary record, the 90 day suspension recommended by the ALJ was too severe and it was properly reduced to a 45-day suspension. While the employee thus was entitled to recover 45 calendar days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10, the employee was not entitled to counsel fees because N.J.A.C. 4A:2-2.12(a) provided for such an award only where an employee prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action, and the primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. In re Pedulla, Monmouth Cnty., CSC Docket No. 2011-5039, OAL Docket No. CSV 9154-11, 2013 N.J. CSC LEXIS 820, Final Administrative Determination (September 4, 2013).

City's request for reconsideration of a prior decision of the Civil Service Commission granting relief to an employee who established that he had been improperly laid off, which relief included the rescission of the layoff and the restoration of the employee to the stated position with seniority and benefits was denied because the city did not show, as required by N.J.A.C. 4A:2-1.6(b), that a clear material error had occurred. Moreover, new evidence before the Commission corroborated the employee's original claim that he was displaced from his position in favor of his successor because the city wished to reward the successor for contributions made to the mayoral campaign. That evidence thus established that the city knowingly and purposely violated civil service laws and rules to place the successor in the position occupied by the employee and demonstrated animus towards the employee. That showing was more than sufficient to support a grant of back pay and counsel fees as authorized by N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Morris, CSC Docket No. 2013-2927, 2013 N.J. CSC LEXIS 758, Final Administrative Decision (September 4, 2013).

A police officer who was indefinitely suspended from his position due to unspecified criminal charges and administrative charges, all of which ultimately dismissed, was entitled to back pay, benefits and seniority for

some of the period of the suspension. First, the city's claims that the officer was not entitled to any back pay on the basis that he did not mitigate his damages were belied by the totality of the circumstances, which was the standard to be applied per N.J.A.C. 4A:2-2.10(d)4iv, because the officer was most unlikely to be able to secure substitute employment given the nature of the charges against him. However, the officer was not entitled to counsel fees pursuant to N.J.A.C. 4A:2-2.12(f), which authorized an award of counsel fees for representation at the departmental level for appeals of major disciplinary actions which were presented to the Civil Service Commission. Here, because the disciplinary charges were dismissed following the departmental hearing, the instant matter did not originally involve an appeal to the Commission following a departmental hearing where major disciplinary charges were upheld and fees were properly denied. In re Bowman, Newark, CSC Docket No. 2013-1085, 2013 N.J. CSC LEXIS 815, Final Administrative Determination (August 19, 2013).

The Civil Service Commission (CSC) adopted the findings of fact by an Administrative Law Judge (ALJ) to the extent that they rejected certain charges against a police officer on which the appointing authority had predicated its action removing the officer from her position, but it rejected the ALJ's action on the issue of whether the police officer had accurately reported an incident and instead concluded that the officer's characterization of the incident as solely verbal was inappropriate. Given how important it is that a law enforcement officer's report be full, accurate and detailed, the CSC concluded that the record supported a finding against the officer on that claim. That said, given the officer's good record with the department since her appointment in 2005, a five-day suspension was a proper penalty, and the officer was entitled to back pay, benefits and seniority per N.J.A.C. 4A:2-2.10 and a proportionally-determined award of counsel fees under N.J.A.C. 4A:2-2.12 (adopting in part and rejecting in part 2013 N.J. AGEN LEXIS 102). In re Brandis Puryear, CSC Dkt. No. 2013-285, OAL Dkt. No. CSV 11114-12, 2013 N.J. CSC LEXIS 476, Final Decision (August 15, 2013).

Though the Civil Service Commission (CSC) accepted the findings of fact and conclusions contained in an Initial Decision of an Administrative Law Judge disposing of the appeal of an assistant family service worker challenging his removal for various reasons including misuse of State property including motor vehicles, the CSC modified the removal to a 120-day suspension. However, because the CSC, in a separate decision, had sustained the agency's release of the worker at the end of his working test period, the worker was not entitled to mitigated back pay, benefits and seniority per N.J.A.C. 4A:2-2.10. Nor was he entitled to an award of counsel fees under N.J.A.C. 4A:2-2.12(a). Even though the CSC had dismissed some of the charges against the worker, it had sustained other serious charges and had imposed major discipline. Because the worker had not prevailed on all or substantially all of the primary issues of the appeal, no award of counsel fees was authorized. In re Shawn Pressley, OAL Dkt. No. CSV 05761-2012, 2013 N.J. CSC LEXIS 475, Final Decision (August 15, 2013).

A county's determination that a county correction officer was properly allowed to resign not in good standing, thus to be removed from her position, on the ground that her excessive unauthorized absences constituted an abandonment of her position was rejected by the Civil Service Commission, as was the recommendation of an Administrative Law Judge (ALJ) that the discipline be modified to a 30-day working suspension, though the Commission found merit in the ALJ's determination that the county should have considered the officer's request for a leave of absence during which she could address some chronic medical issues. Given these facts, and as permitted by N.J.A.C. 4A:2-2.9(d), the penalty imposed by the county was properly modified to a 60-working day suspension. Though the officer thus was entitled to back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, she was not entitled to counsel fees per N.J.A.C. 4A:2-2.12(a) because she had been found guilty of the charges and had only prevailed on her challenge to the penalty imposed therefor. In re Linda Tisby, Camden Cnty., CSC Dkt. No. 2013-1166, OAL Dkt. Nos. CSV 16033-12 and CSR 1202-13, 2013 N.J. CSC LEXIS 580, Final Decision (July 22, 2013).

Failure on the part of an appointing authority to establish that a police officer was properly suspended for 15 calendar days and demoted afforded grounds for a determination by the Civil Service Commission that the police officer was entitled to back pay, benefits, and seniority per N.J.A.C. 4A:2-2.10. However, the office was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) as a fee award is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. Here, because the Commission sustained the charges, it cannot be said that the officer prevailed on all or substantially all of the primary issues of the appeal. In re John Venables, Jr., City of Camden, CSC Dkt. No. 2010-1283, OAL Dkt. No. CSV 10418-09, 2013 N.J. CSC LEXIS 610, Final Decision (June 26, 2013).

Employee was not entitled to the enforcement of a back pay award pursuant to N.J.A.C. 4A:2-2.10(d)3 because he earned more through unemployment benefits and other employment than he would have earned with the appointing authority for the period in question. Thus, he was fully mitigated. In re David Williams, CSC Dkt. No. 2012-2452, 2013 N.J. CSC Lexis 565, Final Decision (June 26, 2013).

When a youth worker failed to report the use of two physician-prescribed medications, he violated the policy of the Mercer County's Drug and Alcohol Free Workplace Program, and a 60-day suspension rather than removal was appropriate. However, he was only entitled to mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 from his removal date until the date that all youth workers were laid off due to the closure of the youth detention facility. He was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) because one of the charges against him was sustained. In re Robert Zorn, Mercer County, CSC Dkt. No. 2011-404, 2013 N.J. CSC LEXIS 242, Civil Service Comm'n Decision (May 3, 2013).

Employee who was reinstated to his position following the dismissal of criminal charges on which an indefinite suspension had been predicated was not entitled to recover, as an element of back pay and benefits, amounts paid by him to obtain coverage under his wife's health insurance policy during the period of suspension because reimbursement of such expenses was not authorized by N.J.A.C. 4A:2-2.10(d). In re Taylor, CSC Docket No. 2012-3190, 2013 N.J. CSC LEXIS 297, Final Agency Action (April 18, 2013).

Though the Civil Service Commission approved the findings of fact made by an administrative law judge (ALJ) to the effect that the former employee, a county road repairer, was properly disciplined for failing to follow the county's drug and alcohol policy, it rejected the ALJ's determination that the charge of "unbecoming conduct" had not been established and so ruled. That and other factors were considered by the Commission in rejecting the ALJ's recommended penalty, which was a 120 working day suspension, and in imposing a six working day suspension. And while the employee thus would be entitled to mitigated back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, he was not entitled to counsel fees per N.J.A.C. 4A:2-2.12(a) as the employee did not prevail on all or substantially all of the primary issues in the appeal, which was the prerequisite to an award of fees. In re James Gillespie, Cnty. of Cape May, OAL Docket No. CSV 4752-12, 2013 N.J. CSC LEXIS 353, Final Agency Action (April 17, 2013).

Though the Civil Service Commission approved a recommendation made by an administrative law judge (ALJ) that some of the charges leveled against the employee, a laborer with a city utility authority, were properly rejected but that "other sufficient cause" for discipline had been shown, the Commission disagreed with the penalty recommended by the ALJ and concluded, upon de novo review, that a 10 working day suspension was properly imposed under all of the facts and circumstances of the case. Also, while the laborer thus was entitled to mitigated back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, the laborer was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a), because such an award is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action, and that was not the case here. In re Scott Haynes, OAL Docket No. CSV 4367-12, 2013 N.J. CSC LEXIS 338, Final Agency Action (April 17, 2013).

Former Fire Captain was entitled to reinstatement to his position under N.J.S.A 43:16A-8 and N.J.A.C. 4A:4-7.12 after a determination

by the Police and Fireman's Retirement System that he was no longer disabled. Although a doctor refused to give him a scheduled psychological examination because he arrived late, his reinstatement was not contingent upon a medical or psychological examination. However, the Fire Captain was not entitled to back pay or counsel fees under N.J.A.C. 4A:2-10 because this was not a disciplinary matter. In re Stephen Phillips, Twp. of West Orange, CSC Dkt. No. 2012-1029, 2013 N.J. CSC LEXIS 304, Final Decision (April 17, 2013).

Definition of the term "reasonable efforts" as used in N.J.A.C. 4A:2-2.10(d) with relation to efforts by an ex-employee to obtain employment during a period of separation from public employment does not require a specific number of contacts or attempts to be made during that period. Rather, the determination as to whether the employee made reasonable efforts to find suitable employment shall be based on the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee and the nature of the employee's public employment. Applying that rule here on specific facts, the Department of Military and Veterans' Affairs failed to carry its burden to show that the separated employee (later ordered reinstated) was not entitled to more than $4,600 in back pay based on her alleged failure to use reasonable efforts to find substitute employment. In re Michelle Taylor, Department of Military and Veterans' Affairs, CSC Docket No. 2012-3286, 2013 N.J. CSC LEXIS 184, Final Decision (March 7, 2013).

After a police officer was suspended for 30 days on charges of improperly allowing the private tow of a disabled vehicle, failing to notify his dispatcher, and giving false statements during the investigation, the Civil Service Commission modified the suspension to an official written reprimand and granted the officer back pay, benefits, and seniority under N.J.A.C. 4A:2-2.10. Notwithstanding his failure to follow the policy regarding utilization of a City-contracted tow, the officer's actions were arguably reasonable given that the vehicle clearly presented a road hazard and warranted a significant mitigation of the penalty. Further, the Commission determined that the officer was not guilty of the other charges and he did not have a significant disciplinary history. The officer was also entitled to an award of counsel fees in the amount of 25 percent of services under N.J.A.C. 4A:2-2.12 because he prevailed on all but one charge. In re Daniel Caetano, City of Newark, OAL Dkt. No. CSV 13338-11, 2013 N.J. CSC LEXIS 109, Civil Service Comm'n. Decision (March 6, 2013).

Administrative law judge's recommendation of the reduction of the 30-day working day suspension of a county corrections officer on charges of incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, and other sufficient cause to a 5-day suspension was improper. After concluding that a 20-day working day suspension was the appropriate penalty, given the corrections officer's failure to comply with the orders of superior in the paramilitary setting of a correctional facility, the Civil Service Commission granted the corrections officer 10 days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, he was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) because he did not prevail on all or substantially all of the primary issues of the appeal. He was found guilty of the charges and the Commission only modified the penalty. In re Vincent De Ponte, Monmouth Cnty., OAL Dkt. No. CSV 5497-12, 2013 N.J. CSC LEXIS 31, Civil Service Comm'n. Decision (March 6, 2013).

Calculation of the back pay owed by the appointing authority to a County Correction Sergeant who was found to have been improperly removed from his position did not include holiday pay because holiday pay was clearly excluded from a back pay award by N.J.A.C. 4A:2-2.10(d)1. However, the appointing authority's claim that the back pay award did not include any amount on account of "shift pay" was incorrect because a shift differential, being the amount that was payable based on the shift to which the employee was assigned, was classified for such purposes as regular wages, and the back pay award to which the sergeant was entitled in fact included "shift pay" as claimed. In re Mark Lyszczak, CSC Docket No. 2012-1651, 2013 N.J. CSC LEXIS 119, Final Decision (February 20, 2013).

After an administrative law judge (ALJ) upheld the charge of incompetency, inefficiency, or failure to perform duties against a county correction officer who left an inmate's cell door open and failed to note or report unusual incidents or imminent behavior of an inmate on suicide watch, the ALJ erred in recommending a 30-day working day suspension instead of removal. The Civil Service Commission imposed a 90 working day suspension instead of removal, which entitled the officer to mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, the officer was not entitled to an award of counsel fees under N.J.A.C. 4A:2-2.12 because he did not prevail on the primary issue on appeal, which was the merit of the charges, not the appropriateness of the penalty imposed. In re Wade Rosenberger, CSC Dkt.. No. 2012-3046, 2013 N.J. CSC LEXIS 129, Civil Service Comm'n Decision (January 23, 2013).

Initial Decision (2009 N.J. AGEN LEXIS 321) adopted, which found that county correction sergeant was entitled to reinstatement where respondent failed to meets its burden of proof that the officer violated a fraternization policy by having a relationship with a parolee. The officer testified that she did not know of the parolee's status when she hired him to perform home improvement work and that, upon learning that was the case, she immediately reported her association with the parolee to her supervisor. In re Ford, OAL Dkt. No. CSV 12530-08 and CSV 7175-06 (On Remand), 2009 N.J. CSC LEXIS 67, Civil Service Comm'n Decision (September 2, 2009).

Although an employee with the Department of Children and Family services uttered, "if I return to work and my supervisor and any of her flunkies harass me, I will grab her about the neck and rip her eyes out," the employee should not have been subject to discipline where the comment was made in a therapeutic setting during a psychiatric evaluation, was not an actual threat, and the employee did not otherwise display any violent tendencies. In re Bellamy, OAL Dkt. No. CSV 8866-06, 2009 N.J. AGEN LEXIS 807, Civil Service Comm'n Decision (March 25, 2009).

Since removal from position of supervising sheet metal worker with public school district was modified to a six-month suspension, employee was entitled to mitigated back pay, benefits, and seniority. In re Delli Santi, OAL Dkt. No. CSV 11901-07, 2008 N.J. AGEN LEXIS 1088, Civil Service Commission Decision (September 24, 2008).

Imputed mitigation subtracted from former city firefighter's back pay award. In re Abdul-Haqq, OAL Dkt. No. CSV 9385-03, 2008 N.J. AGEN LEXIS 720, Final Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 228) adopted, which concluded that the appointing authority had the right to impose an indefinite suspension without pay under N.J.A.C. 4A:2-2.5(a)2 on a correction officer until June 26, the date when the officer pleaded guilty to downgraded charges, rather than only until March 7, the date when the County Prosecutor chose to downgrade the indictable offense, as the downgrade was specifically conditioned on a guilty plea. In re Paris, OAL Dkt. No. CSV 12208-06, 2008 N.J. AGEN LEXIS 708, Final Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 228) adopted, which concluded that while the appointing authority had the right to impose an indefinite suspension without pay under N.J.A.C. 4A:2-2.5(a)2 from Dec. 14, 2005 until June 26, 2006, the date when the correction officer pleaded guilty in municipal court to downgraded charges, back pay was due the officer under N.J.A.C. 4A:2-2.10(c)2 for the period of the indefinite suspension that exceeded six months, i.e., from June 14, 2006 to July 30, 2006. In re Paris, OAL Dkt. No. CSV 12208-06, 2008 N.J. AGEN LEXIS 708, Final Decision (June 11, 2008).

Although a police officer was exonerated on criminal charges that he sexually assaulted three women, he was not entitled to reinstatement or back pay because he still remained subject to disciplinary proceedings, including conduct unbecoming a police officer. In re Cofone, OAL Dkt. No. CSV 6774-05 (CSV 2578-01 and CSV 6148-03 On Remand), 2006 N.J. AGEN LEXIS 776, Final Decision (July 19, 2006), aff'd per curiam, No. A-0306-06T5, 2008 N.J. Super. Unpub. LEXIS 1694 (App.Div. July 16, 2008).

Disciplinary action was not properly taken against two correctional officers on a county's claim of incompetence, inefficiency or failure to perform duties per N.J.A.C. 4A:2-2.3(a)1; neglect of duty per N.J.A.C. 4A:2-2.3(a)7, or other sufficient cause per N.J.A.C. 4A:2-2.3(a)11, which cause was claimed to be their failure to properly report and incident between an inmate and another officer and neglecting to appropriately handle that situation. First, the officers were not responsible to directly handle a complaint about another officer on another shift because neither of the disciplined officers supervised the officer against whom the complaint had been lodged. Second, there was no showing that the officers attempted to evade their responsibility once they became aware of the complaint but they used common sense and discretion in evaluating it and in reporting the claim, which did not include a claim that the inmate had been injured, to the charged officers' lieutenant. That verbal report was all that was required; the facility rules required that there be a verbal or a written report, not both. Nor were the charged officers required to investigate the complaint; again, their responsibility was to report the complaint to their supervisor, which they did. Because the officers were not subject to discipline for their conduct, moreover, they were entitled to receive back pay, benefits and counsel fees resulting from the disciplinary proceedings per N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Grupico, Burlington Cty., and in re McLeod, Burlington Cty., OAL DKT. NO. CSV2489-06, OAL DKT. NO. CSV2490-06 (CONSOLIDATED), AGENCY DKT. NOS. 2006-1621-I and 2006-1622-I (CONSOLIDATED), 2007 N.J. AGEN LEXIS 1302, Initial Decision (October 4, 2007).

Correction officer, who was unreasonably denied a leave of absence during her working test period, was entitled to back pay from the date she was medically cleared to return to work (August 5, 2005), rather than from the date of her removal (June 7, 2005); because it could not be assumed that the officer would have passed her working test period, she was entitled to back pay for 10 months (the part of the one-year working test she did not complete) or until her reinstatement, whichever was first. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 483) adopted, which found that city was required to pay back wages to police officer after criminal charges against him were dismissed, there was no administrative action against him, and he had mitigated his losses during his period of separation; after termination, the officer had increased his hours at his second job, which constituted sufficient mitigation of his back pay award. In re Russo, OAL Dkt. No. CSV 11729-03, 2005 N.J. AGEN LEXIS 1077, Final Decision (November 22, 2005).

