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

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

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

**Case Notes**

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).

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.

**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).

## 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 which would be otherwise appealable to the Board 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).

**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.

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 Board 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 semi-colon at the end; deleted (a)4 and (a)5; and added (b) and (c).

**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.

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).

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 disorderly 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).

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 unnecessary 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

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).

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 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).

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).

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).

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).

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).

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 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).

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 examination 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).

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).

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).

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).

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).

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).

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

**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).

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).

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,

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 Commissioner or Board.

(g) These rules 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.

**Case Notes**

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 5-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 Discipline Action form, 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 4A:2-3.7 for appeal to the 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).

### 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 Department of Personnel grievance form 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.

### 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.

(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.

**Case Notes**

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 Board hearing

(a) An appeal to the Board shall be processed in accordance with N.J.A.C. 4A:2-2.9 et seq.

(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 Board, 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.

**Case Notes**

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).

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).

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 reprisal. Ferraro v. City of Long Branch, 314 N.J.Super. 268, 714 A.2d 945 (N.J.Super.A.D. 1998).

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 Board 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 Commissioner shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The Board 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 Board shall provide appropriate protections and remedies to the employee.

**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.

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## 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 Board under N.J.A.C. 4A:2-1.1.

**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).

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 Pyschiatric 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 Board 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 Board 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).

**Case Notes**

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.