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	: SUPERIOR COURT OF NEW JERSEY : APPELLATE DIVISION : : Docket No.: A-000747-23
IN THE MATTER OF JUDY BELLAMY, MERCER COUNTY CORRECTION CENTER	: : Civil Action : : On Appeal from a Final : Administrative Determination of the : Civil Service Commission : : State of New Jersey : Civil Service Commission, sat below :

BRIEF ON BEHALF OF RESPONDENT MERCER COUNTY

On the Brief:
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PRELIMINARY STATEMENT

Appellant Judy Bellamy (hereinafter referred to as "Appellant") comes before this Court seeking to overturn the Final Agency Determination that the County of Mercer (hereinafter referred to as "Respondent") sustained its burden of proof as to the disciplinary action filed against the Appellant dated September 23, 2022 (amended November 2, 2022) wherein the Appellant was removed from her public employment.

In this matter, the evidence and testimony presented supported the finding that the Appellant was guilty as charged of insubordination and, as a result of that finding, should forfeit her public employment as a correctional police officer.

For these and the reasons that follow, the Court should affirm the Final Agency Determination dated November 1, 2023.

CONCISE STATEMENT OF FACTS

The following paragraphs detail the facts as they were adduced during the plenary hearing conducted before the Administrative Law Judge (hereinafter referred to as "ALJ"). In addition to the testimony of the witnesses, the Court received, in evidence, Respondent's Exhibits R-1 to R-8, inclusive, and R-10. (Pa-2 to Pa35; Pa47 to Pa48).

The Respondent called Nicholas Mauro. Mr. Mauro testified that he is employed at the Mercer County Corrections Center as a Sergeant. (T11-3 to 8). He described his duties and responsibilities as those of a supervising officer. (T11-9 to 11).

Sergeant Mauro testified that, on September 10, 2022, while working A Tour (11pm to 7am shift) he was assigned to the "New Jail". (T11-12 to 16). At the Corrections Center, "New Jail" encompasses various housing units ("pods") and the Medical Department. (T12-15 to 24). At some point, during the tour of duty, the Appellant broadcast a call using her hand–held communication device, saying, "Mauro, I need to see you in medical." Sergeant Mauro replied via radio, "Last caller go for Sergeant Mauro." (T14-3 to 13). The Appellant replied, "Mauro, I need you to come to medical." (T14-14 to 17). The reply ignored protocol as to addressing a superior officer via broadcast media. Sergeant Mauro replied, "Officer Bellamy, you can call me at 2310." Sergeant Mauro testified that '2310' was a telephone extension

in Master Control, the office that Sergeant Mauro was occupying at the time of the transmission. (T14-22 to 15-13). Instead of calling extension 2310, several minutes later, Officer Bellamy called extension 2217. When the call was transferred to extension 2310, Officer Bellamy, in a loud and disrespectful tone said, "Why didn't you come to medical when I called you?" Sergeant Mauro reminded the Appellant that she was told to call 2310. Moreover, Sergeant Mauro advised the Appellant that a subordinate was not going to order a superior officer. (T16-9 to 13). The Appellant explained that she was having an issue with an inmate and needed assistance. Sergeant Mauro reminded the Appellant that, if she needed to call a code, that she should do so. (T17-1 to 12). At that point, the Appellant, again in the loud and disrespectful tone and manner replied, "I don't need you anymore. I handled it." With that, Officer Bellamy ended the call by hanging up her telephone receiver. (T17-13 to 19).

At this point in the testimony, Sergeant Mauro identified existing policy regarding officers requesting assistance. An officer who needs assistance should implement the SOP for calling 'a code'. Based on the severity of the situation, an officer can call a code to meet a present need. (T17-20 to 18-17).

Based on the telephone call and the officer's failure to implement policy, Sergeant Mauro decided to discuss the matter in person with Officer Bellamy. (T18-18 to 23). Sergeant Mauro addressed Officer Bellamy and her conduct, i.e., hanging

up the telephone call, ordering the Sergeant to Medical and refusing to address his rank and title. (T19-16 to 24). The Appellant responded by accusing the Sergeant of being disrespectful by not reporting to the Medical Department and complying with her directive. (T20-2 to 3). Sergeant Mauro reminded the Appellant that, as a subordinate, she had no authority or expectation to order a superior officer to do anything. He reminded the Appellant that, when circumstances warranted, she needed to call a code. (T20-4 to 8). The Appellant replied, "Okay. We don't need to talk about this anymore. I'll just call a 'Code 1' for every incident." (T20-9 to 13). Sergeant Mauro explained to the Appellant that she was not to misuse the code system, especially when a code was not warranted, but Officer Bellamy continued to address Sergeant Mauro in a loud and disrespectful manner, ignoring his attempt to counsel and educate an unruly, off-track employee. (T20-14 to 24).