Reinstated county correction officer was entitled to back pay for the period of time in which he sought substitute employment because the appointing authority did not provide any evidence that suitable substitute employment was available, nor did it overcome the officer's testimony that his search for substitute employment took place in the period right after he was terminated; however, the officer was not entitled to back pay for the period of time that he attended school on a full-time basis because he was not actively seeking substitute employment. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Reinstated county correction officer was not entitled to recover his monthly expenses for medications not covered by his spouse's health insurance because he was only entitled to recover additional amounts expended to maintain health insurance coverage during the period of improper suspension or removal. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Reinstated county correction officer was not entitled to recover unpaid accrued vacation time because, pursuant to N.J.A.C. 4A:6-1.2, vacation leave not taken in a given year could only be carried over to the following year; it could not be accrued and carried over from year to year. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Suspended employee not entitled to back pay and benefits for accepting plea agreement. Ward v. Department of Labor, 97 N.J.A.R.2d (CSV) 180.

Firefighter entitled to back pay for period of suspension while awaiting outcome of criminal indictment. Naro v. Trenton Fire Department, 96 N.J.A.R.2d (CSV) 234.

Reinstatement of guard at correctional facility was required when he did not intentionally trip or kick inmate. Finley v. Wagner Youth Correctional Facility, 95 N.J.A.R.2d (CSV) 676.

Agency awarding employee back pay was entitled to offset unemployment benefits as long as state was reimbursed. Bellamy v. Essex County Hospital, 95 N.J.A.R.2d (CSV) 652.

Public employee was entitled to back pay for period of indefinite suspension that was improper, incorrect and invalid. Gonzalez v. Essex County, 95 N.J.A.R.2d (CSV) 200.

Medical expenses to be paid after improper reduction in force action. Takakjian v. Fairview Borough Board of Education, 93 N.J.A.R.2d (EDU) 184.

Employee was entitled to back pay following acquittal. Scouler v. Housing Services and Code Enforcement, City of Camden, 93 N.J.A.R.2d (CSV) 40.

Employee not entitled to back pay for period of suspension even if she successfully completed intervention program. Amison v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (CSV) 568.

Employee was entitled to back pay for period of suspension pending disposition of criminal charges. Kelly v. City of Camden, 92 N.J.A.R.2d (CSV) 537.

Initial suspension from employment violated due process; later valid removal; no entitlement to back pay. Brantley v. New Jersey State Prison, 92 N.J.A.R.2d (CSV) 37.

Employee entitled to reinstatement and back pay. N.J.S.A. 11A:1-1 et seq. Holmes v. Essex County, 91 N.J.A.R.2d (CSV) 65.

Appellant, removed from employment and later reinstated with back pay, denied counsel fees; appellant entitled to award of 30 vacation days (citing former N.J.A.C. 4:1-5.5). Harrington v. Dep't of Human Services, 11 N.J.A.R. 537 (1989).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-16.14). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:2-2.11 Interest

(a) When the Civil Service Commission makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the Commission or Chairperson, as applicable; or

2. Where the Commission finds sufficient cause based on the particular case.

(b) Where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

(c) Before interest is applied, an award of back pay shall be reduced in accordance with N.J.A.C. 4A:2-2.10(d)2 and 3.

Administrative Correction.
See: 26 N.J.R. 198(a).
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In the introductory paragraph of (a), substituted "Civil Service Commission" for "Commissioner or Board"; in (a)1, substituted "Commission or Chairperson, as applicable" for "Commissioner or Board"; and in (a)2, substituted "Commission" for "Board".

Case Notes

Reinstated employee was not entitled to interest on a back pay award made by an appointing authority in connection with the employee's reinstatement because N.J.A.C. 4A:2-2.11 authorizes such an award where there is evidence that the appointing authority unreasonably delayed compliance with the Civil Service Commission's order or in any way acted in bad faith. On the facts here, the appointing authority's belief that the employee had not made reasonable efforts to find substitute employment was not unreasonable nor did it act in bad faith. In re Michelle Taylor, Department of Military and Veterans' Affairs, CSC Docket No. 2012-3286, 2013 N.J. CSC LEXIS 184, Final Decision (March 7, 2013).

4A:2-2.12 Counsel fees

(a) The Civil Service Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission.

(b) When the Commission awards counsel fees, the actual amount shall be settled by the parties whenever possible.

(c) Subject to the provisions of (d) and (e) below, the following fee ranges shall apply in determining counsel fees:

1. Associate in a law firm: $100.00 to $150.00 per hour;

2. Partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law: $150.00 to $175.00 per hour; or

3. Partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: $175.00 to $200.00 per hour.

(d) If an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement.

(e) A fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated;

3. The nature and length of the professional relationship with the employee; and

4. The experience, reputation and ability of the attorney performing the services.

(f) Counsel fees incurred in matters at the departmental level that do not reach the Civil Service Commission on appeal or are incurred in furtherance of appellate court review shall not be awarded by the Commission.

(g) Reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. Costs associated with normal office overhead shall not be awarded.

(h) The attorney shall submit an affidavit and any other documentation to the appointing authority.

(i) If settlement on an amount cannot be reached, either party may request, in writing, Commission review.

(j) See N.J.A.C. 4A:2-2.13 for situations in which certain law enforcement officers or firefighters have appealed a removal.

Amended by R.2001 d.424, effective November 19, 2001.
See: 33 N.J.R. 2725(a), 33 N.J.R. 3280(a), 33 N.J.R. 3895(a).
Rewrote (a) and (c); added new (d) through (g), and recodified existing (d) and (e) as (h) and (i).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Substituted "Civil Service Commission" for "Merit System Board" and "Commission" for "Board" throughout; and added (j).
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

Case Notes

After considering both N.J.A.C. 4A:2-2.12(e) and N.J. Ct. R. Prof. Conduct 1.5(a), counsel for an official at a mental health residential facility was entitled to an hourly fee of $250, given the complexity of the case and the amount of skill required to adequately represent his client, who was subject to discipline for failing to develop an intervention plan to deal with a patient's behavioral disorder, and that patient died, as counsel had to be alert to the potential implications for his client of the testimony put forth by each of the various witnesses; further, the court did not think it could seriously be disputed that attorneys of a similar background and experience as counsel herein would customarily charge an equivalent or greater amount for their services in this type of case. In re Malone, 381 N.J. Super. 344, 886 A.2d 181, 2005 N.J. Super. LEXIS 340 (App.Div. 2005).

Merit System Board had the statutory authority to make an award to township police officer for counsel fees incurred in connection with police department hearing which had preceded officer's appeal to the Merit System Board, regarding officer's claim for reinstatement; the departmental hearing was an integral part of the civil service process. Burris v. Police Department, Township of West Orange, 769 A.2d 1112 (2001).

Regulation mandating the award of counsel fees was intended to apply in cases where disciplinary charges did not arise out of employee's lawful exercise of powers in furtherance of official duties. Marjarum v. Township of Hamilton, 336 N.J.Super. 85 (A.D. 2001).

Statute and its accompanying regulation, allowing Merit System Board to award fees to employee who has prevailed on all or substantially all of the primary issues, authorized fee award to police officer. Oches v. Township of Middletown Police Dept., 155 N.J. 1, 713 A.2d 993 (N.J. 1998).

Municipal employee whose removal was mitigated to six-month suspension by Merit System Board was not entitled to award of counsel fees as prevailing party under regulation. Walcott v. City of Plainfield, 282 N.J.Super. 121, 659 A.2d 532 (A.D.1995).

Civil Service Commission adopted the recommendation of an administrative law judge (ALJ) that an appointing authority failed to sustain its burden of proof with regard to charges of other sufficient cause, unauthorized use of force pursuant to N.J.A.C. 4A:2-2.3(a)11 and conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6 filed against a County Correction Officer. The officer was justified in his use of force because an inmate was acting in a violent manner and had to be subdued. However, the Commission did not agree with the ALJ's determination that the officer did not file a use-of-force report and reversed the removal. Because the charges were dismissed, the officer was entitled to mitigated back pay, benefits, seniority, and reasonable counsel feels pursuant to N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Joseph Graffagnino, Middlesex Cnty., OAL Dkt. No. CSR 9216-13, 2013 N.J. CSC LEXIS 1147, Final Decision (December 18, 2013).

Action by an appointing authority in removing an employee from her position as a Judiciary Account Clerk, Judiciary was unwarranted because the employer failed to prove that the employee falsified her time reports for January 18, 2012, which was a day on which she was called for jury duty but thereafter released when it was determined that her service was not needed. While she gave imprecise information to her superior regarding the length of time she spent was at the courthouse after jury duty, which if knowing and willful, could have constituted insubordination or conduct unbecoming within the meaning of N.J.A.C. 4A:2-2.2-2.3, she was not charged as having done so, and the totality of the record showed that the decision to remove her was arbitrary, capricious, and unreasonable as well as not supported by substantial evidence on the record. Moreover, not only was the employee entitled to be reinstated into her position with back pay, benefits and seniority but the appointing authority was also responsible for reasonable counsel fees per N.J.A.C. 4A:2-2.12. In re Wang, Judiciary, Union Vicinage, CSC DKT. NO. 2013-211, OAL DKT. NO. CSV 11707-12, 2013 N.J. CSC LEXIS 1072, Final Administrative Action (December 18, 2013).

Counsel who represented a police officer who prevailed on his claim that he had been wrongly removed from his position was entitled to compensation at the hourly rate of $175, not at his billed rate of $375, because counsel provided insufficient information to justify an award at the billed rate. Specifically, the certification did not elaborate as to the specific nature or subject matter of cases for which he was paid at the $375 hourly rate nor any basis on which it could be concluded that he has particular expertise in labor or employment law. In the absence of such a showing, an award based on an hourly rate of $175 was proper under N.J.A.C. 4A:2-2.12. As for the related claim for costs, because subpoenas were not required to be served by process servers, the cost thereof was not reimbursable per N.J.A.C. 1:1-11.2, while the $20 appeal processing fee was also nonreimbursable per N.J.A.C. 4A:2-1.8(f). In re Hulse, Newark, CSC Docket No. 2013-3505, 2013 N.J. CSC LEXIS 1151, Final Administrative Action (December 6, 2013).

After the Superior Court of New Jersey, Appellate Division, reversed a Civil Service Commission's decision modifying the removal of a County Correction Officer to a 10 working day suspension, the Commission, on remand, concluded that the officer was entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 for the 10 working day suspension that was reversed less any monies actually earned during that time. Because all charges were dismissed, the officer was also entitled to counsel fees solely for those incurred in furtherance of her appeal to the Commission under N.J.A.C. 4A:2-2.12(f). In re Donna Jackson, Hudson Cnty., CSC DKT. No. 2014-1226, 2013 N.J. CSC LEXIS 1101, Civil Service Comm'n. Decision (December 6, 2013).

Employee who was serving as a Personnel Assistant 2, Department of Military and Veterans Affairs was properly disciplined per N.J.A.C. 4A:2-2.3(a) for insubordination, conduct unbecoming a public employee and creating a disturbance on state property, all of which violations arose out of a confrontation between the employee and his immediate supervisor which occurred during a meeting in which the supervisor was addressing what she had concluded to be the employee's improper use of time and was advising him that he was required to produce a doctor's note for any absences in accord with N.J.A.C. 4A:6-1.4(d). The record amply supported the supervisor's claim that the employee had conducted himself in an insubordinate and inappropriate manner. That said, given the record here, the sanction of removal was too severe and a 180 day suspension was more appropriate. That finding meant that the employee was entitled to back pay, benefits and related benefits, but no award of counsel fees was appropriate under N.J.A.C. 4A:2-2.12(a) because the Commission had upheld the merits of the charges. In re Serdiuk, Dep't of Military & Veterans Affairs, CSC DKT. NO. 2013-739, OAL DKT. NO. CSV 7323-12, 2013 N.J. CSC LEXIS 1164, Final Administrative Action (December 4, 2013).

County corrections officer who had been removed from his position with a county department of adult corrections on findings that the officer had engaged in conduct unbecoming an officer, had filed a false police report, and had been negligent in the performance of his duties was entitled to recover back pay under N.J.A.C. 4A:2-2.10 and attorney's fees under N.J.A.C. 4A:2-2.12 based on a determination of the Civil Service Commission that the charges were unproven and that he should be reinstated immediately. In re Reedinger, Middlesex Cnty., Dep't. of Adult Corr., CSC Dkt. No. 2013-3155, 2013 N.J. CSC LEXIS 1146, Decision of the Civil Serv. Comm'n (November 20, 2013).

Correction officer seeking enforcement of a settlement agreement was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a). That regulation was inapplicable because the matter did not present an adjudication of the merits of the disciplinary charges and levied against the officer before the Commission. In addition, the officer would not have a basis for receiving counsel fees under N.J.A.C. 4A:2-1.5 because the record did not indicate that the appointing authority's action was based on any improper motivation. In re Benita Cisrow, Dep't. of Corr., CSC DKT. No. 2013-2347, 2013 N.J. CSC LEXIS 999, Final Decision (November 8, 2013).

Senior Correction Officer whose removal was modified to a six month suspension was not entitled to an award of counsel fees under N.J.A.C. 4A:2-2.12(a). Because the Civil Service Commission dismissed some of the charges against the officer but sustained other serious charges and imposed major discipline, the officer did not prevail on all or substantially all of the primary issues of the appeal. In re Keith Wickham, Jr., CSC Dkt. No. 2013-1195, 2013 N.J. CSC LEXIS 692, Final Decision (September 18, 2013).

The Civil Service Commission approved of an initial decision by an Administrative Law Judge (ALJ) that a county, as the appointing authority for an employee who was a Senior Carpenter in the Department of Public Works and Engineering, had established that the employee was guilty of incompetency, inefficiency or failure to perform duties within the meaning of N.J.A.C. 4A:2-2.3(a)1 as well as conduct that was "unbecoming a public employee" within the meaning of N.J.A.C. 4A:2-2.3(a)6 as a result of his having fallen asleep in his county-owned vehicle when it was parked in a public parking lot. However, given the employee's decent employment and disciplinary record, the 90 day suspension recommended by the ALJ was too severe and it was properly reduced to a 45-day suspension. While the employee thus was entitled to recover 45 calendar days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10, the employee was not entitled to counsel fees because N.J.A.C. 4A:2-2.12(a) provided for such an award only where an employee prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action, and the primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. In re Pedulla, Monmouth

Cnty., CSC Docket No. 2011-5039, OAL Docket No. CSV 9154-11, 2013 N.J. CSC LEXIS 820, Final Administrative Determination (September 4, 2013).

City's request for reconsideration of a prior decision of the Civil Service Commission granting relief to an employee who established that he had been improperly laid off, which relief included the rescission of the layoff and the restoration of the employee to the stated position with seniority and benefits was denied because the city did not show, as required by N.J.A.C. 4A:2-1.6(b), that a clear material error had occurred. Moreover, new evidence before the Commission corroborated the employee's original claim that he was displaced from his position in favor of his successor because the city wished to reward the successor for contributions made to the mayoral campaign. That evidence thus established that the city knowingly and purposely violated civil service laws and rules to place the successor in the position occupied by the employee and demonstrated animus towards the employee. That showing was more than sufficient to support a grant of back pay and counsel fees as authorized by N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Morris, CSC Docket No. 2013-2927, 2013 N.J. CSC LEXIS 758, Final Administrative Decision (September 4, 2013).

A police officer who was indefinitely suspended from his position due to unspecified criminal charges and administrative charges, all of which ultimately dismissed, was entitled to back pay, benefits and seniority for some of the period of the suspension. First, the city's claims that the officer was not entitled to any back pay on the basis that he did not mitigate his damages were belied by the totality of the circumstances, which was the standard to be applied per N.J.A.C. 4A:2-2.10(d)4iv, because the officer was most unlikely to be able to secure substitute employment given the nature of the charges against him. However, the officer was not entitled to counsel fees pursuant to N.J.A.C. 4A:2-2.12(f), which authorized an award of counsel fees for representation at the departmental level for appeals of major disciplinary actions which were presented to the Civil Service Commission. Here, because the disciplinary charges were dismissed following the departmental hearing, the instant matter did not originally involve an appeal to the Commission following a departmental hearing where major disciplinary charges were upheld and fees were properly denied. In re Bowman, Newark, CSC Docket No. 2013-1085, 2013 N.J. CSC LEXIS 815, Final Administrative Determination (August 19, 2013).

The Civil Service Commission (CSC) adopted the findings of fact by an Administrative Law Judge (ALJ) to the extent that they rejected certain charges against a police officer on which the appointing authority had predicated its action removing the officer from her position, but it rejected the ALJ's action on the issue of whether the police officer had accurately reported an incident and instead concluded that the officer's characterization of the incident as solely verbal was inappropriate. Given how important it is that a law enforcement officer's report be full, accurate and detailed, the CSC concluded that the record supported a finding against the officer on that claim. That said, given the officer's good record with the department since her appointment in 2005, a five-day suspension was a proper penalty, and the officer was entitled to back pay, benefits and seniority per N.J.A.C. 4A:2-2.10 and a proportionally-determined award of counsel fees under N.J.A.C. 4A:2-2.12 (adopting in part and rejecting in part 2013 N.J. AGEN LEXIS 102). In re Brandis Puryear, CSC Dkt. No. 2013-285, OAL Dkt. No. CSV 11114-12, 2013 N.J. CSC LEXIS 476, Final Decision (August 15, 2013).

Though the Civil Service Commission (CSC) accepted the findings of fact and conclusions contained in an Initial Decision of an Administrative Law Judge disposing of the appeal of an assistant family service worker challenging his removal for various reasons including misuse of State property including motor vehicles, the CSC modified the removal to a 120-day suspension. However, because the CSC, in a separate decision, had sustained the agency's release of the worker at the end of his working test period, the worker was not entitled to mitigated back pay, benefits and seniority per N.J.A.C. 4A:2-2.10. Nor was he entitled to an award of counsel fees under N.J.A.C. 4A:2-2.12(a). Even though the CSC had dismissed some of the charges against the worker, it had sustained other serious charges and had imposed major discipline. Because the worker had not prevailed on all or substantially all of the primary issues of the appeal, no award of counsel fees was authorized. In re Shawn Pressley, OAL Dkt. No. CSV 05761-2012, 2013 N.J. CSC LEXIS 475, Final Decision (August 15, 2013).

The Civil Service Commission (CSC) upheld the determination of an Administrative Law Judge (ALJ) sustaining an appointing authority's action in suspending a county corrections officer for 132 working days based on the officer's conduct in assaulting his ex-partner during a confrontation about child custody, but rejected findings relating to the removal of the officer from duty for refusing to answer questions posed by a psychologist who, at the request of the appointing authority, was to determine whether the officer was fit for duty. Though the ALJ had concluded that the officer was not properly removed on that basis and had also awarded, per N.J.A.C. 4A:2-2.12, 75% of the officer's counsel fees, the CSC concluded that the officer could not be returned to duty until an appropriate psychological evaluation showed that he was fit for duty. It also disagreed with the ALJ's award of counsel fees and ordered that any such award was not only contingent on other factors but could not exceed 50% of the cost thereof (adopting in part and rejecting in part 2013 N.J. AGEN LEXIS 99). In re Ah'Kaleem Ford, Hudson Cnty., CSC Dkt. Nos. 2012-3290 and 2013-1158, OAL Dkt. Nos. CSV 07692-12 and CSR 15066-12 (Consolidated), 2013 N.J. CSC LEXIS 474, Final Decision (August 15, 2013).

Public employee who won a jury verdict on claims that certain disciplinary matters that had been brought against him were retaliatory in nature and thus violated the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq., was entitled to award of counsel fees as permitted by N.J.A.C. 4A:2-2.12(a) because he prevailed on his claim in the N.J. Superior Court. The award of such fees did not violate any order of the Superior Court and was otherwise proper. In re Joseph Napoleone, CSC Dkt. No. 2013-3243, 2013 N.J. CSC LEXIS 481, Final Decision (August 7, 2013).

A county's determination that a county correction officer was properly allowed to resign not in good standing, thus to be removed from her position, on the ground that her excessive unauthorized absences constituted an abandonment of her position was rejected by the Civil Service Commission, as was the recommendation of an Administrative Law Judge (ALJ) that the discipline be modified to a 30-day working suspension, though the Commission found merit in the ALJ's determination that the county should have considered the officer's request for a leave of absence during which she could address some chronic medical issues. Given these facts, and as permitted by N.J.A.C. 4A:2-2.9(d), the penalty imposed by the county was properly modified to a 60-working day suspension. Though the officer thus was entitled to back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, she was not entitled to counsel fees per N.J.A.C. 4A:2-2.12(a) because she had been found guilty of the charges and had only prevailed on her challenge to the penalty imposed therefor. In re Linda Tisby, Camden Cnty., CSC Dkt. No. 2013-1166, OAL Dkt. Nos. CSV 16033-12 and CSR 1202-13, 2013 N.J. CSC LEXIS 580, Final Decision (July 22, 2013).

Finding by an administrative law judge that a 20-day suspension imposed on a 17-year employee based on her handling of a particular client who needed a Spanish-speaking interpreter was unreasonable and unwarranted was approved and adopted by the Civil Service Commission. The weight of the evidence did not support the appointing authority's claim, per N.J.A.C. 4A:2-2.3(a), that the employee had failed to perform her duties or that she was insubordinate, engaged in conduct that was unbecoming a public employee, neglected her duties or other violated any application rule or regulation. Moreover, the authority's inability to adduce any evidence on some of the charges brought against the employee supported a finding that the institution of formal disciplinary proceedings was unreasonable, by reason of which the employee was entitled to an award of counsel fees per N.J.A.C. 4A:2-2.12, reinstatement with back pay, seniority and all other affected benefits. In re Sandra Matthews, Essex Cnty., Dep't of Citizen Servs., CSC Dkt. No. 2012-1627, OAL Dkt. No. CSV 15052-11, 2013 N.J. CSC LEXIS 656, Final Decision (June 26, 2013).

Failure on the part of an appointing authority to establish that a police officer was properly suspended for 15 calendar days and demoted afforded grounds for a determination by the Civil Service Commission that the police officer was entitled to back pay, benefits, and seniority

per N.J.A.C. 4A:2-2.10. However, the office was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) as a fee award is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. Here, because the Commission sustained the charges, it cannot be said that the officer prevailed on all or substantially all of the primary issues of the appeal. In re John Venables, Jr., City of Camden, CSC Dkt. No. 2010-1283, OAL Dkt. No. CSV 10418-09, 2013 N.J. CSC LEXIS 610, Final Decision (June 26, 2013).

Civil Service Commission awarded counsel fees pursuant to N.J.S.A. 11A:2-22 and N.J.A.C. 4A:2-2.12(a) for his representation of a police officer whose removal was reversed. The Commission agreed with the appointing authority's argument that the attorney was not entitled to collect fees for any period of time when he was not the officer's attorney of record, but it did not agree that a fee agreement existed settling the hourly rate to be charged when there was no substantive evidence of that agreement. In re Richard Bell, CSC Dkt. No. 2012-540, 2013 N.J. CSC LEXIS 564, Final Decision (June 26, 2013).

Correction officer was not entitled to an award of counsel fees under N.J.A.C. 4A:2-2.12(a). While the penalty against him was modified and one of the charges against him dismissed, the Civil Service Commission sustained the remaining charges and imposed major discipline. Thus, the officer did not prevail on all or substantially all of the primary issues of the appeal. In re Alexander Loizos, Dep't. of Corr., CSC Dkt. No. 2013-1009, 2013 N.J. CSC LEXIS 618, Civil Service Comm'n Decision (June 5, 2013).

When a youth worker failed to report the use of two physician-prescribed medications, he violated the policy of the Mercer County's Drug and Alcohol Free Workplace Program, and a 60-day suspension rather than removal was appropriate. However, he was only entitled to mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 from his removal date until the date that all youth workers were laid off due to the closure of the youth detention facility. He was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) because one of the charges against him was sustained. In re Robert Zorn, Mercer County, CSC Dkt. No. 2011-404, 2013 N.J. CSC LEXIS 242, Civil Service Comm'n Decision (May 3, 2013).

Though the Civil Service Commission accepted and approved a decision of an administrative law judge (ALJ) sustaining an appointing authority's suspension of a senior correction officer for incompetency or failure to perform duties, leaving his assigned work area without permission, and violating procedures and regulations involving safety and security, the ALJ's reduction, from 120 days to 30 days, of the length of the suspension meant that the officer was entitled to back pay, benefits and seniority credit for the 90 day period of the suspension that had been disapproved. However, the officer was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a), because such an award is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. For these purposes, the "primary issue" in any disciplinary appeal concerns the merits of the charges, not whether the penalty imposed as a result thereof was appropriate. Applying that rule here, because the modification of the penalty imposed on the officer did not affect the findings sustaining the underlying charges, the officer did not prevail on "all or substantially all of the primary issues" and was not entitled to an award of legal fees (adopting Initial Decision). In re Brett Schmidt, Bayside State Prison Dep't of Corr., OAL Dkt. No. CSV 14759-11, 2013 N.J. CSC LEXIS 365, Final Agency Action (May 1, 2013).

Though the Civil Service Commission approved the findings of fact made by an administrative law judge (ALJ) to the effect that the former employee, a county road repairer, was properly disciplined for failing to follow the county's drug and alcohol policy, it rejected the ALJ's determination that the charge of "unbecoming conduct" had not been established and so ruled. That and other factors were considered by the Commission in rejecting the ALJ's recommended penalty, which was a 120 working day suspension, and in imposing a six working day suspension. And while the employee thus would be entitled to mitigated back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, he was not entitled to counsel fees per N.J.A.C. 4A:2-2.12(a) as the employee did not prevail on all or substantially all of the primary issues in the appeal, which was the prerequisite to an award of fees. In re James Gillespie, Cnty. of Cape May, OAL Docket No. CSV 4752-12, 2013 N.J. CSC LEXIS 353, Final Agency Action (April 17, 2013).

Recommendation made by an Administrative Law Judge (ALJ) that an employee of the Department of Human Services was properly disciplined for having an altercation with another employee was approved while the ALJ's recommendation that the sanction of removal imposed by the Department be modified to a three-month suspension was rejected in favor of a four-month suspension, adjudged by the Civil Service Commission to be a proportionate penalty. Though the modification in the penalty meant that the employee would be entitled to back pay, benefits and seniority for the period following the four-month suspension until her reinstatement, the employee was not entitled to counsel fees under N.J.A.C. 4A:2-2.12. In re Wanda Hunt, Dep't of Human Servs., OAL Docket No. CSV 8511-2012, 2013 N.J. CSC LEXIS 342, Final Agency Action (April 17, 2013).

Though the Civil Service Commission approved a recommendation made by an administrative law judge (ALJ) that some of the charges leveled against the employee, a laborer with a city utility authority, were properly rejected but that "other sufficient cause" for discipline had been shown, the Commission disagreed with the penalty recommended by the ALJ and concluded, upon de novo review, that a 10 working day suspension was properly imposed under all of the facts and circumstances of the case. Also, while the laborer thus was entitled to mitigated back pay, benefits and seniority per N.J.A.C. 4A:2-2.10, the laborer was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a), because such an award is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action, and that was not the case here. In re Scott Haynes, OAL Docket No. CSV 4367-12, 2013 N.J. CSC LEXIS 338, Final Agency Action (April 17, 2013).

Though the Civil Service Commission accepted and approved a decision of an administrative law judge (ALJ) modifying an appointing authority's order removing a senior correction officer from his position and instead imposing a 120 working day suspension, the officer was entitled to back pay, benefits and seniority credit for the period after the 120 day suspension was over until the date of actual reinstatement. However, the officer was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) because such an award is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. For these purposes, the "primary issue" in any disciplinary appeal concerns the merits of the charges, not whether the penalty imposed as a result thereof was appropriate. Applying that rule here, the modification of the penalty did not affect the findings sustaining the underlying charges, and that meant the officer in fact did not prevail on "all or substantially all of the primary issues." That meant that he was not entitled to an award of legal fees (adopting Initial Decision). In re Zygmunt Krawczyk, Juvenile Justice Comm'n, OAL Dkt. No. CSR 10047-12, 2013 N.J. CSC LEXIS 164, Final Agency Action (April 17, 2013).

Employee's failure to file, per N.J.A.C. 4A:2-1.6(a), a timely request that the Civil Service Commission reconsider its prior decision returning the employee to a prior position on a finding that the Department of Corrections' action in reassigning him was improper because it had not initiated appropriate disciplinary proceedings prior to the reassignment, which reconsideration presumably would have sought additional relief in the form of an award of counsel fees award as permitted by N.J.A.C. 4A:2-2.12, afforded grounds for the denial of the employee's request for fees, nor did the employee articulate any grounds on which the 45 day deadline for the filing of a reconsideration request was properly extended. In re Robert Trent, Department of Corrections, CSC Docket No. 2012-2923, 2013 N.J. CSC LEXIS 203, Final Decision (March 8, 2013).

After a police officer was suspended for 30 days on charges of improperly allowing the private tow of a disabled vehicle, failing to notify his dispatcher, and giving false statements during the investigation, the Civil Service Commission modified the suspension to an

official written reprimand and granted the officer back pay, benefits, and seniority under N.J.A.C. 4A:2-2.10. Notwithstanding his failure to follow the policy regarding utilization of a City-contracted tow, the officer's actions were arguably reasonable given that the vehicle clearly presented a road hazard and warranted a significant mitigation of the penalty. Further, the Commission determined that the officer was not guilty of the other charges and he did not have a significant disciplinary history. The officer was also entitled to an award of counsel fees in the amount of 25 percent of services under N.J.A.C. 4A:2-2.12 because he prevailed on all but one charge. In re Daniel Caetano, City of Newark, OAL Dkt. No. CSV 13338-11, 2013 N.J. CSC LEXIS 109, Civil Service Comm'n. Decision (March 6, 2013).

Administrative law judge's recommendation of the reduction of the 30-day working day suspension of a county corrections officer on charges of incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, and other sufficient cause to a 5-day suspension was improper. After concluding that a 20-day working day suspension was the appropriate penalty, given the corrections officer's failure to comply with the orders of superior in the paramilitary setting of a correctional facility, the Civil Service Commission granted the corrections officer 10 days of back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, he was not entitled to counsel fees under N.J.A.C. 4A:2-2.12(a) because he did not prevail on all or substantially all of the primary issues of the appeal. He was found guilty of the charges and the Commission only modified the penalty. In re Vincent De Ponte, Monmouth Cnty., OAL Dkt. No. CSV 5497-12, 2013 N.J. CSC LEXIS 31, Civil Service Comm'n. Decision (March 6, 2013).

Appointing authority's obligation under N.J.A.C. 4A:2-2.12(d) to pay attorney's fees incurred by counsel who represented a public employee found to have been wrongfully removed from his position as a county correction sergeant was governed by the $125 hourly billing rate specified in the New Jersey State Policemen's Benevolent Association, Inc., Legal Protection Plan because, contrary to the attorney's claims, his execution of an Attorney Acknowledgement of Participation in the Plan specifying that rate controlled. Moreover, while N.J.A.C. 4A:2-2.12(d) granted the Civil Service Commission the discretion to assess fees based on the circumstances of a particular case, no compelling reason had been given for why it should award fees based on an hourly rate that exceeded that prescribed by the Plan. In re Mark Lyszczak, CSC Docket No. 2012-1651, 2013 N.J. CSC LEXIS 119, Final Decision (February 20, 2013).

After an administrative law judge (ALJ) upheld the charge of incompetency, inefficiency, or failure to perform duties against a county correction officer who left an inmate's cell door open and failed to note or report unusual incidents or imminent behavior of an inmate on suicide watch, the ALJ erred in recommending a 30-day working day suspension instead of removal. The Civil Service Commission imposed a 90 working day suspension instead of removal, which entitled the officer to mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10. However, the officer was not entitled to an award of counsel fees under N.J.A.C. 4A:2-2.12 because he did not prevail on the primary issue on appeal, which was the merit of the charges, not the appropriateness of the penalty imposed. In re Wade Rosenberger, CSC Dkt.. No. 2012-3046, 2013 N.J. CSC LEXIS 129, Civil Service Comm'n Decision (January 23, 2013).

Where a police officer was retired due to a disability and the appointing authority amended the Final Notice of Disciplinary Action to reflect his retirement and did not pursue the disciplinary charges against him, the officer's appeal of his discipline was moot. However, the charges against him were not dismissed and there was no adjudication on the merits of the charges or the penalty levied against him; therefore, he was not entitled to attorney fees since he did not prevail on all or substantially all of the primary issues in an appeal of a major disciplinary action. In re Bowles, OAL Dkt. No. CSV 3256-09, 2009 N.J. AGEN LEXIS 816, Final Decision (July 22, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 613) adopted, which concluded that while the appointing authority had withdrawn some of the charges against a township police officer, the Merit System Board had sustained the other serious charges against the officer resulting in his removal from office, and the officer's request for counsel fees lacked merit since he had not prevailed on all or substantially all of the primary issues of his appeal. In re Hawkins, OAL Dkt. No. CSV 4469-05, 2008 N.J. AGEN LEXIS 1222, Final Decision (December 3, 2008).

Correction officer was not entitled to counsel fees although the penalty against the officer was modified from removal to a 60-day suspension; the officer did not prevail on all or substantially all of the primary issues in the appeal because two of the charges against the officer were sustained and major discipline was imposed. In re Pettiford, OAL Dkt. No. CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

Disciplinary action was not properly taken against two correctional officers on a county's claim of incompetence, inefficiency or failure to perform duties per N.J.A.C. 4A:2-2.3(a)1; neglect of duty per N.J.A.C. 4A:2-2.3(a)7, or other sufficient cause per N.J.A.C. 4A:2-2.3(a)11, which cause was claimed to be their failure to properly report and incident between an inmate and another officer and neglecting to appropriately handle that situation. First, the officers were not responsible to directly handle a complaint about another officer on another shift because neither of the disciplined officers supervised the officer against whom the complaint had been lodged. Second, there was no showing that the officers attempted to evade their responsibility once they became aware of the complaint but they used common sense and discretion in evaluating it and in reporting the claim, which did not include a claim that the inmate had been injured, to the charged officers' lieutenant. That verbal report was all that was required; the facility rules required that there be a verbal or a written report, not both. Nor were the charged officers required to investigate the complaint; again, their responsibility was to report the complaint to their supervisor, which they did. Because the officers were not subject to discipline for their conduct, moreover, they were entitled to receive back pay, benefits and counsel fees resulting from the disciplinary proceedings per N.J.A.C. 4A:2-2.10 and N.J.A.C. 4A:2-2.12. In re Grupico, Burlington Cty., and in re McLeod, Burlington Cty., OAL DKT. NO. CSV2489-06, OAL DKT. NO. CSV2490-06 (CONSOLIDATED), AGENCY DKT. NOS. 2006-1621-I and 2006-1622-I (CONSOLIDATED), 2007 N.J. AGEN LEXIS 1302, Initial Decision (October 4, 2007).

Employee was entitled to an award of partial counsel fees where she prevailed on one of two charges against her, including an allegation of conduct unbecoming a public employee; the remaining charge of neglect of duty for failure to place $5 in the proper place was not egregious. In re Payton, OAL Dkt. No. CSV 7740-05, 2007 N.J. AGEN LEXIS 1168, Merit System Board Decision (January 17, 2007).

Charge of possession of controlled, dangerous substance was not supported by credible evidence and required public employee's reinstatement after removal. Ramos v. Department of Corrections, 95 N.J.A.R.2d (CSV) 413.

Removal of plant operator not justified; charges against him were indefinite and inconsistent with job requirements. Onori v. City of Burlington Department of Public Works, 95 N.J.A.R.2d (CSV) 53.

Police officer was entitled to reimbursement of the expenses of his defense when allegations against the officer were dismissed. Black v. Lakehurst Borough Police Department, 94 N.J.A.R.2d (CSV) 35.

Reasonable and partial attorney fee award. Gill v. State Dept. of Health, 92 N.J.A.R.2d (CSV) 142.

Reprimand and ten days' suspension would be reversed and attorney fees would be awarded. Neal v. Police Dept., City of New Brunswick, 92 N.J.A.R.2d (CSV) 52.

Officer was entitled to unmitigated back pay but was not entitled to attorney fees or interest. N.J.S.A. 11A:11-5. Franklin v. City of Atlantic City, 91 N.J.A.R.2d (CSV) 71.

Appellant, removed from employment and later reinstated with back pay, denied counsel fees; appellant entitled to award of 30 vacation days

(citing former N.J.A.C. 4:1-5.6). Harrington v. Dep't. of Human Services, 11 N.J.A.R. 537 (1989).

4A:2-2.13 Removal appeals of certain law enforcement officers and firefighters

(a) For purposes of this section:

1. "Law enforcement officer" or "officer" is defined as an individual employed as a permanent, full-time member of a State, county, or municipal law enforcement agency who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State and statutorily required to successfully complete a training course approved by, or certified as substantially equivalent to such an approved course, by the Police Training Commission. See N.J.S.A. 52:17B-66 et seq. With the exception of the Juvenile Justice Commission, which is covered by this definition, the Department of Law and Public Safety shall not be considered a law enforcement agency for purposes of this definition.