Sergeant Mauro briefly described what "calling a Code 1" meant. A "Code 1" is a call out for a supervisor (i.e. sergeant or lieutenant) to immediately respond to the officer's area. (T21-3 to 7). Sergeant Mauro understood Officer Bellamy's statement, i.e. calling a 'Code 1' for every incident, as her threat to misuse the code protocol. (T21-17 to 22). Such a threat would constitute a serious abuse of the SOPs. Misusing the code protocol can put uniform personnel at risk. It can also tie up resources away from the facility's normal work flow. (T22-1 to 9).

Sergeant Mauro requested the Appellant to complete an incident report regarding their interaction. Instead, the Appellant submitted a report that detailed her incident with the inmate, the incident where she should have called a code, (Pa8), contrary to the Sergeant's clear request. (T22-10 to 23-1).

On cross-examination, Sergeant Mauro testified that, on September 12, 2022, he was sergeant for only 1 year 8 months. (T24-23 to 25-1). He also discussed the particulars of his incident report, (Pa6-Pa7), i.e., the time of the incident and the lapse in time when he drafted the report. (T26-20 to 27-4). Sergeant Mauro acknowledged that officers use radio communication for guidance when circumstances do not justify the calling of a code. (T29-22 to 30-4). As to officer relations, Sergeant Mauro testified that officers of equal rank often call each other by their last names, usually omitting the word "officer". (T31-5 to 15). As to the preparation of his report, Sergeant Mauro testified he may have jotted notes and use those notes to prepare his incident report. He admitted that he did not preserve the notes. (T33-15 to 34-5).

Still on cross-examination, Sergeant Mauro explained a phrase he used in his report: "I feel that administrative action is required due to the failed conversation with Officer Bellamy and ongoing issues with disrespecting her superiors." (T34-10 to 17). Sergeant Mauro stated that the "ongoing issues" predate the September 12,

2022 incident; however, the Sergeant could not refer to any specific report of any other superior officer. (T34-24 to 35-18).

As to Appellant's original radio call, the witness explained that adding the word "sergeant" would not have cured the problem. The phrase in its entirety, still constituted an order from an inferior officer to a superior officer, by definition, an insubordinate act. (T37-11 to 22). The witness then testified that he counseled the Appellant in a manner to give the Appellant an example of proper respectful discourse. (T39-20 to 40-13).

With regard to the calling of codes, Sergeant Mauro denied that officers were instructed not to call codes because of personnel shortages at the Correction Center. (T47-16 to 25). As to the overnight shift, Sergeant Mauro dispelled the notion that the overnight staff are more "relaxed" when the Warden, Deputy Administrator and the Captain are not present. (T52-22 to 53-3).

On redirect examination, Sergeant Mauro commented on his incident report and the use of the word "superiors" in his incident report. The witness also testified that it was well known that the Appellant had issues in the past with other supervisors. (T53-20 to 54-2).

The Appellant testified on her behalf. The Appellant testified that she was working on September 12, 2022, A Tour, 11pm to 7am, in the Medical Department,

her usual assignment. (T57-19 to 24). During her tour of duty, Appellant had an incident with an inmate who was in the Medical Department waiting for intake processing. (T60-12 to 16). The witness explained that new arrivals, no matter what the hour, are evaluated by the Medical Department prior to assignment to a living unit. (T60-18 to 61-11). During Appellant's shift, a "code 3" was called, i.e. a fight between two inmates. That slowed down the new arrival evaluation process. One inmate grew tired of waiting in the Medical Department and threatened to leave the Medical Department and go to his anticipated unit assignment. The Appellant testified that she did everything to deescalate the situation. (T63-1 to 6). The inmate insisted on leaving the Medical Department. The Appellant recalled calling into her radio communication device, "Sergeant Mauro, may I see you in Medical." (T64-21 to 65-4). The Appellant opined that the situation did not reach a minimal threat of harm for officers and civilians requiring a code. (T65-20 to 66-5). The Appellant remembered addressing Sergeant Mauro as "Sergeant" and explained that, sometimes, first words of radio transmissions get cut off. (T66-23 to 67-12). The inmate rose from his seat, with his belongings in hand. Again, the Appellant called for Sergeant Mauro. (T67-21 to 25). She cajoled the inmate into resuming his seat and waiting for the medical evaluation. (T67-21 to 70-2).