2. "Firefighter" is defined as a full-time, paid firefighter employed by a public fire department as provided in N.J.S.A. 40A:14-200.

3. "Appellant" refers to a "law enforcement officer" or "firefighter" as defined in (a)1 and 2 above.

4. "Removal," "removal date," "and "removal effective date" shall mean the first date on which the law enforcement officer or firefighter is separated from employment without pay.

(b) If the law enforcement officer or firefighter requests a departmental hearing regarding his or her removal in accordance with N.J.A.C. 4A:2-2.5, the appointing authority shall conduct a hearing within 30 days of the removal's effective date, unless:

1. The officer or firefighter agrees to waive his or her right to the hearing; or

2. The officer or firefighter and the appointing authority agree to an adjournment of the hearing to a later date.

(c) The appointing authority shall issue a Final Notice of Disciplinary Action within 20 days of the hearing and serve the Final Notice to the appellant either by personal service or certified mail. If the appointing authority does not hold a hearing as required in (b) above, the appointing authority shall issue a Final Notice within 30 days of the removal effective date.

(d) The officer or firefighter shall have 20 days from the date of receipt of the Final Notice to appeal the removal. Receipt of the Final Notice on a different date by the appellant's attorney or negotiations representative shall not affect this appeal period. If the appellant does not receive the Final Notice as required by (c) above, he or she shall file an appeal of removal within a reasonable time. The officer or firefighter shall file the appeal simultaneously with the Office of Administrative Law and the Civil Service Commission using the Law Enforcement Officer and Firefighter Removal Appeal Form in the Appendix to this section. If the appellant files an appeal within 20 days of receipt of the Final Notice with the Civil Service Commission but not with the Office of Administrative Law, or the appellant files an appeal within 20 days of receipt of the Final Notice with the Office of Administrative Law but not with the Commission, the appeal shall still be considered timely. However, if the appellant fails to submit the appeal within 20 days to either the Office of Administrative Law or the Commission, the appeal shall be considered untimely and the Commission shall dismiss the appeal. See N.J.A.C. 1:4B for processing of the appeal at the Office of Administrative Law.

1. If the appellant fails to provide the information and documents required by the Law Enforcement Officer and Firefighter Removal Appeal Form, after notice of and reasonable opportunity to correct the deficiency, the Commission may dismiss the appeal.

(e) Once the administrative law judge at the Office of Administrative Law who is presiding over an officer or firefighter's removal appeal renders an initial decision, the Office of Administrative Law shall immediately transmit the decision to the Commission for review.

(f) The Commission shall complete its review and issue its final administrative determination regarding the appellant's removal appeal within 45 days of the Commission's receipt of the administrative law judge's initial decision. If the Commission does not issue its final administrative determination within 45 days, the administrative law judge's initial decision shall be deemed the final administrative determination, except that the Commission may, at its discretion, extend its review period by no more than an additional 15 days. If the Commission does not issue a final administrative determination by the end of the additional 15-day period, the administrative law judge's initial decision shall be deemed the final administrative determination, unless, for good cause, the Chairperson of the Commission provides a signed order of extension to the Director of the Office of Administrative Law and serves copies on all affected parties.

(g) The Commission's final administrative determination shall be rendered within 180 calendar days from the date on which the officer or firefighter was initially suspended without pay, except that:

1. This 180-day limit shall not apply to disciplinary charges related to a pending criminal investigation, nor to disciplinary charges which allege conduct that would constitute a violation of criminal law and which seek removal from employment. See N.J.S.A. 40A:14-201(a).

(h) If the Commission fails to render a final administrative determination of an appeal of an officer's or firefighter's removal from employment within the required 180 days, the appellant shall begin receiving the base salary that he or she

was receiving at the time of his or her removal and shall continue to receive such salary until the Commission renders a final administrative determination, provided, however, that the following days shall not be counted toward the 180-day period:

1. The period between the date of removal and the date on which the officer or firefighter requests a departmental hearing;

2. The period of agreed-upon adjournment of a departmental hearing;

3. The period between the date of removal and the date on which the appellant appeals a Final Notice of Disciplinary Action with the Office of Administrative Law and the Civil Service Commission;

4. If applicable, the gap in time between the date of timely filing of an appeal with the Office of Administrative Law and the date of filing of the appeal with the Civil Service Commission;

5. If applicable, the gap in time between the date of timely filing with the Civil Service Commission and the date of filing of the appeal with the Office of Administrative Law;

6. The period of time for which appellant or his or her attorney or negotiations representative requests and is granted postponement of a hearing or other delay;

7. The period of time during which the appellant or his or her attorney or negotiations representative causes by his or her actions a postponement, adjournment or delay of a hearing;

8. The period of time for which the appellant or his or her attorney or negotiations representative agrees with the appointing authority to a postponement or delay of a hearing;

9. The period of time during which the administrative law judge or the Civil Service Commission, for good cause, postpones or delays a hearing;

10. The period of time for which the administrative law judge has been granted an extension for filing an initial decision in accordance with N.J.A.C. 1:1-18.8; and

11. The period of time for which the Commission has extended its period of review of the administrative law judge's initial decision in accordance with (f) above.

(i) The following are special circumstances which may affect the receipt of the appealing officer's or firefighter's base salary after the 180-day period:

1. If the appellant or the appellant's representative requests and is granted, or otherwise causes by his or her actions, the postponement, adjournment, or delay of a hearing, the appellant shall not receive full pay during the period of postponement, adjournment, or delay of a hearing.

2. The appellant shall not continue to receive his or her base salary if the administrative law judge's initial decision recommends that the appellant's appeal be denied, unless and until such time as the Civil Service Commission renders a final administrative decision rejecting the administrative law judge's recommendation and ordering the appellant's reinstatement to employment.

3. If the administrative law judge's initial decision recommends reversal of the removal, or that the officer or firefighter receive discipline other than removal, the appellant shall receive his or her base salary on the date provided in the administrative law judge's initial decision, provided, however, that if the appellant is already receiving his or her base salary at the time of the administrative law judge's initial decision, the appellant shall continue to receive such base salary.

4. If the Civil Service Commission grants the officer's or firefighter's appeal, the appointing authority shall immediately reinstate the appellant to employment, and the appellant shall receive his or her base salary, as well as, within 60 days of the issuance of the Commission's decision, all back pay, benefits, seniority, and counsel fees that may be due in accordance with N.J.A.C. 4A:2-2.10 and 2.12.

5. If the officer or firefighter appeals a Civil Service Commission decision upholding his or her removal to the Superior Court, Appellate Division, the appellant shall not be entitled to receive his or her base salary.

6. If the appointing authority appeals the Civil Service Commission decision to the Superior Court, Appellate Division, the officer or firefighter shall continue to receive his or her base salary during the pendency of the appeal.

(j) The following relates to an officer's or firefighter's obligation to reimburse his or her base salary to the appointing authority:

1. If the Civil Service Commission denies the officer's or firefighter's appeal, the appellant shall reimburse the appointing authority all pay he or she has received during the period of appeal. If the officer or firefighter fails to do so, the appointing authority may have a lien for the amount owed on any and all property and income to which the appellant has or will have an interest in, in accordance with N.J.S.A. 40A:14-205(b).

2. If the appellate court affirms the appointing authority's removal of the officer or firefighter, the appellant shall reimburse the appointing authority for all pay he or she has received during the period of appeal. If the officer or firefighter fails to do so, the appointing authority may have a lien for the amount owed on any and all property and income to which the appellant has or will have an interest in, in accordance with N.J.S.A. 40A:14-206(b).

APPENDIX

OFFICE OF ADMINISTRATIVE LAW/CIVIL SERVICE COMMISSION
LAW ENFORCEMENT OFFICER & FIREFIGHTER REMOVAL APPEAL FORM

Use this form to submit an appeal of removal of a law enforcement officer or firefighter to the Office of Administrative Law and Civil Service Commission

1. Employee Name: _____

Address: _____

_____
(City) (State) (Zip Code)

Telephone: (___) ___ - _____ Email: _____

2. The following information **MUST** be provided:

Date of incident subject to removal: _____

Date employee served with Final Notice of Disciplinary Action: _____

3. You **MUST** provide BOTH of the following:

Preliminary Notice of Disciplinary Action and Final Notice of Disciplinary Action

4. Give a copy of this form and attachments to your Personnel Officer/Employer - Representative

Employing Agency Name: _____

Personnel Officer's/Employer Representative's Name: _____

Address: _____

_____
(City) (State) (Zip Code)

Telephone: (___) ___ - _____ Fax# (___) ___ - _____

Email: _____

5. If you will be represented by a lawyer or union representative at the hearing, please complete:

Representative Name: _____

Union or Law Firm: _____

Address: _____

_____
(City) (State) (Zip Code)

Telephone: (___) ___ - _____ Fax# (___) ___ - _____

Email: _____

6. Appointing Authority Attorney for Appeal, if known:

Name: _____

Address: _____

_____

(City) (State) (Zip Code)

Telephone: (___) ___ - _____ Fax# (___) ___ - _____

Email: _____

Note: Your appeal will not be processed unless this appeal form **with attachments** is completed, signed and submitted to the Office of Administrative Law **and** the Civil Service Commission. A copy of this appeal **must** also be served upon the appointing authority (your employer). You **must** submit this appeal to both the Office of Administrative Law and the Civil Service Commission within twenty (20) days after you receive the Final Notice of Disciplinary Action. If your appeal is not submitted within twenty (20) days, it **will be dismissed.** You must seek alternate employment; failure to do so may reduce the back pay award.

Pursuant to N.J.S.A. 11A:4-1.1 there is a $20 fee for disciplinary appeals. The filing fee of $20 must be submitted to the Civil Service Commission along with the appeal form. Payment must be made by check or money order only, payable to NJCSC. Persons receiving public assistance pursuant to N.J.S.A. 44:8-107 et seq., N.J.S.A. 44:7-85 et seq., or N.J.S.A. 44:10-55 et seq., and veterans as defined by N.J.S.A. 11A:5-1 et seq., are exempt from this appeal fee.

SIGNATURE

EMPLOYEE/EMPLOYEE REPRESENTATIVE **DATE**

Mail to: Civil Service Commission
Attention: Hearings Unit-Unit H
PO Box 312
Trenton, NJ 08625-0312

AND

Office of Administrative Law
Attention: Clerk's Office
Direct Filing
33 Washington Street
Newark, New Jersey 07102

Hand Deliver: Civil Service Commission
3 Station Plaza
44 South Clinton Avenue
Trenton, NJ 08625

AND

Office of Administrative Law
Attention: Clerk's Office
Direct Filing
7th Floor
33 Washington Street
Newark, New Jersey 07102

Special new rule, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Readopted new rule, R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.
Amended by R.2012 d.008, effective January 3, 2012.
See: 43 N.J.R. 2396(a), 44 N.J.R. 65(b).
Added (d)1; and rewrote the appendix.

Case Notes

Pursuant to N.J.A.C. 4A:2-1.2(c), a police officer was not entitled to a stay and interim relief of her removal on charges of chronic or excessive

absenteeism, neglect of duty, conduct unbecoming a public employee, incompetency, inefficiency or failure to perform duties; insubordination, and other sufficient cause. Because there were a number of disputes regarding material facts, the Civil Service Commission would not attempt to determine the sufficiency and credibility of the evidence based on an incomplete written record. The record was not clear as to when an investigation was started, or when sufficient information was obtained to bring such charges. Thus, there was not a sufficient basis to dismiss any administrative charges as a violation of the 45-day rule. The Commission would not determine if the penalty was appropriate. While the Commission sympathized with the officer's financial situation, the harm that she was suffering while awaiting her hearing was purely financial and could be remedied by the granting of back pay should she prevail in the appeal. If the matter was not concluded within the time period prescribed in N.J.A.C. 4A:2-2.13(g), the officer would be entitled to begin receiving her regular pay pursuant to N.J.A.C. 4A:2-2.13(h). In re Tamieka Dwyer, City of East Orange, CSC Dkt. No. 2014-488, 2013 N.J. CSC LEXIS 1029, Decision of Civil Service Commission (November 8, 2013).

Police officers' appeals were erroneously processed under the provisions of N.J.A.C. 4A:2-2.13, which requires the Commission to render final administrative determinations within 180 calendar days from the date on which a law enforcement officer or firefighter is initially suspended without pay; the officers had not completed the required 12-month working test period and were not permanent employees. In re Reid, OAL Dkt. No. CSR 7477-10 and CSR 7481-10, 2011 N.J. CSC LEXIS 754, Final Decision (April 20, 2011).

The 180-day time frame in N.J.A.C. 4A:2-2.13 commenced on June 17, 2009, the date on which a county correction officer was immediately suspended from employment, with deductions of time for the period between the date of his removal and the date of the filing of his appeal, as well as the time during which the officer requested an adjournment of a hearing. The record reflected that the hearing in this matter was originally scheduled for November 2, 2009, but it was adjourned until January 8, 2010, at the officer's request; thus, the 181st date was March 31, 2010 (July 27, 2009 to November 2, 2009 (appeal) + January 8, 2010 to March 31, 2010 (adjournment) = 180 days). In re Wolff, OAL Dkt. No. CSR 6228-09, 2010 N.J. AGEN LEXIS 693, Civil Service Comm'n Decision (February 24, 2010).

APPENDIX

MAJOR DISCIPLINARY APPEAL FORM

New Jersey Civil Service Commission - Division of Appeals and Regulatory Affairs

Mail completed form to: Civil Service Commission, Unit H, P.O. Box 312, Trenton, NJ 08625-0312.

1. Your Name: _____

Address: _____

_____ Daytime Telephone: (___) _____

(City) (State) (Zip Code)

Email: _____

2. Will you be represented by a lawyer or union representative at the hearing? ☐ YES ☐ NO
If YES, complete Section 2.

Representative Name: _____

Union or Law Firm: _____

Address: _____

_____ Telephone: (___) _____

(City) (State) (Zip Code)

Email: _____

3. Give a copy of this form and attachments to your Personnel Officer/Employer Representive
Personnel Officer's/
Employer Representive's Name: _____

Address: _____

_____ Telephone: (___) _____

(City) (State) (Zip Code)

Email: *(if known)* _____

4. Your or your representative's signature

▶ _____ Date: _____

5. **ATTACH the following to this form:**

1. Preliminary Notice of Disciplinary Action.
2. Final Notice of Disciplinary Action.
3. Check or Money Order for $20.00 payable to NJCSC.

NOTE: Your appeal will NOT be processed unless Sections 1-4 are completed and the three documents listed in Section 5 are included. **Pursuant to P.L. 2010, c. 26, effective July 1, 2010 there is a $20 fee for disciplinary appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC and sent to the CSC, Unit H, P.O. Box 312, Trenton, N.J. 08625. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 *et seq.*), P.L.1973, c. 256 (C.44:7-85 *et seq.*), or P.L.1997, c.38 (C.44:10-55 *et seq.*), and veterans as defined by N.J.S.A.11A:5-1 *et seq.* are exempt from this appeals fee.** If you have been suspended or removed, you should seek alternate employment. In case your penalty is reduced, failure to seek alternate employment could reduce your back pay award.

DPF-714 revised 05-18-15 ▶ **Hand Deliver:** 3 Station Plaza, 44 South Clinton Ave., Trenton NJ

New Rule, R.1998 d.518, effective November 2, 1998.
See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).
Repeal and New Rule, R.2012 d.008, effective January 3, 2012.
See: 43 N.J.R. 2396(a), 44 N.J.R. 65(b).
Repeal and New Rule, R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
Appendix was "Major Disciplinary Appeal Form".

SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

4A:2-3.1 General provisions

(a) Minor discipline is a formal written reprimand or a suspension or fine of five working days or less.

(b) A grievance is an employee complaint regarding any term or condition that is beyond the employee's control and is remedial by management.

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

(d) This subchapter shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances.

(e) In State service, this subchapter shall only apply to:

1. Minor discipline appeals of permanent employees in the career service or persons serving a working test period. Appointing authorities may establish procedures for other employees.

2. Grievance appeals of any employees in the career or unclassified services.

(f) Grievance procedures shall not be used to address any matter for which there is another specific type of appeal to the Civil Service Commission.

(g) This subchapter shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

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 (c) and relettered old (c)-(f) as (d)-(g), with no change in text.
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (b), substituted "that" for "which"; in (f), substituted "Civil Service Commission" for "Commissioner or Board"; and in (g), substituted "This subchapter" for "These rules".

Case Notes

A police officer who accessed confidential police records without authorization was properly found, per N.J.A.C. 4A:2-2.3, to have engaged in conduct unbecoming a police officer and/or public employee, to have committed insubordination, and to have conducted personal business while on duty was properly disciplined for those violations. However, the township's action in suspending the officer for ten days was not justified, nor was the recommendation of the Administrative Law Judge (ALJ) that the officer receive an oral reprimand proper because an oral reprimand was not a form of minor discipline specified in N.J.A.C. 4A:2-3.1(a). The Civil Service Commission thereupon modified the suspension to a formal written reprimand. In re Kafton, Jackson Twp. Police Dep't, CSC DKT. NO. 2012-184, OAL DKT. NO. CSV 8824-11, 2013 N.J. CSC LEXIS 1068, Final Administrative Action (December 18, 2013).

While an Administrative Law Judge properly concluded that a correction officer did not verbally abuse inmates or other officers when, in a justifiably agitated condition, he randomly yelled in the presence of a fellow officer and inmates, and that such conduct constituted, at most, a disturbance on State property, the ALJ could not simply order that a 10-day suspension be modified to an oral reprimand. An oral reprimand was not minor discipline within the meaning of N.J.A.C. 4A:2-3.1(a); therefore, the Commission modified the officer's discipline to an official written reprimand (adopting in part and rejecting in part 2010 N.J. AGEN LEXIS 45). In re Desmond, OAL Dkt. No. CSV 8989-08, 2010 N.J. CSC LEXIS 584, Final Decision (March 10, 2010).

Appointing authority's reduction in penalty to a five-day suspension divested the Commission of jurisdiction over the matter; if there was no mechanism available to the employee to pursue a minor disciplinary action under standards and procedures established by his appointing authority or by a negotiated labor agreement, the employee could seek relief through the Law Division of the Superior Court of New Jersey. In re Poeppel, OAL Dkt. No. CSV 6153-08, 2009 N.J. AGEN LEXIS 1007, Final Decision (March 25, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 819) adopted, which found that where the appointing authority changed an employee's discipline from a 10-day to a five-day suspension, the matter changed from a major disciplinary action to a minor disciplinary action over which the Office of Administrative Law had no jurisdiction. In re Lewis, OAL Dkt. No. CSV 4216-07, 2008 N.J. AGEN LEXIS 547, Final Decision (January 30, 2008).