The Appellant denied hearing Sergeant Mauro's call to her asking her to call extension 2310. (T70-22 to 71-1). At the appropriate time, the Appellant called

Master Control to report on the head count of inmates in the Medical Department, which she did every 30 minutes. (T71-9 to 14). Appellant called extension 2217, the normal telephone extension to report the count. (T71-2 to 23). After reporting the count to the officer in Master Control, the Appellant spoke to Sergeant Mauro, who was also in Master Control. (T72-2 to 12). The Appellant recounted a different version of her conversation with Sergeant Mauro. In her version, she calmly explained the incident with the inmate; however, the Appellant did admit to questioning Sergeant Mauro's statements. (T72-23 to 74-6). At some point, the conversation ended in silence followed by her hanging up the receiver. (T74-4 to 6). The Appellant denied speaking to Sergeant in an intimidating or challenging fashion. (T74-11 to 19).

The Appellant recalled the conversation taking place around 2:00 am, the time of her head count report. Minutes before her 3:00 am break, the Appellant recalled Sergeant Mauro entering the Medical Department. (T75-6 to 11). The Appellant recounted another calm and tranquil conversation between herself and Sergeant Mauro. (T76-22 to 77-6). Sergeant Mauro questioned the Appellant as to why she did not call a code. The Appellant explained that there was no danger, but she needed supervisor assistance. (T78-5 to 9). Sergeant Mauro requested the Appellant to write an incident report. She questioned the need for an incident report. Sergeant Mauro explained the need for the incident report. (T78-15 to 24).

Again, the Appellant explained that she chose not to call a code for safety reasons as it relates to the staffing levels over the last year and a half. (T80-4 to 12). She did admit that her superiors do not instruct officers not to call a code, when necessary. (T81-5 to 7). When questioned by her counsel, the Appellant testified that she first saw Sergeant Mauro's notes on the bottom of her incident report (Exhibit R-3, in evidence) indicating that the report did not comport with his request. (T82-1 to 9).

The Appellant reviewed her disciplinary history. (Pb26 to Pb29). As to the entry dated May 27, 2021, the Appellant claimed that the administration held the hearing for the insubordination charge in her absence. She also stated that she was unaware of the five-day suspension levied against her. (T84-8 to 16). She had requested an adjournment that was seemingly denied. She presented no documentation supporting her claim.

On cross-examination, the Appellant admitted that she did not file an appeal of the disciplinary finding of insubordination. (T88-18 to 24).The Appellant was then questioned as to the service of process of the Preliminary Notice of Disciplinary Action which she claims she was not served. The Appellant confirmed that she received correspondence from her attorney regarding their representation of her. She had no adequate answers for these inconsistencies. (T89-6 to 90-8).

As to the incident in the Medical Department on September 12, 2022, the Appellant was asked about the broken unlockable door at the entrance of the Medical Department. Despite this broken door and the unruly inmate who attempted to leave the Medical Department via the unlocked, broken door, the Appellant insisted that a code was not necessary. (T92-19 to 93-11). She insisted that she did not call the code for safety reasons, i.e. the shorthanded staff levels. In prior testimony, the Appellant acknowledged that she was never instructed not to call a code because of low staffing levels.

As for her incident report, the Appellant admitted that she did not include any information concerning her conversation with Sergeant Mauro. (T93-21 to 94-1). She denied ever being loud or disrespectful. (T94-2 to 6). She claimed to address Sergeant Mauro by his title under all circumstances. (T94-7 to 9). The Appellant dismissed Sergeant Mauro's incident report and his testimony as pure fabrication. (T94-10 to 13).

PROCEDURAL HISTORY

The Respondent issued a Preliminary Notice of Disciplinary Action (hereinafter referred to as "PNDA") on or about September 23, 2022, charging the Appellant with several charges. (Pa2 to Pa5). They include: insubordination (per *N.J.A.C.* 4A:2-2.3(a)(2), conduct unbecoming a public employee, verbal abuse of a patient, client, resident or employee, insubordination (per the Mercer County Public Safety Table of Offenses and Penalties, hereinafter referred to as "TOOP") (Pa31 to Pa35) and violation of administrative procedures and/or regulations involving safety and security. After discovery was shared by and between the parties, the parties scheduled a department- level hearing before the Respondent's independent hearing officer. On January 14, 2023, the hearing officer issued its decision. (Pa36 to Pa46). The hearing officer found that the Respondent proved its case and recommended removal from public employment. A Final Notice of Disciplinary Action (hereinafter referred to as "FNDA") issued on or about January 20, 2023. (Pa47 to Pa48). Appellant appealed to the Civil Service Commission (hereinafter referred to as "CSC" or the "Commission") on February 6, 2023. The Commission referred the matter to the Office of Administrative Law (hereinafter referred to as "OAL").