Minor disciplinary actions insufficient basis for independent removal action. Range v. Newark Board of Education, 97 N.J.A.R.2d (CSV) 700.

Petition dismissed for lack of jurisdiction. Harrison v. Buttonwood Hospital, 97 N.J.A.R.2d (CSV) 250.

4A:2-3.2 Minor discipline appeal to appointing authority: State service

(a) Where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) Employees not covered by a negotiated agreement or covered by an agreement that does not address a minor discipline appeal process shall request a departmental hearing within five days of receipt of a notice of discipline or such additional time as may be agreed to by the appointing authority.

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.

2. The burden of proof shall be on the appointing authority.

3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor Disciplinary Action form (DPF-335), unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

(c) See N.J.A.C. 4A:2-3.6 for conduct and scheduling and N.J.A.C. 4A:2-3.7 for appeals to the Civil Service Commission.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (b)3, substituted "Disciplinary" for "Discipline", and inserted "(DPF-335)"; and in (c), inserted the second occurrence of "N.J.A.C.", and substituted "appeals" for "appeal" and "Civil Service Commission" for "Board".

Case Notes

Director of county board of social services possessed final authority regarding the board's personnel and discipline decisions, as required for municipal liability under § 1983 based upon former county employee's First Amendment retaliation claims. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983; N.J.Admin. Code tit. 4A, §§ 2-2.8, 2-3.2. Marrero v. Camden County Board of Social Services, 164 F.Supp.2d 455 (D.N.J. 2001).

Although a departmental hearing on the issue of an employee's three-day suspension was conducted beyond the regulatory time period of N.J.A.C. 4A:2-3.2(b)1, there was no evidence that the delay had an adverse impact on the matter. The record reflected that the employee received notice of the discipline and a hearing was held. Thus, he had adequate notice to respond to the appointing authority's allegations. Moreover, there was no Civil Service law or rule which mandated the dismissal of the charges for procedural violations. In re Robert A Giangrasso, Dep't. of Transp., CSC Dkt. No. 2012-3463, 2013 N.J. CSC LEXIS 183, Final Decision (March 6, 2013).

4A:2-3.3 Grievance appeal to appointing authority: State service

(a) Where departmental grievance procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) An employee not covered by a negotiated agreement or covered by an agreement that does not address a grievance appeal process shall utilize the appeal procedures in this subchapter.

(c) When a grievance directly concerns and is shared by more than one grievant, the grievants may appeal as a group to the first level of supervision common to the grievants.

(d) A department may consolidate two or more grievances on the same issue and process them as a group grievance. All grievants shall be promptly notified of this action.

(e) An employee may amend a grievance during the initial step at which it is processed. Such amendment may only be made for the purpose of clarification and shall not be utilized to change the nature of the grievance or to include additional items.

(f) The burden of proof shall be on the employee.

4A:2-3.4 Grievance procedure: Step One: State service

(a) A grievance shall be presented in writing on the Grievance Procedure Form (DPF-251) to the office or individual designated by the department to process the matter. It must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;

2. State the requested remedy; and

3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date within seven days of receipt of the grievance. Such hearing or grievance meeting shall be conducted within 30 days of receipt of the grievance, unless an additional time period is agreed to by the parties.

(d) A written decision shall be rendered within 14 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a negative response.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), substituted "Grievance Procedure Form (DPF-251)" for "Department of Personnel grievance form".

4A:2-3.5 Grievance procedure: Step Two

(a) A grievant may appeal to the Department head or his or her designee within 10 calendar days of:

1. Receipt of the written decision at Step One; or

2. A lack of timely response by the department. See N.J.A.C. 4A:2-3.4(e).

(b) The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

(c) The department shall notify the employee of the scheduled hearing or grievance meeting date within 10 days of receipt of the grievance.

(d) A written decision shall be rendered within 21 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a denial of the grievance appeal.

4A:2-3.6 Conduct and scheduling of hearings and grievance meetings: State service

(a) A grievant shall be entitled to at least one hearing on a grievance prior to the conclusion of Step Two, unless the grievance is satisfactorily resolved at Step One. In addition, a department, at its option, may also schedule a grievance meeting at either Step One or Step Two of the grievance process.

(b) A department may advance a grievance to Step Two of the grievance process. Timely notice of this action shall be supplied to the grievant.

(c) The following shall apply during a hearing at the department level:

1. An employee may be represented by legal counsel, an authorized union representative or appear on his or her own behalf. An employee may also be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative;

2. Permission for a reasonable number of relevant witnesses shall be granted upon the request of the employee or his or her representative or agent;

3. The employee or his or her representative or agent shall act as a spokesperson for the grievant and one person shall act as a spokesperson for the department; and

4. The spokesperson for either party shall have the right to present evidence and examine witnesses.

(d) Any grievance meeting shall be attended only by a designated supervisor, a spokesperson for the department, the grievant, or a spokesperson in a group grievance situation, and the grievant's representative. The department may also permit the attendance of resource persons possessing direct information important to the clarification of the matter.

(e) Departmental management shall schedule minor discipline and grievance hearings or grievance meetings during the employee's regular work hours as far as possible.

(f) The employee or employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings. Such time off shall include reasonable travel time and shall not extend to any time necessary for the preparation of a grievance.

Case Notes

To the extent that a suspended senior corrections investigator raised arguments concerning the discovery process for his departmental hearing, discovery is not addressed in N.J.A.C. 4A:2-3.6. Thus, the Civil Service Commission did not have jurisdiction to address such arguments. In re Adrian Ellison, Dep't. of Corr., CSC Dkt. No. 2013-3124, 2013 N.J. CSC LEXIS 753, Final Decision (October 17, 2013).

4A:2-3.7 Appeals from appointing authority decisions: State service

(a) Minor discipline may be appealed to the Commission under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The Civil Service Commission shall review the appeal upon a written record or such other proceeding as the Commission directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the Commission will render a final administrative decision upon a written record or such other proceeding as the Commission directs.

(b) Grievances may be appealed to the Commission within 20 days of the conclusion of Step Two procedures under this subchapter or the conclusion of departmental procedures under a negotiated agreement.

1. The Commission shall review the appeal on a written record or such other proceeding as the Commission directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or Civil Service Commission grievance form and all written records and decisions established during departmental reviews; and

2. Written argument and documentation.

(d) A copy of all material submitted to the Civil Service Commission must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) In Commission reviews, the employee shall present issues of general applicability in the interpretation of law, rule, or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.

2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
In (f): Revised text to specify employee's responsibilities in presenting issues in appeals.
Added 1. and 2. regarding burden of proof.
Amended by R.2014 d.099, effective June 2, 2014.
See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).
Rewrote the section.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 61) adopted, which explained that an appointing authority has the discretion to determine whether it will seek major or minor discipline of its employee and, even after an appeal of major disciplinary action to the Board and the Board's

transmittal of the contested case to the Office of Administrative Law for hearing before an ALJ, an appointing authority has the inherent right to reduce a disciplinary penalty so that it no longer constitutes major disciplinary action and the employee no longer has a right to such a hearing; such a matter will be referred from the OAL to the Commissioner of Personnel for processing under minor disciplinary rules. In re Booker, OAL Dkt. No. CSV 6800-05, 2007 N.J. AGEN LEXIS 537, Final Decision (March 28, 2007).

Where a county correction officer grieved two minor disciplinary actions and the charges were sustained with no evidence that the officer appealed the actions further, the ALJ's decision to review the appropriateness of the "step one" and "step two" violation matters was improper, as those matters were not properly before her. In re Bowser, OAL Dkt. No. CSV 6519-06, 2007 N.J. AGEN LEXIS 356, Merit System Board Decision (March 14, 2007).

SUBCHAPTER 4. TERMINATION AT END OF WORKING TEST PERIOD

4A:2-4.1 Notice of termination

(a) An employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance shall be given written notice in person or by certified mail by the appointing authority.

(b) The notice shall inform the employee of the right to request a hearing before the Civil Service Commission within 20 days of receipt of the notice.

(c) The notice shall be served not more than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (c).
Administrative Correction to (c).
See: 25 N.J.R. 686(a).
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (b), substituted "Civil Service Commission" for "Board".

Case Notes

Evidence adduced by an employee in support of his challenge to a decision of the Department of Children and Families releasing him at the end of his working test period (WTP) for unsatisfactory performance within the meaning of N.J.A.C. 4A:2-4.1 and N.J.A.C. 4A:4-5.4(a) did not show that the decision was made in bad faith. To be sure, the employee complimented the efforts made by his supervisors. That being so, the employee did not carry his burden of proof per N.J.A.C. 4A:2-4.3(b) to show that the appointing authority had acted in bad faith, and the Administrative Law Judge's recommendation that the appeal be dismissed was approved and adopted. In re Jeremy Rodas, Dep't of Children & Families, CSC Dkt. No. 2012-3204, OAL Dkt. No. CSV 12410-12, 2013 N.J. CSC LEXIS 657, Final Decision (June 26, 2013).

New four-month working test period was granted in the title of Assistant District Parole Supervisor based on the totality of the circumstances, including the employee's satisfactory performance during the majority of the working test period and the lack of opportunity to remedy performance deficiencies brought to the employee's attention during the latter part of the working test period; the procedural irregularity caused by the fact that the working test period start date was not the same as the regular appointment date was not enough to justify granting permanent status to the employee under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Merit System Board directed the Division of Human Resource Information Services to reevaluate its practice of approving regular appointment dates that were not consistent with working test period start dates, resulting in uncertainties concerning the ending date of an employee's working test period and the time within which notice must be served under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Release at end of working test period appropriate absent employer's bad faith. Brown v. State Department of Education, 97 N.J.A.R.2d (CSV) 537.

Employee properly released at the end of working test period if poor performance assessment made in good faith. Murry v. Geraldine L. Thompson Medical Home, 97 N.J.A.R.2d (CSV) 371.

Employee's unsatisfactory performance during working test period warrants removal. Tassoni v. County of Cape May, 97 N.J.A.R.2d (CSV) 248.

Employee receiving poor evaluations terminated at end of working test period for failing to improve. Raffa v. County of Cape May, 97 N.J.A.R.2d (CSV) 203.

Employee terminated at end of working test period entitled to reinstatement if termination based on insufficient evaluations. Polk v. City of Camden Utilities Department, 97 N.J.A.R.2d (CSV) 163.

Park ranger's refusal to clean up park during working test period justifies termination. Heim v. Monmouth County, Department of Parks, 97 N.J.A.R.2d (CSV) 143.

Employee's abandonment of position during working test period justifies termination. Kilpatrick v. Department of Community Affairs, 97 N.J.A.R.2d (CSV) 115.

Release of public works employee at end of working test period is justified if agency's opinion that employee has performed in unsatisfactory manner was formed in good faith. Raymond v. Trenton Department of Public Works, 97 N.J.A.R.2d (CSV) 52.

Examining physician's prospective opinion as to corrections officer's future unfitness was insufficient to preclude officer's entrance into police training program. Farrar v. Passaic County Sheriff's Department, 96 N.J.A.R.2d (CSV) 780.

Excessive absenteeism during probationary period justified termination of employee. Harris v. Northern State Prison, 96 N.J.A.R.2d (CSV) 596.

County laborer's tardiness and absences justified termination at the end of the working test period. Woodburn v. Ocean County Department of Roads, 96 N.J.A.R.2d (CSV) 387.

Unsatisfactory performance justified release of county corrections officer following working test period. Walker v. Camden County Sheriff's Department, 96 N.J.A.R.2d (CSV) 295.

Unsatisfactory performance reviews justify county inspector's termination at end of working test period. Plummer v. Monmouth County Department of Buildings and Grounds, 96 N.J.A.R.2d (CSV) 129.

State human services department technician released following inadequate performance following working test period. Patel v. State Department of Human Services, 96 N.J.A.R.2d (CSV) 126.

County's removal of communications operator at end of working test period justified where operator's performance unsatisfactory and operator failed to show county acted in bad faith. Ball v. Burlington County, 96 N.J.A.R.2d (CSV) 33.

County social services board's good faith in evaluating income maintenance technician's performance justifies release after working test period. Chandiramani v. Bergen County Board of Social Services, 96 N.J.A.R.2d (CSV) 12.

Termination at end of working test period was justified when building service worker's monthly probationary progress reports were unsatisfactory. Hamilton v. Essex County Hospital Center, 95 N.J.A.R.2d (CSV) 580.

Release of income maintenance technician trainee after working test period was not in bad faith. Montesi v. Burlington County, 95 N.J.A.R.2d (CSV) 404.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-13.7). Davis v. Newark Public Library, 9 N.J.A.R. 84 (1987).

4A:2-4.2 Time for appeal

(a) An appeal shall be made in writing to the Civil Service Commission no later than 20 days from the employee's receipt of written notification from the appointing authority of the termination from service or return to a former permanent title.

(b) If the appointing authority fails to provide the notice as specified in N.J.A.C. 4A:2-4.1, an appeal must be filed within a reasonable time.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), substituted "Civil Service Commission" for "Board".

Case Notes

Civil Service Commission found that an employee did not meet the standard for reconsideration of the denial of her request for a hearing with respect to her demotion under N.J.A.C. 4A:2-1.6(b) and did not sustain her burden of establishing the timeliness of her appeal under N.J.A.C. 4A:2-4.2. The employee did not dispute that she was personally served the Final Notice of Disciplinary Action, and she provided no valid explanation as to why the appeal was not filed within the permitted timeframe when she was clearly apprised of the procedural requirements for filing an appeal. In re Joyce Maldonado, Berkeley Twp, CSC Dkt. No. 2014-150, 2013 N.J. CSC LEXIS 934, Final Decision (October 2, 2013).

Employee did not provide a valid explanation for her failure to file an appeal, as N.J.A.C. 4A:2-4.2 required, within the 20 day period after her receipt of notice that she was being returned to her permanent title of Cottage Training Technician after she received an unsatisfactory rating for her working test period as a Cottage Training Supervisor. Since the Appeal Rights Letter specifically advised her to file her appeal directly with the Commission within 20 days of her receipt of the notice, the employee's explanation that she understood that a departmental EEO Officer would "handle everything" did not meet the criteria in N.J.A.C. 4A:2-1.6(b) that had to be met in order to win reconsideration of a prior Commission decision. In re Ginger Ferrell New Lisbon Developmental Center Department of Human Services, CSC Docket No. 2013-1335, 2013 N.J. CSC LEXIS 370, Final Decision (April 3, 2013).

Initial Decision (2006 N.J. AGEN LEXIS 325) adopted, which dismissed an employee's appeal from her removal as moot based on her failure to timely file an appeal of her release at the end of the working test period. In re Drummond, OAL Dkt. No. CSV 6845-05, 2006 N.J. AGEN LEXIS 629, Final Decision (June 7, 2006).

Failure to appeal failure of second working test period precluded appeal from decision in first working test period. Sansalone v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 22.

4A:2-4.3 Civil Service Commission hearing

(a) An appeal to the Commission shall be processed in accordance with N.J.A.C. 4A:2-2.9.

(b) The employee has the burden of proof to establish that the action was in bad faith.

(c) If bad faith is found by the Commission, the employee shall be entitled to a new full or shortened working test period and other appropriate remedies. See N.J.A.C. 4A:2-1.5.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
Section was "Board hearing". In (a) and (c), substituted "Commission" for "Board"; and in (a), deleted "et seq" following "4A:2-2.9".

Case Notes

An Administrative Law Judge concluded that an employee who failed to meet the standards for promotion to the position of Family Service Specialist 1 (FSS1) did not satisfy her burden to show that the evaluations of her working test period (WTP) were performed in bad faith within the meaning of N.J.A.C. 4A:2-4.3(b) because the employee did not show that the evaluators were motivated by bias, animosity or other sinister attitude. It was insufficient to merely argue that the evaluations, which were based on the agency's conclusion that the employee was behind in her work and was unable to catch up notwithstanding various accommodations, were not fair or properly decided. The purpose of the WTP as established by N.J.A.C. 4A:1-1.3 and N.J.A.C. 4A:4-5.1 was to enable the appointing authority to evaluate an employee's work performance and conduct in order to determine whether the employee merited permanent status. It had operated to do so in this case. Lisa Brown v. Dep't of Children & Families, OAL Dkt. No. CSV 2630-13, AGENCY Dkt. No. 2013-1984, 2014 N.J. AGEN LEXIS 175, Initial Decision (April 8, 2014).

Employee who was terminated from her position at the end of her Working Test Period (WTP) for excessive absenteeism failed to establish bad faith termination within the meaning of N.J.A.C. 4A:2-4.3(b). Even though her absences were related to a debilitating illness, an appointing authority should not have to be burdened with what was in essence a part-time employee holding a full-time job. Other employees cannot be expected to cover for absent colleagues for unreasonable periods of time or under unreasonable circumstances as such circumstances cause disruption, hardship, and dissension in the workplace. An appointing authority has the right to expect a consistency of employee attendance in order to properly fulfill its mission. The pattern of absenteeism demonstrated over four months by the employee compromised her training as well as the efficiency expected by the public and had the capacity for harm to the public. Inasmuch as attendance is an essential function of most jobs, termination of the employee's employment was appropriate on these facts. In re Barbarita Melendez, Superior Ct. of New Jersey, Hudson Vicinage, OAL Dkt. NO. CSV 04350-13, AGENCY Dkt. NO. 2013-2353, 2013 N.J. AGEN LEXIS 353, Initial Decision (December 26, 2013).

Appointing authority for a senior building maintenance worker at a state university was justified in releasing the worker at the end of her extended working test period. The record established that the worker had multiple altercations with coworkers in front of faculty, students and others and did not properly complete her assignments; did not do required cleaning; and that the work that she did do was not up to standards. Moreover, even though such deficiencies were brought to her

attention on multiple occasions, her work continued to be unsatisfactory and altercations continued to occur in the presence of students and others. Next, the evidence showed that the worker also did not adhere to the break schedule and took unscheduled breaks; was frequently on the telephone in offices; had her headphones in while working; yelled at supervisors and was not respectful; and behaved inappropriately towards coworkers. Even though her working test period was extended twice in order to give her ample opportunity to conform to policies and procedures and improve the quality of her work, she did not do so. Given the state of the evidence in the record, the worker did not establish by a preponderance of the competent and credible evidence as required by N.J.A.C. 4A:2-4.3(b) that bad faith was involved in the appointing authority's formulation of the opinion that the worker's service was unsatisfactory. In re Melissa Brown, Montclair State University, CSC DKT. NO. 2011-4793, OAL DKT. NO. CSV 04763-12 (ON REMAND), 2013 N.J. CSC LEXIS 812, Final Administrative Decision (August 15, 2013).

The Civil Service Commission rejected a determination of an Administrative Law Judge that an assistant family service worker who had been released at the end of his working test period had satisfied his burden per N.J.A.C. 4A:2-4.3(b) to show that his working test period was conducted in bad faith because the Commission's review of the record evidenced no bad faith and in fact supported the conclusion that there were sufficient problems during the worker's working test period to justify his release including three complaints filed in a three month period, all of which were based on the worker's improper use of a cell phone while operating a state-owned vehicle and/or his improper operation of such a vehicle. Inasmuch as disciplinary action during a working test period, especially relating to performance, can provide sufficient justification to release an employee. That being said, though the ALJ's Findings of Fact were properly accepted and adopted, the Commission rejected the ALJ's recommendation to reverse the release at the end of the working test period in favor of an order upholding the worker's release at the end of the test period. In re Shawn Pressley, OAL Dkt. No. CSV 00731-12, 2013 N.J. CSC LEXIS 471, Final Decision (August 15, 2013).

Evidence adduced by an employee in support of his challenge to a decision of the Department of Children and Families releasing him at the end of his working test period (WTP) for unsatisfactory performance within the meaning of N.J.A.C. 4A:2-4.1 and N.J.A.C. 4A:4-5.4(a) did not show that the decision was made in bad faith. To be sure, the employee complimented the efforts made by his supervisors. That being so, the employee did not carry his burden of proof per N.J.A.C. 4A:2-4.3(b) to show that the appointing authority had acted in bad faith, and the Administrative Law Judge's recommendation that the appeal be dismissed was approved and adopted. In re Jeremy Rodas, Dep't of Children & Families, CSC Dkt. No. 2012-3204, OAL Dkt. No. CSV 12410-12, 2013 N.J. CSC LEXIS 657, Final Decision (June 26, 2013).

Initial Decision (2010 N.J. AGEN LEXIS 55) adopted, which found that a family services worker was properly released at the end of her working test period because the use of a provisional family service worker to train and evaluate her while the immediate supervisor was on vacation for two weeks was not so irregular or so prejudicial that it constituted bad faith on the part of the County. In re Rachmiel, OAL Dkt. No. CSV 11354-09, 2010 N.J. CSC LEXIS 586, Final Decision (March 10, 2010).

Although the Commission found that a correction officer recruit was improperly removed following his working test period, the Commission did not find that he was entitled to a permanent appointment based on the successful completion of his working test period, only that he was simply entitled to a new six-month working test period. Therefore, sufficient cause was not demonstrated to award back pay and counsel fees. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 446) adopted, which found that a hospital provided a technical assistant with appropriate training for her position, but that she was unable to perform the duties expected of her during the working test period, as observed by her co-workers, other staff, as well as by her supervisor; the assistant's performance did not improve even after being afforded an extension of the working test period and there was simply no evidence that the termination was based on anything other than her performance. In re Graves, OAL Dkt. No. CSV 4701-08, 2009 N.J. AGEN LEXIS 985, Final Decision (August 19, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 439) adopted, which found that a sheriff's officer was properly removed where the officer, while on probation and on duty, lent her car to her sister's boyfriend, who was then arrested for possession of a handgun and possession of a controlled dangerous substance while driving her car; the officer lied about directly lending the car to the boyfriend in her report to her supervisor and such misconduct went to the heart of the officer's ability to be trusted and function appropriately in her position, warranting the bypass of progressive discipline and justifying her removal. In re Ocasio, OAL Dkt. No. CSV 01171-08, 2009 N.J. AGEN LEXIS 958, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 285) adopted, which found that a Public Safety Telecommunicator Trainee was properly released at the conclusion of her working test period; the trainee received classroom training, on the job training, and remedial training, evidencing that the appointing authority did not rush to judgment on her performance, but provided her training and a reasonable time to show she was capable of performing the duties of her assignment. In re Mitchell, OAL Dkt. No. CSV 1478-09, 2009 N.J. AGEN LEXIS 969, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 158) adopted, which found that a family service worker was properly released at the end of her working test period where she was unproductive, error prone, and failed to acquire the level of knowledge necessary to function as a family service worker; additionally, although she needed supervision, she failed to seek guidance when she was underperforming. In re Johnson, OAL Dkt. No. CSV 07526-08, 2009 N.J. AGEN LEXIS 963, Final Decision (May 27, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 68) adopted, which held that, although it was true that a youth worker was working in a facility with residents who were street wise, manipulative, and were capable of making false allegations against him, the scope and variety of charges leveled against him during the working test period demonstrated that he was inappropriate and unprofessional; there were allegations that he used inappropriate restraining techniques, foul language, taunted a resident, and was tardy on numerous occasions. In re Macklin, OAL Dkt. No. CSV 02016-08, 2009 N.J. AGEN LEXIS 888, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 109) adopted, which found that an animal control officer was properly removed at the end of his probationary work period after the ALJ found, on conflicting evidence, that the officer had sexually harassed a worker, disobeyed a direct order, and conducted private business while on duty. In re Kanis, OAL Dkt. No. CSV 782-07, 2009 N.J. AGEN LEXIS 996, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 7) adopted, which found that a building management specialist was properly terminated following his working test period where: he was either absent or late on 27 out of the 60 days, causing the work to be redistributed within the unit; produced a work product which was incomplete, lacking in critical information or contained errors; was insubordinate in that he hung-up on his supervisor who called to discuss an incident that had taken place in the office; and, demonstrated a lack of veracity on two occasions. In re Robinson, OAL Dkt. No. CSV 12165-07, 2009 N.J. AGEN LEXIS 804, Final Decision (February 25, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 771) adopted, which concluded that an employee was properly returned to her former title after a working test period for the position of Head Cottage Training Supervisor after she allowed telephone contact between a patient and her alleged abuser, who also worked in the facility; the employee's actions were seen as a failure to exercise sound judgment and give due attention to a significant occurrence at the Group Home. In re Pennington, OAL Dkt.

No. CSV 10039-07, 2008 N.J. AGEN LEXIS 1081, Final Decision (September 24, 2008).

Social Service Aide was entitled to a new working test period because, in failing to provide the aide with timely written notification of his deficiencies through the progress reports required by N.J.A.C. 4A:4-5.3, the appointing authority denied him a fair evaluation of his work performance and the authority's release of the aide for deficiencies in job performance that were not adequately brought to his attention through the required progress reports evidenced a lack of good faith. In re Maldonado, OAL Dkt. No. CSV 07337-04, 2008 N.J. AGEN LEXIS 396, Initial Decision (June 6, 2008), adopted (Civil Service Comm'n July 30, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that an employee failed to demonstrate that the decision to release her at the end of her working test period was made in bad faith; in a probationary employee's appeal of termination, the only issue is whether the appointing authority exercised good faith in determining that the employee was not competent to satisfactorily perform the duties of the position. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which explained that if the appointing authority's decision to release an employee at the end of the working test period is based on actual observations of the employee's performance of the duties of the position, and is an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties, it must be considered to have been formed in good faith. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 217) adopted, which concluded that a probationary Supervising Family Service Specialist 2 should be afforded a new working-test period rather than demoted, based on credibility determinations, the employee's satisfactory ratings during five years as a provisional supervisor, and the timing of the unsatisfactory reports, which only began to surface after the employee's return from emergency leave and his filing of a hostile work environment claim. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Where the Merit System Board did not find that an employee was entitled to a permanent appointment based on the successful completion of the employee's working test period, but rather that the employee was simply entitled to a new working test period, sufficient cause was not demonstrated to award back pay. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 189) adopted, which concluded that a clerk typist had presented no evidence that her release at the end of the working test period was based on anything other than her performance, and thus failed to sustain burden of showing bad faith. The only requirement to justify release at the end of the working test period is good faith. In re Ehrenkranz, OAL Dkt. No. CSV 4026-07, 2008 N.J. AGEN LEXIS 545, Final Decision (April 23, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 830) adopted, which concluded that a correction officer failed to show by a preponderance of the competent and credible evidence that the appointing authority's determination releasing him at the end of his working test period was made in bad faith where the evidence revealed that the officer had difficulty dealing with inmates and was not forceful enough with them, as evidenced by the inmate who refused to go back into his cell when ordered to do so, as well as the officer's reluctance to charge an inmate who threw bleach at him; the facility performed and graded the officer's two evaluations in good faith and had legitimate concerns as to his ability to perform. In re Britton, OAL Dkt. No. CSV 8350-06, 2008 N.J. AGEN LEXIS 520, Final Decision (January 30, 2008).

An Administrative Law Judge (ALJ) concluded that a city police department had not shown that the termination of a probationary officer at the end of the 12-month working test period (WTP) as permitted by N.J.A.C. 4A:4-5.1 was in good faith as required by N.J.A.C. 4A:2-4.3(b) and that the officer was entitled to have a 6 month extension of the WTP. The officer had served only four months of the WTP when, in January 2004, he was called back to active duty by the U.S. Army and deployed to Iraq. The officer only returned to duty with the city in April 2005. Even though N.J.A.C. 4A:4-5.2(d) did not specify that a WTP was to consist on one uninterrupted year, the military-service based interruption in the officer's WTP lasted 17 months and placed the officer at a distinct disadvantage. It also put in doubt the validity of the performance evaluations on which the city had relied in terminating the officer. On these facts, it did not appear that the officer had been fairly evaluated, and his WTP was properly extended by six months so that a fair evaluation might be made. In re Howe, City of Clifton, OAL DKT. NO. CSV3601-06, AGENCY DKT. NO. 2006-2849-I, 2008 N.J. AGEN LEXIS 1545, Initial Decision (January 9, 2008).

Initial Decision adopted, which concluded, based on the testimony and record presented, that the probationary employee, a county correction officer, failed to show bad faith on the part of the appointing authority in terminating him. His protestations that he was completely caught off guard when he received the negative evaluation and subsequent termination did not comport with the weight of the evidence, as: (1) the employee failed to show that enforcement was directed at him particularly, but rather was a general change in attitude by the new administration; (2) the claim that the county had the obligation to provide additional training to help him with his skills was equally unfounded, as the county provided him with four months of training; and (3) the employee provided no explanation for the 13 instances in which he took sick time either before or after regularly scheduled time off, and an employer looking at the record could validly question a probationary employee's commitment to the job based on this pattern (2007 N.J. AGEN LEXIS 708 adopted as clarified). In re Matus, OAL Dkt. No. CSV 5064-07, 2007 N.J. AGEN LEXIS 1029, Final Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 665) adopted, which concluded that a correction officer recruit was properly removed following her one-year testing period because, although she received satisfactory ratings after her first six months of employment, the recruit had attendance problems and was advised that her absences were unauthorized; the recruit incurred 11 sick days with no sick leave to cover them and her supervisor formed an honest assessment that she would not be able to satisfactorily and efficiently perform the duties of a corrections officer if the appointment became permanent. In re Petty, OAL Dkt. No. CSV 60-07, 2007 N.J. AGEN LEXIS 1141, Final Decision (December 5, 2007).

An Administrative Law Judge (ALJ) concluded that two trainees who were dismissed by the Department of Corrections from the Correctional Staff Training Academy (CSTA) were not required to prove bad faith on the part of the Department in having dismissed them. Even though the Department urged the application of a bad faith standard such as that which applied to working test periods in N.J.A.C. 4A:2-4.3, the regulations governing appeals to the Police Training Commission in N.J.A.C. 13:1-9.1 did not impose any specific burden of proof. That being so, the trainees were properly required to prove that the Department did not have good cause within the meaning of N.J.A.C. 13:1-7.2(a)8 to dismiss them from the CSTA. Reid v. Dep't of Corr. Training Acad.; Weaver v. Dep't of Corr. Training Acad.; OAL DKT. NO. PTC2091-07 (CONSOLIDATED) OAL DKT. NO. PTC2092-07, AGENCY DKT. NO. CJ07-1369-HPT (CONSOLIDATED) AGENCY DKT. NO. CJ07-1370-HPT, 2007 N.J. AGEN LEXIS 1280, Initial Decision (October 1, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 593) adopted, which concluded that a Department of Transportation employee failed to establish by a preponderance of the competent and credible evidence that there was any bad faith involved in the decision to demote her to her prior-held permanent title (technical assistant personnel) at the conclusion of her six-month working test period; the employee was given critiques and the opportunity to improve, including an extension of the working test period to give her an additional opportunity to succeed. In re Stubbs, OAL Dkt. No. CSV 6150-06, 2007 N.J. AGEN LEXIS 1145, Final Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 280) adopted, in which a county employee was returned to his prior position after completion of his working test period. The employee's supervisor had testified that the employee had continued difficulty completing required tasks to an acceptable level of competence in the prescribed time for the required tasks and no bad faith had been shown. In re Woodford, OAL Dkt. No. CSV 11157-04, 2007 N.J. AGEN LEXIS 1064, Final Decision (June 20, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 143) adopted, which found that a social services clerk failed to establish her release at the end of the working test period was done in bad faith; the appointing authority had no choice but to release the clerk after the reception area, which worked fine prior to her arrival, became dysfunctional and clients witnessed arguments between the clerk and her co-worker. In re Barnes, OAL Dkt. No. CSV 2885-05, 2007 N.J. AGEN LEXIS 1099, Final Decision (April 25, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1028) adopted, which concluded that a Motor Vehicle Commission service center employee, who was terminated at the end of the working test period, failed to carry the burden of proof of bad faith where, despite the employee's conflicting testimony, the appointing authority provided detailed documentation indicating that most of the employee's errors were of a serious nature and required extra work by co-workers. Moreover, despite an extended working test period and additional remedial instruction, the employee showed no improvement in the ability to handle crucially important tasks, indicating that the appointing authority had more than adequate justification for terminating the employee. In re Acosta, OAL Dkt. No. CSV 227-06, Final Decision (January 31, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 736) adopted, which concluded that the police department had ample non-discriminatory reasons to terminate a police officer at the end of her one-year working test period, including an unacceptably high absentee record of 37 or 38 days and inadequate report-writing ability; contrary to the officer's assertions, she had adequate notice of the department's dissatisfaction with her performance and ample opportunity to correct her deficiencies during the course of her working test period, even absent a formal six-month written report. In re Ausby, OAL Dkt. No. CSV 5735-04, 2006 N.J. AGEN LEXIS 863, Final Decision (October 4, 2006).

Petitioner failed to meet his burden of proving that the appointing authority's action in demoting him to his prior permanent title as Senior Engineer at the end of an extended working test period for Principal Engineer was in bad faith; the working test period was not one during which petitioner was to be given further training to qualify himself for the position and the evidence demonstrated that petitioner simply did not have the requisite skills. In re Olofintuyi, OAL Dkt. No. CSV 4571-05, 2006 N.J. AGEN LEXIS 619, Final Decision (June 21, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 239) adopted, which found that a county welfare services employee had properly been terminated at the end of her working test period. Evidence was presented that the employee had performed unsatisfactorily in classroom training and her productivity was below acceptable standards, requiring excessive supervision, and there was no proof that the county based its determination on factors other than observations of the employee's actual performance or that the county was wrongly influenced by bias, prejudice, or other improper motive. In re Yanes, OAL Dkt. No. CSV 11481-04, 2006 N.J. AGEN LEXIS 560, Final Decision (April 5, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 35) adopted, which found that the probationary or working test period under N.J.A.C. 4A:4-5.1 is part of the testing process and an employee must demonstrate competency to discharge the duties of the position without further training; only upon a showing of bad faith under N.J.A.C. 4A:2-4.3 will an employer's decision to release an employee be scrutinized. In re Mabson, OAL Dkt. No. CSV 2164-05, 2006 N.J. AGEN LEXIS 1101, Final Decision (March 8, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 65) adopted, which concluded that a Motor Vehicle Commission employee failed to establish that there was any bad faith involved in returning her, at the conclusion of the working test period, to her formerly held permanent title of Support Services Representative 2. The worker was given training, counseling, critiques, the opportunity to improve, and an extension of the working test period. Whether the appointing authority's judgment concerning the worker's performance was totally accurate was not the issue for determination; rather, the only determination to be made was whether the worker had shown by a preponderance of the competent and credible evidence that the determination releasing her at the end of the working test period was made in bad faith. In re Woolford, OAL Dkt. No. CSV 803-04, 2006 N.J. AGEN LEXIS 1125, Final Decision (March 8, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 523) adopted, which found that a police officer failed to prove that the appointing authority acted in bad faith when it released her following her working test period; the failure to institute a disciplinary action in lieu of termination was not an act of bad faith where the offense of which the officer was accused occurred during her working test period, was investigated during her working test period, and was acted upon at the end of her working test period. In re Cooper, OAL Dkt. No. CSV 3473-05, 2005 N.J. AGEN LEXIS 1190, Final Decision (November 3, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 407) adopted, which found that a Human Services Assistant failed to meet his burden of proving that his removal following a working test period was made in bad faith; the employee's supervisor testified as to the employee's various deficiencies, many of which were undisputed, including his lack of driver's license, his poor attendance records, his tardiness, and his dislike for reassignments. In re Tolbert, OAL Dkt. No. CSV 4337-01, 2005 N.J. AGEN LEXIS 1260, Final Decision (September 21, 2005).

Untrustworthiness and instability justified return of bridge operator to former position of maintenance worker. Howarth v. Department of Transportation, 95 N.J.A.R.2d (CSV) 636.

Release of probationary public works repairer was justified for failure to obtain required commercial driver's license. Kreudl v. Department of Public Works, 95 N.J.A.R.2d (CSV) 584.

Termination at end of working test period was justified when building service worker's monthly probationary progress reports were unsatisfactory. Hamilton v. Essex County Hospital Center, 95 N.J.A.R.2d (CSV) 580.

SUBCHAPTER 5. EMPLOYEE PROTECTION AGAINST REPRISALS OR POLITICAL COERCION

4A:2-5.1 General provisions

(a) An appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

(b) An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

Case Notes

Failure of municipal employee to exhaust administrative remedies warranted dismissal of his claim alleging violations of administrative code section prohibiting person from being appointed under title not appropriate to the duties to be performed and section prohibiting re-

prisal. Ferraro v. City of Long Branch, 314 N.J.Super. 268, 714 A.2d 945 (N.J.Super.A.D. 1998).

Non-selection of a candidate's name on the certification of a Police Sergeant eligible list was proper. Given that he ranked lower on the eligible list than the candidates who were appointed, the appointing authority was not obligated to consider him for appointment under the Rule of Three pursuant to N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7, and N.J.A.C. 4A:4-4.8(a)3i. The records did not indicate that he established veteran's preference with the Department of Military and Veteran's Affairs. Thus his prior military experience did not establish that he was veteran for promotional purposes. There was also no evidence that the candidate was retaliated against in regard to his non-selection for appointment in violation of N.J.A.C. 4A:2-5.1(a). In re William Cullen, Berkeley Twp., DOP Dkt. No. 2013-1663, 2013 N.J. CSC Lexis 664, Final Decision (July 17, 2013).

Job title elimination done in bad faith if politically motivated. Kirshbaum v. Camden County, 97 N.J.A.R.2d (CSV) 197.

Layoff; proof of political motivation. Pikolycky v. Department of Military and Veterans' Affairs, 94 N.J.A.R.2d (CSV) 685.

Layoff of supervisor; not based on retaliation or political retribution. 94 N.J.A.R.2d (CSV) 569.

"Whistleblower" medical director justifiably dismissed. Mendoza v. Wagner Youth Correctional Facility, 94 N.J.A.R.2d (CSV) 135.

Agency employee voluntarily resigned from his position. Sandell v. Department of Law and Public Safety, 93 N.J.A.R.2d (CSV) 705.

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the Civil Service Commission within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

(b) The appeal must be in writing and specify the basis for appeal.

(c) The Commission shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The Commission shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(e) Where improper reprisal or political coercion is established, the Commission shall provide appropriate protections and remedies to the employee.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), substituted "Civil Service Commission" for "Board"; and in (c), (d), and (e), substituted "Commission" for "Board".

Case Notes

Acts of reprisal for public disclosure of information on abusive use of State cars. Cryan v. Human Services Department, 92 N.J.A.R.2d (CSV) 275.

SUBCHAPTER 6. RESIGNATIONS

Subchapter Historical Note

Petition for Rulemaking. See: 39 N.J.R. 4867(a).

Petition for Rulemaking. See: 42 N.J.R. 1251(b).

4A:2-6.1 Resignation in good standing

(a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days written or verbal notice, unless the appointing authority consents to a shorter notice.

(b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

(c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

(d) Where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Civil Service Commission under N.J.A.C. 4A:2-1.1.

Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (a), substituted "days" for "days' "; and in (d), substituted "Civil Service Commission" for "Board".

Case Notes

Resignation may be rescinded prior to effective date upon appointing authority's approval (citing former N.J.A.C. 4:1-16.12). Manusco v. No. Arlington Boro., 203 N.J.Super. 427, 497 A.2d 238 (App.Div.1985).

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).

Senior youth worker who resigned before final disposition of her disciplinary case was not entitled to back pay, benefits, or seniority upon a finding that the penalty should have been modified and reduced because the worker failed to bring a separate appeal to pursue her claim that the resignation was made under duress; Merit System Board noted that worker could still appeal within 20 days of receipt of its decision (adopting 2006 N.J. AGEN LEXIS 152). In re Thomas, OAL Dkt. No. CSV 559-05, 2006 N.J. AGEN LEXIS 539, Final Decision (April 5, 2006).

Refusal to accept rescission of resignation prior to its effective date constituted abuse of discretion. Harmon v. Monmouth County Board of Social Services, 97 N.J.A.R.2d (CSV) 541.

Police officer's resignation not in good standing for untimely resignation modified. Polidoro v. City of New Jersey Police Department, 97 N.J.A.R.2d (CSV) 239.

Employee suffering personal problems considered resigned in good standing. DiMattia v. Department of Transportation, 97 N.J.A.R.2d (CSV) 215.

Chronically absent employee granted resignation in good standing. Caldwell v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 134.

Merit System Board approved removal of employee for unsatisfactory attendance, but modified her termination status from resignation not in good standing to resignation in good standing, where employee's absence followed denial of her request for indefinite leave of absence due to illness. Bell v. Mid-State Correctional Facility, 96 N.J.A.R.2d (CSV) 839.

Removal of clerk typist based upon five-day absence without approval of her supervisor was not warranted, and she would be treated as if she had resigned in good standing. Neuschafer v. Vineland Developmental Center, 96 N.J.A.R.2d (CSV) 766.

Resignation proposed by employee's union representative as alternative to discipline was not coerced. Kwasniewski v. Probation Division, 96 N.J.A.R.2d (CSV) 597.

Resignation in good standing was more appropriate than removal when injury was cause of training failure. Gottlieb v. Monmouth County Sheriff, 95 N.J.A.R.2d (CSV) 573.

Highway maintenance worker with bilateral carpal tunnel syndrome resigned in good standing by reason of an inability to perform job duties. Kromenacker v. Department of Transportation, 95 N.J.A.R.2d (CSV) 275.

Public employee who was convicted of offense involving theft from employer forfeited her position. Gurenlian v. Ancora Psychiatric Hospital, 94 N.J.A.R.2d (CSV) 599.

Failure to return to duty for five consecutive business days following leave of absence; resignation in good standing. Apoldite v. Dept. of Treasury, 93 N.J.A.R.2d (CSV) 459.

Unapproved absence was justified; resignation in good standing. DeBlasio v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (CSV) 398.

Discharge would be classified as having resigned in good standing. DeBlasio v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (CSV) 398.

Appeal of resignation not in good standing was moot. Scott v. Department of Human Resources, 93 N.J.A.R.2d (CSV) 339.

Removal modified to resignation in good standing. Harwell v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 679.

Removal modified to resignation in good standing. Ensslin v. Township of North Bergen, 92 N.J.A.R.2d (CSV) 674.

Resignation considered as one in good standing. Swinney v. Sheriff's Department, Camden County, 92 N.J.A.R.2d (CSV) 614.

Settlement agreement; technician allowed to resign in good standing. Di Lard v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 159.

Employee was not entitled to rescind his resignation. Schaan v. Gloucester County Bd. of Social Services, 92 N.J.A.R.2d (CSV) 152.

Sanitary inspector resigned under distress and refusal to allow him to rescind his resignation was unreasonable. Manzo v. Jersey City Div. of Health, 92 N.J.A.R.2d (CSV) 117.

Attempt to change resignation to a medical leave of absence; resignation would be changed from not-in-good standing to good standing. Cheeseman v. Bayside State Prison, 92 N.J.A.R.2d (CSV) 41.

Merit Service Board had no jurisdiction to hear an appeal from employee who voluntarily resigned her position. Tatum v. John L. Montgomery Medical Home, 91 N.J.A.R.2d (CSV) 45.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

(c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Civil Service Commission under N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Commission may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

Public Notice on Resignation not in good standing.
See: 22 N.J.R. 3407(b).
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (b)-(c).
Amended by R.2015 d.186, effective December 7, 2015.
See: 47 N.J.R. 1689(a), 47 N.J.R. 2966(a).
In (d), substituted "Civil Service Commission" for "Board"; and in (f), substituted "Commission" for "Board".

Case Notes

Parking Enforcement Officer (PEO) for a city was properly deemed to have abandoned his position and to have resigned not in good standing per N.J.A.C. 4A:2-6.2(b) on account of his failure to report for work for 10 consecutive days. Though the PEO insisted that he had suffered an on-the-job injury and was pursuing a workers compensation claim through a lawyer who allegedly told him that he need not contact the city because the lawyer would do so, the PEO did not provide any documentation supporting these allegations. That is, he did not submit any medical records supporting his injury claim nor any documentation from his lawyer tending to show that he was pursuing a workers compensation claim. Thus, the rule in N.J.A.C. 4A:2-6.2(b) deeming any failure to report for more than five consecutive days as an abandonment of an employee's position was properly invoked. In re Ruggiero, City of Hoboken Dep't of Transp. & Parking, OAL DKT. NO. CSV 17224-13, AGENCY DKT. NO. 2014-1411, 2014 N.J. AGEN LEXIS 437, Initial Decision (July 31, 2014).

Telecommunications operator (employee) engaged in neglect of duty under N.J.A.C. 4A:2-2.3(a)7 when he failed to return to work at the end of the approved leave period, which was taken because his son was born with a brain abnormality. The initial three month approved leave was a reasonable necessity, but when his child improved he did not return to employment, but collected unemployment benefits and waited 20

months to appeal a resignation not in good standing. Regarding abandonment of job under N.J.A.C. 4A:2-6.2(b), even though both the employee and the Town of West New York Department of Public Safety procrastinated in resolving the concern about the employee's extended leave and return to work, the employee did not return for 20 months. Given the employee's clean disciplinary history and the situation where both parties deviated from regulatory disciplinary action procedures, the administrative law judge concluded that the penalty of resignation not in good standing was unreasonable and unwarranted and recommended that it should be modified to resignation in good standing. Manuel Suarez v. Town of West New York Dep't. of Public Safety, OAL DKT. No. 2013-2438, 2014 N.J. AGEN LEXIS 416, Initial Decision (July 22, 2014).

Employee was absent from duty for five or more consecutive business days without approval of his supervisor in violation of N.J.A.C. 4A:2-6.2 and he breached the terms of a Conditional Letter of employment, resulting in his resignation not in good standing and supporting other related charges against him under N.J.A.C. 4A:2-2.2, N.J.A.C. 4A:2-2.3(a)6; N.J.A.C. 4A:2-2.3(a)7; and N.J.A.C. 4A:2-2.3(a)11. There was no debate that he failed to report to work following his arrest and incarceration and that he failed to contact his supervisors to determine his date of return or to explain his non-appearance. Although he asserted that he called his supervisor, he offered no proof of this call. In re Ravin Morrison, City of Newark Dep't. of Eng'g., OAL Dkt. No. CSV 00844-14, 2014 N.J. AGEN LEXIS 359, Initial Decision (July 17, 2014).

Administrative law judge (ALJ) recommended the affirmation of the removal of a custodian due to chronic or excessive absenteeism and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a). He was absent without authorization for thirty-one days, during which time he was incarcerated for failure to pay child support. He used his sick time but did not provide medical documentation and was not approved for sick leave. His absences caused him to neglect his duty and negatively impacted the custodial staff, and the ALJ concluded that the custodian did not avail himself of the proper avenues for obtaining leave. The charge of resignation not in good standing under N.J.A.C. 4A:2-6.2 was also sustained because his unauthorized absences were for five or more consecutive days. In re Jackie Lovett, State-Operated Sch. Dist. of the City of Newark, OAL Dkt. No. CSV 15460-13, 2014 N.J. AGEN LEXIS 89, Initial Decision (March 6, 2014).

An employee was not properly deemed to have resigned her position as a Building Maintenance Worker not in good standing per N.J.A.C. 4A:2-6.2(b). Though the employee was absent from duty for five or more consecutive days without the approval of her supervisor and though the employee had been disciplined in the past for chronic and excessive absenteeism within the meaning of N.J.A.C. 4A:2-2.3(a)4, the employee made an adequate showing that the absences at issue were necessitated by the employee's documented medical condition and that her supervisors were aware of that medical condition and of the employee's inability to work by reason thereof. Moreover, because the appointing authority mailed a leave of absence packet intended to be completed by the employee to the wrong address, the supervisor's insistence that she complete and return the packet to her supervisor within two days of her receipt thereof was unreasonable. Under these facts, the penalty of removal not in good standing based on the employee's inability to submit confirmation of her medical condition and disability time within two days of the appointing authority's request was unwarranted, and the employee was entitled to have her separation from her position recorded as a resignation in good standing. In re Lumford, Hudson Cnty., Dep't of Roads & Public Prop., CSC DKT. NO. 2013-2694, OAL DKT. NO. CSV 05761-13, 2013 N.J. CSC LEXIS 1169, Final Administrative Action (December 4, 2013).

Clerk was absent from duty for five continuous days without proper notice pursuant to N.J.A.C. 4A:2-6.2. There was no debate that she failed to report to work after receiving a five-day letter or that she did not contact her supervisors to determine her date of return or to explain her non-appearance. There was also no doubt that she had adequate notice, under the five-day letter, of her return date. This unapproved absence resulted in a resignation by the clerk not in good standing. In re Cassandra E. Jones, Essex County, Department of Citizen Services, OAL Dkt. No. CSV 00037-13, N.J. AGEN LEXIS 244, Recommended Decision (September 6, 2013).

Youth correctional facility acted unlawfully when it terminated the employment of an individual who worked as a communications operator on the ground that she had abandoned her position within the meaning of N.J.A.C. 4A:2-2.3(a) and thus was deemed to have resigned "not in good standing" within the meaning of N.J.A.C. 4A:2-6.2(c). The undisputed facts established that the employee was suffering from a medical disability and that she had requested time off without pay, not leave under the federal Family and Medical Leave Act (FMLA). Because the employee was not asking for FMLA leave, it was improper for the facility to deny the request on the sole ground that the employee had used up any available FMLA leave. Moreover, given the medical evidence, it was incumbent on the facility to document the reasonableness of its determination to deny leave, and denial of the requested leave based solely upon the unavailability of FMLA time was an unreasonable denial. In re Marcia Davis, Mountainview Juvenile Correction Facility, Department of Corrections, OAL Dkt. No. CSV 07672-12, Agency Dkt. No. 2012-3257, 2013 N.J. AGEN LEXIS 188, Initial Decision (July 2, 2013).

Administrative law judge reversed the termination of a correction officer's employment as a resignation not in good standing under N.J.A.C. 4A:2-6.2(b) and instead imposed a 30-day suspension for sick leave abuse. She returned timely but prematurely from leave and suffered a relapse, and she was given a preliminary notice of disciplinary action on the same day she requested a new leave and an opportunity to produce back-up medical documentation. The County did not consider the request at all and imposed the resignation not in good standing and associated suspension. The officer's conduct did not bear the hallmarks of job abandonment; rather, it indicated an unsuccessful effort to return to active duty. In re Linda Tisby, Camden Cnty. Corr. Facility, OAL Dkt. Nos. CSV 16033-12, CSR 01202-13, 2013 N.J. AGEN LEXIS 92, Initial Decision (May 17, 2013).

Good cause existed to modify a painter's resignation from one not in good standing under N.J.A.C. 4A:2-6.2(b) to one of good standing in view of the undisputed fact that he was medically unable to return to his employment. In re James Brice, Newark Public Schools, OAL Dkt. No. CSV 10082-12, 2013 N.J. CSC LEXIS 658, Initial Decision (May 15, 2013).

An Administrative Law Judge (ALJ) concluded that a police aide was properly removed from her position in a city police department based on the city's showing that she had been absent without leave from duty for five or more consecutive business days without the approval of her supervisor in violation of N.J.A.C. 4A:2-6.2(b) and (c). Though the aide sought to justify her absence by claiming that she was advised by her lawyer not to return to work until an agreement relating to a prior disciplinary notice under which she had been suspended for six months was amended, the aide's other conduct was inconsistent with such an explanation. Moreover, the city showed that the aide had been advised as to the date on which she was required to return, had failed to contact the department to determine her return date, failed to advise her superiors as to why she did not return to work on that date, and failed to properly update her recall card with her current address and phone numbers so management could contact her regarding this issue. Given these facts, the aide was properly deemed to have resigned from her position. In re McClain, City of Newark Police Dep't, OAL Dkt. Nos. CSV 04146-11 and CSV 03413-12 (Consolidated), AGENCY Dkt. Nos. 2011-3995 and 2011-4038, 2012 N.J. AGEN LEXIS 742, Initial Decision (July 27, 2012).

Employee was unfairly "resigned not in good standing" for job abandonment where the appointing authority failed to attempt to seek additional information from his physician or send the employee for an employer-paid examination under N.J.A.C. 4A:6-1.4(g). The employee did not "fall off of the face of the earth," but rather, remained in contact with the appointing authority and attempted to obtain the requested information in support of his leave request (adopting 2009 N.J. AGEN LEXIS 442). In re Smith, OAL Dkt. No. CSV 241-09, 2009 N.J. CSC LEXIS 1550, Civil Service Comm'n Decision (October 21, 2009).

Although under certain circumstances a resignation not in good standing may be modified to a resignation in good standing when an employee, through no misconduct or fault of her own, could not perform

her duties, an ALJ erred in so modifying an employee's penalty where the employee clearly engaged in misconduct and simply did not report to work as required for five business days; additionally, the ALJ applied the tenets of progressive discipline which were not usually considered when determining whether to modify a resignation not in good standing to a resignation in good standing (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 477). In re Jackson, OAL Dkt. No. CSV 10620-08, 2009 N.J. AGEN LEXIS 790, Final Decision (August 5, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 287) adopted, which found that a truck driver was properly resigned not in good standing for his unreported and unauthorized absences following a 45-day suspension; the driver was informed of and familiar with the call-in policy and procedure and he failed to provide his employer with information regarding the medical reason for his absences, information about when he would return to work, or which days he would be absent. In re White, OAL Dkt. No. CSV 060-09, 2009 N.J. AGEN LEXIS 962, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 114) adopted, which found that a secretary was properly resigned as not in good standing where she failed to report to work from the first week of October 2006 forward and did not contact her supervisors to advise them of her absence, to explain the reason for her failure to report to work or to seek approval for her month absence within the regulatory five-day period or at any time before the charges were issued against her; the secretary's contention that the appointing authority did not enforce its policy regarding the submission of leave of absence documentation as to her was not supported by the record. In re Bridges, OAL Dkt. No. CSV 7819-07, 2009 N.J. AGEN LEXIS 995, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 69) adopted, which found that a senior food services handler was deemed to have resigned not in good standing after she failed to appear at work for two months; although she claimed to have suffered from depression, there was no evidence that she would have been entitled to medical leave had she requested it, since her alleged condition was undocumented, she was not receiving medication, and she did not appear to have been under a physician's care. In re Montgomery, OAL Dkt. No. CSV 02307-08, 2009 N.J. AGEN LEXIS 889, Final Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 38) adopted, which found that an assistant personnel director was properly resigned not in good standing after he had been granted multiple leave extensions and was examined by the County's physician and found fit to return to his position, but failed to do so. In re Simisak, OAL Dkt. No. CSV 6156-08, 2009 N.J. AGEN LEXIS 823, Final Decision (March 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 847) adopted, which concluded that a city laborer was deemed to have abandoned his position when he was absent for more than five consecutive business days, and his absenteeism and lateness was chronic and excessive; the laborer was absent from work 22 times, late to work 11 times, failed to call in to work 2 times, and was also absent more than 19 consecutive days when he was incarcerated in a drug rehabilitation program, but never informed anyone. In re Mickens, OAL Dkt. No. CSV 07248-08, 2008 N.J. AGEN LEXIS 1206, Final Decision (November 6, 2008).

While appointing authority met its burden in establishing that a secretarial assistant 1 (non-stenographic) failed to return to work for five or more consecutive days after an approved leave of absence following her carpal tunnel surgery, discipline of a resignation not in good standing was modified to a 15-day suspension where there was a complete breakdown of communication between the employee and the appointing authority. The employee's supervisor failed to return the employee's calls, did not contact the employee when she failed to return to work, and did not communicate to the employee that a light duty plan was developed for her. The employee failed to state her needs to her supervisor, failed to find out if light duty was available and the details of any such accommodation, and failed to be more diligent in contacting the appointing authority with her medical needs and requirements. In re Cannuli, OAL Dkt. No. CSV 4533-07, 2008 N.J. AGEN LEXIS 1059, Civil Service Comm'n Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 220) adopted, which concluded that a licensed practical nurse (LPN) was properly terminated under the designation of resignation not in good standing based on unauthorized absenteeism for five or more days, pursuant to N.J.A.C. 4A:2-6.2; the LPN had previously been disciplined numerous times for absenteeism, and in this instance the chronic absences critically affected the infirmary's ability to function. In re Uhland, OAL Dkt. No. CSV 08226-02, 2008 N.J. AGEN LEXIS 583, Final Decision (April 23, 2008).

Resignation not in good standing was the proper disciplinary action after an employee failed to report to work for four consecutive days due to his incarceration; the appointing authority was under no obligation to provide the employee with a leave for incarceration (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 52). In re Hidalgo, OAL Dkt. No. CSV 4029-07 (CSV 6712-06 On Remand), 2008 N.J. AGEN LEXIS 1433, Final Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 82) adopted, which found that a Human Services Assistant was properly removed following his conviction for simple assault and failure to appear at work for five consecutive days. In re Hammie, OAL Dkt. No. CSV 4526-07, 2008 N.J. AGEN LEXIS 554, Final Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 64) adopted, which concluded that "resignation not in good standing" of a sanitation truck driver was the proper disciplinary action under N.J.A.C. 4A:2-6.2(b) where the driver was absent without approval from his superior from July 25, 2005, to August 10, 2005, and there was no indication that he ever requested approval for the absences; the driver was not incarcerated during this period, and the stresses that he experienced due to a death in the family did not justify his failure to make a telephone call to his employer. In re Purkett, OAL Dkt. No. CSV 13063-05, 2008 N.J. AGEN LEXIS 529, Final Decision (March 12, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 666) adopted, which concluded that a psychiatric hospital employee's conduct fell within the definition of a resignation not in good standing under N.J.A.C. 4A:2-6.2(c) because whatever the employee believed about the length of her leave, she filed two sets of papers putting the end date prior to her return, did not go to the doctor until after the day she said she thought she was due back at work, and delayed several weeks in filing documentation that might have affected the hospital's willingness to take her back; however, balancing the need for adequate staffing in the facility with the employee's lack of prior discipline, a 90-day suspension rather than resignation was warranted. In re Bazile, OAL Dkt. No. CSV 00478-07, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 374) adopted, which concluded that a sanitation employee who was familiar with the process of requesting a leave extension, having done so on two prior occasions, was properly removed. While the director approved the extension, it was clear that the director's approval was only the initial step in the approval process and that the ultimate approval was denied until the employee supplied certain required documentation; the employee failed to provide such documentation as was clearly provided for in the notice and which was further required pursuant to a telephone conversation with the clerk. In re Braswell, OAL Dkt. No. CSV 09148-06, 2007 N.J. AGEN LEXIS 1178, Final Decision (August 15, 2007).

Employee was improperly determined to have resigned her employment with the appointing authority by failure to return to work after an authorized leave; the employee was receiving temporary disability benefits and it was unreasonable to demand that she return to work while collecting such benefits (adopting 2007 N.J. AGEN LEXIS 398). In re Johnson, OAL Dkt. No. CSV 750-06, 2007 N.J. AGEN LEXIS 1154, Merit System Board Decision (July 25, 2007), aff'd per curiam, No. A-0834-07T1, 2008 N.J. Super. Unpub. LEXIS 1729 (App.Div. November 28, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 275) adopted, which concluded that resignation not in good standing was warranted for a senior corrections officer who was absent for an extended time period in February after having exhausted sick leave; the ALJ found, based in part on credibility assessments, that the absences were without authorization. The officer had previous warnings and fines for excessive absenteeism. Given the dependence on manpower to maintain order and discipline at a correctional facility, it is imperative that correction officers be available for duty. In re Novielli, OAL Dkt. No. CSV 03981-06, Final Decision (May 7, 2007), aff'd per curiam, No. A-5890-06T2, 2009 N.J. Super. Unpub. LEXIS 350 (App.Div. February 24, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 43) adopted, which concluded that a laborer was improperly removed for unauthorized excessive absenteeism, including two incremental five working day consecutive periods, where the county failed to impose progressive discipline prior to termination. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 995) adopted, which concluded that a Human Services Assistant did not abandon her position where she reasonably believed she had been approved for an extended leave of absence; the evidence revealed that she did not receive a letter from the appointing authority, indicating that it was missing the Certification of Health Care Provider form from her file. In re Dunmore, OAL Dkt. No. CSV 8687-05, 2007 N.J. AGEN LEXIS 1171, Merit System Board Decision (January 31, 2007).

Phrase "five or more consecutive business days" means consecutive business days in which an employee is scheduled to work, excluding scheduled time off, such as weekends and holidays. In re Pearn, OAL Dkt. No. CSV 7739-05, 2006 N.J. AGEN LEXIS 1124, Merit System Board Decision (December 6, 2006).

Where an employee provided evidence that he was suffering from and being treated for depression, the appointing authority unreasonably denied his request for medical leave and also failed to accommodate the employee's request for a change in his shift; the appointing authority offered no evidence that granting leave would have placed an undue burden on its operations nor did it show that any real attempt was made to accommodate the employee's change in shift request, which might have allowed him to return to work. In re Pearn, OAL Dkt. No. CSV 7739-05, 2006 N.J. AGEN LEXIS 1124, Merit System Board Decision (December 6, 2006).

Lifeguard abandoned his position pursuant to N.J.A.C. 4A:2-6.2(b), which was properly recorded as a resignation in good standing. Based on an assessment of the medical evidence, the ALJ rejected the employee's argument that his absence was justified because he did not have the physical capacity to return to work. In re Harris, OAL Dkt. No. CSV

03968-05, 2006 N.J. AGEN LEXIS 797, Initial Decision (September 25, 2006), adopted (Merit System Board November 11, 2006).

It was unreasonable for the appointing authority to deny the leave request of a correction officer in her working test period where there was no question that the officer was medically unable to work, and the appointing authority was aware of her situation before it terminated her; the appointing authority should have extended the officer's leave without pay, rather than taking action to remove her based on an unauthorized leave of absence. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Employees in their working test period can be granted leaves of absence. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 921) adopted, which found that because the duties and responsibilities of a Human Services Assistant are of great public importance, the appointing authority was within its right to deny an assistant's request for an indefinite leave of absence; however, because the assistant's illness was what prevented him from returning to work after a temporary unpaid leave of absence, the harsh consequence of a resignation not in good standing, which would have precluded the assistant from seeking future public employment, was modified to a resignation in good standing from his position. In re Taylor, OAL Dkt. No. CSV 2842-05, 2006 N.J. AGEN LEXIS 102, Final Decision (January 11, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 680) adopted, which concluded that "resignation not in good standing" of a sanitation worker was the proper disciplinary action under N.J.A.C. 4A:2-6.2(b) because, although the worker was incarcerated, there was insufficient evidence that the worker or anyone designated by him informed the city of the reason for his failure to report to work for five consecutive days; the worker did not obtain authorization to be out of work and failed to take meaningful steps to ensure that the city was timely notified of his whereabouts in order to obtain approval for his absence. In re Amparbin, OAL Dkt. No. CSV 1547-03, 2005 N.J. AGEN LEXIS 1078, Final Decision (December 21, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 614) adopted, which found that a city employee subject to a Conditional Letter of Employment was properly penalized by a resignation not in good standing for repeated absences. The employee had not offered any documentation of his claim that he was receiving medical treatment and his absences had an adverse effect on his department. In re Hunt, OAL Dkt. No. CSV 11479-04, 2005 N.J. AGEN LEXIS 1248, Final Decision (November 22, 2005).

Probation officer's resignation not in good standing was modified to a resignation in good standing because, although the officer failed to report to work for five consecutive days after her request for a leave of absence was denied, the officer was unable to return to work for medical reasons (adopting as modified 2005 N.J. AGEN LEXIS 340). In re Sykes, OAL Dkt. No. CSV 4461-04, 2005 N.J. AGEN LEXIS 1195, Final Decision (September 7, 2005).

There was no showing that the appointing authority's denial of a leave of absence to a probation officer was unreasonable, and the employee was not eligible for leave under the Family and Medical Leave Act since she had not worked a minimum of 1,250 hours in the preceding 12 months. In addition, the appointing authority did not unreasonably deny the probation officer's request for an accommodation under the Americans with Disabilities Act to allow her to work from home and/or on a part-time basis, because the essential functions of the probation officer's position were performing site visits and intake services conferences, appearing in court, entering information into a centralized computer system, and assisting individuals who come into the office (adopting as modified 2005 N.J. AGEN LEXIS 340). In re Sykes, OAL Dkt. No. CSV 4461-04, 2005 N.J. AGEN LEXIS 1195, Final Decision (September 7, 2005).

Resignation pursuant to valid settlement agreement affirmed. Fuller v. New Jersey Department of Environmental Protection, 97 N.J.A.R.2d (CSV) 688.

Employee offering medical evidence for leave of absence defeats employer's resignation not in good standing action. Wright v. Burlington County Juvenile Detention Center, 97 N.J.A.R.2d (CSV) 555.

Storekeeper's abandonment of position justifies resignation not in good standing. Aikens v. Riverfront State Prison, 97 N.J.A.R.2d (CSV) 422.

Employee's unreliable work history and absence without approval justifies employer's resignation not in good standing. Roberts v. Thomas Edison State College, 97 N.J.A.R.2d (CSV) 382.

Progressive discipline supports suspension over resignation not in good standing when employee fails to report for duty. Hargis v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 335.

Unreasonable denial of medical leave precludes employer's removal action for abandoning position. Gilmore v. Veteran's Memorial Home, 97 N.J.A.R.2d (CSV) 332.

Practical nurse's resignation not in good standing for job abandonment modified to resignation in good standing. Miles v. Woodbridge Developmental Center, 97 N.J.A.R.2d (CSV) 222.

Resignation not in good standing for absence from duty modified to resignation in good standing. Bogar v. Department of Human Resources, 97 N.J.A.R.2d (CSV) 189.

Removal of laborer for abandonment of position modified to resignation in good standing. Niosi v. Department of Public Works, 97 N.J.A.R.2d (CSV) 161.

Nurse's refusal to work due to unsubstantiated knee injury justified implied resignation not in good standing. Gregg v. Woodbine Developmental Center, 96 N.J.A.R.2d (CSV) 594.

Clerk who failed to provide timely medical documentation for extension of medical leave resigned not in good standing. Littlejohn v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (CSV) 471.

Corrections officer who failed to return to work after medical leave expired was found to have resigned not in good standing. Hall v. Bayside State Prison, 96 N.J.A.R.2d (CSV) 466.

Township code enforcement officer improperly deemed to have resigned not in good standing based upon actions taken on advice of counsel. Clougher v. Hazlet Township, 96 N.J.A.R.2d (CSV) 102.

Resignation of human services assistant from developmental center was not in good standing. Davis v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 674.

Suspension rather than termination was appropriate penalty when charges of excessive absenteeism were not all proven. White v. City of Newark Police, 95 N.J.A.R.2d (CSV) 599.

Removal for excessive absences was not warranted when due to medical illness stemming from training technician's alcoholism. Telfair v. Woodbine Developmental Center, 95 N.J.A.R.2d (CSV) 501.

Resignation not in good standing upon failing to return to work after doctor's release justified laborer's removal. McGee v. Bergen County Utilities, 95 N.J.A.R.2d (CSV) 486.

Termination based on deemed resignation not in good standing was inappropriate under circumstances. Giglio v. Department of Labor, 95 N.J.A.R.2d (CSV) 367.

Excessive absenteeism and failure to report to work warranted institutional attendant's removal. Mills v. Montgomery Medical Home, 95 N.J.A.R.2d (CSV) 353.

Resignation not in good standing by corrections officer following failure to report for work for five consecutive days was too harsh and changed to resignation in good standing. Rodriquez v. Department of Corrections, 95 N.J.A.R.2d (CSV) 254.

Absence from work and failure to advise employer warranted termination. Matter of Wilkins, 95 N.J.A.R.2d (CSV) 203.

Suspension of human services technician; absent from work without notice or permission. Bucci v. Department of Human Services, 95 N.J.A.R.2d (CSV) 111.

Failure to use established call-in procedure to report absences on five consecutive days amounted to a resignation not in good standing. Lisowski v. Department of Buildings, 95 N.J.A.R.2d (CSV) 98.

Removal justified; employee failed to use call-in procedure on five consecutive days. Lisowski v. Buildings and Operations Department, Camden County, 95 N.J.A.R.2d (CSV) 98.

Absence from duty of five or more consecutive days without approval of supervisor was not a basis for termination from public employment under circumstances. Williams v. City of Trenton, 95 N.J.A.R.2d (CSV) 87.

Removal not justified; employee improperly denied use of accumulated leave time to cover absence. Williams v. City of Trenton, 95 N.J.A.R.2d (CSV) 87.

Senior medical security officer removed; excessive absences without permission or proper notice. Washington v. Department of Human Services, 95 N.J.A.R.2d (CSV) 1.

Conduct while on disability leave; not abandonment of employment. Boisvert v. Sea Isle City. 94 N.J.A.R.2d (CSV) 571.

Termination was proper when employee failed to report to work for more than five days without approval from his supervisor. Randall v. City of Newark Housing Authority, 94 N.J.A.R.2d (CSV) 477.

Employee abandoned his position and resigned not in good standing. Goel v. Newark Department of Engineering, 94 N.J.A.R.2d (CSV) 546.

Resignation in good standing of correction officer was proper. Bogdan v. Garden State Reception and Youth Correctional Facility, 94 N.J.A.R.2d (CSV) 426.

Termination of maintenance worker based on resignation not in good standing was justified. LaBenz v. Cape May County Department of Facilities and Services, 94 N.J.A.R.2d (CSV) 88.

Clerical employee was properly deemed to have resigned not in good standing based on her absence without authorization. Wilkins v. Bergen County Board of Social Services, 93 N.J.A.R.2d (CSV) 780.

Suspension rather than removal was justified for long-term employee's absence. McNeil v. Department of Transportation, 93 N.J.A.R.2d (CSV) 742.

Employee was properly resigned not in good standing for absence following denial of medical leave. Williams v. Northern States Prison, 93 N.J.A.R.2d (CSV) 701.

Forced resignation not in good standing was not warranted for failure to return to duty for five consecutive days following an approved leave of absence. Singley v. Woodbridge Developmental Center, 93 N.J.A.R.2d (CSV) 606.

County employee's conduct constituted abandonment of his position. Lee v. Monmouth County Department of Public Works, 93 N.J.A.R.2d (CSV) 452.

Resignation not in good standing; chronic and unauthorized absences. Boston v. Woodbridge Developmental Center, State Dept. of Human Services, 93 N.J.A.R.2d (CSV) 413.

Resigning nurse not in good standing was justified. Boston v. Woodbridge Developmental Center, 93 N.J.A.R.2d (CSV) 413.

Absence for more than five days without giving notice resulted in abandonment of employment. Randall v. Newark Housing Authority, 93 N.J.A.R.2d (CSV) 185.

Absence from position for five or more consecutive days constituted an abandonment of position; resignation not in good standing. Key v. New Lisbon Developmental Center, 93 N.J.A.R.2d (CSV) 138.

Resignation not in good standing was justified. Green v. Gloucester County Board of Social Services, 93 N.J.A.R.2d (CSV) 36.

Resignation not in good standing was warranted. Lick v. Trenton Public Works Department, 92 N.J.A.R.2d (CSV) 765.

Resignation would be considered rescinded and employee would be reinstated. Cooke v. Monmouth County Board of Social Service, 92 N.J.A.R.2d (CSV) 666.

Removal of park ranger with work related disability modified to resignation in good standing. Reardon v. Monmouth County, 92 N.J.A.R.2d (CSV) 583.

Abandonment of position would be treated as resignation not in good standing. Miller v. Crest Haven Nursing Home, Cape May County, 92 N.J.A.R.2d (CSV) 560.

Security guard resigned not in good standing because of unauthorized absence. Turner v. Newark Housing Authority, 92 N.J.A.R.2d (CSV) 403.

Failure to establish that employee refused to obey reasonable order. Drakeford v. North Jersey Development Center, 92 N.J.A.R.2d (CSV) 333.

Correction officer did not abandon her position; work-related injuries entitled her to sick leave. Thomas v. Northern State Prison, 92 N.J.A.R.2d (CSV) 329.

Employee properly resigned not in good standing. Powell v. North Princeton Developmental Center, 92 N.J.A.R.2d (CSV) 301.

Resignation in good standing; failure to report to work in timely manner following end of medical leave. Estate of Hoffman v. State Dept. of Corrections, 92 N.J.A.R.2d (CSV) 286.

Suspension; failure to follow proper procedures to extend a leave of absence. Tierney v. State Department of the Treasury, 92 N.J.A.R.2d (CSV) 229.

Officer resigned not in good standing; proper. Mason v. Cumberland County, 92 N.J.A.R.2d (CSV) 210.

Resignation not in good standing; unauthorized absences. Carvale v. Department of Public Works, City of Trenton, 92 N.J.A.R.2d (CSV) 187.

Resigning employee not in good standing; justified. Martin v. Forensic Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 179.

Public employee resigned not in good standing. Eigenmann v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 136.

Removal of corrections officer would be modified to resignation not in good standing. N.J.S.A. 11A:1-1 et seq. Moore v. Central Transp., New Jersey Dept. of Corrections, 92 N.J.A.R.2d (CSV) 98.

Refusal to submit to blood and urine test constituted resignation not in good standing. U.S.C.A. Const.Amend. 4, N.J.S.A. Const. Arts. 1, 7. Johnson v. City of Camden Police Dept., 91 N.J.A.R.2d (CSV) 13.

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-16.14). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:2-6.3 General resignation

(a) A general resignation is a third category of employee resignation from employment, distinct from a resignation in good standing and a resignation not in good standing.

(b) An employee may be deemed to have received a general resignation from employment for purposes of reaching a settlement in a disciplinary action appealed by an employee to the appointing authority or to the Civil Service Commission in accordance with N.J.A.C. 4A:2-2. The settlement shall clearly state in writing that the parties have agreed to a general resignation as a resolution to the disciplinary appeal.

(c) An appointing authority may not unilaterally impose a general resignation on an employee.

New Rule, R.2010 d.222, effective October 18, 2010.
See: 42 N.J.R. 1277(a), 42 N.J.R. 2399(a).