The Administrative Law Judge assigned to hear this matter scheduled the matter as quickly as possible. On March 21, 2023, Judge Delanoy heard testimony and received exhibits in evidence. (Pa2 to Pa35; Pa 47 to Pa 48). At the conclusion

of the hearing, the parties agreed to order transcripts and submit written summations. Judge Delanoy issued his Initial Decision on June 27, 2023, finding that the Respondent had proven its case and agreed that removal was the appropriate sanction. (Pa158 to Pa174). The Appellant filed exceptions. (Pa131 to Pa144). The Respondent replied. (Pa145 to Pa155).

The Commission remanded the matter back to the ALJ. In its August 2, 2023 remand order, the Commission expressed concerned that the ALJ decided the matter "solely based on the testimony of the appellant and the Correctional Police Sergeant". (Pa156 to Pa157). The Commission acknowledged that it defers such credibility determinations; however, in this matter, it required that the ALJ provide "further support for his determinations", by possibly requiring additional evidence. (Pa156).

Immediately after remand, on August 20, 2023, the Appellant filed a motion to return the Appellant to pay status. (Pa175). On September 29, 2023, in a written opinion, the Court, per Judge Delanoy, denied the motion. (Pa176 to Pa181). Consistent with the remand order, Judge Delanoy closed the record on October 4, 2023. Thereafter, on October 6, 2023, the Court issued a Second Initial Decision. (Pa209 to Pa228). In that Second Initial Decision, Judge Delanoy, in clear, unambiguous language, affirmed his prior decision, i.e., confirming the removal from employment.

The Appellant filed exceptions as to the Second Initial Decision. (Pa182 to Pa199). The Respondent replied. (Pa200 to Pa207). At the Commission's monthly meeting, scheduled for November 1, 2023, four commissioners attended the meeting. A vote on the motion to modify the removal to a 60 day suspension resulted in a 2-to-2 tie. Per the Commission's rules, a tie results in the ALJ's decision being deemed as adopted. A Final Agency Determination was entered accordingly. (Pa208).

STANDARD OF REVIEW

A reviewing court reviews the fact findings of the agency whose decision is on appeal, not of the ALJ. A reviewing court should uphold those findings if they are supported by the record, even if the findings are contrary to fact findings of the ALJ whose decision the agency head reviewed, provided the agency head follows the requirements of the Administrative Procedure Act and makes the necessary statement of his or her reasons for rejecting the ALJ's findings. It is not the function of the reviewing court to substitute its independent judgment on the facts for that of an administrative agency. *In re Grossman*, 127 N.J. Super. 13, 23 (App. Div.), certif. denied, 65 N.J. 292 (1974).

The standard of review outlined in *In Matter of Hendrickson*, 451 N.J.Super. 262 (App. Div., 2017) is inappropriate under the circumstances. In *Hendrickson,* the vacancy complained of resulted from a lack of commissioners being appointed to the Commission. In the present matter, the 2-2 deadlock resulted when one of the commissioners was absent. To that end, the narrow exception carved by *Hendrickson* does not apply.

LEGAL ARGUMENT

POINT I

THE CSC'S DECISION, RELYING ON THE DETAILED FINDINGS OF THE ALJ, WAS NOT ARBITRARY, CAPRICIOUS OR UNREASONABLE.

The CSC accepted and adopted the ALJ's findings and conclusions, concluding that the County's determination to remove Appellant from her employment as a Correction Officer. (Pa208). For this Court to reverse this determination, Appellant must demonstrate that the CSC's decision was "arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence, or that it violated legislative policies expressed or implicit in the [enabling legislation]." *Aqua Beach Condominium Association v. Dept. of Community Affairs,* 186 N.J. 5, 15-16 (2006). See also *Campbell v. Dept. of Civil Service,* 39 N.J. 556, 562 (1963). Appellant has not and cannot do so.

Appellate review of an administrative agency's decision is narrow. *Id.* at 15. A strong presumption of reasonableness attaches to decisions of the CSC. *In re Carroll,* 339 N.J. Super. 429, 437 (App.Div., 2001), certif. denied, 179 N.J. 85 (2001), citing *In re Vey,* 272 N.J.Super. 199, 205 *(*App.Div.,*1993)*, aff'd, 135 N.J. 306 (1994).

While an appellate court is not bound by an agency's interpretation of a statute or its determination on an exclusively legal issue, *Mayflower Sec. Co. v. Bureau of Sec.,* 64 N.J. 85, 93 (1973), an appellate court is obliged to affirm the CSC's decision if substantial evidence supports the decision, even if the appellate court could have reached a different result. *Campbell v. NJ Racing Commission,* 169 N.J. 579, 587 (2001); *Greenwood v. State Police Training Ctr.,* 127 N.J. 500, 513 (1992).

In reviewing agency determinations, "appellate courts must defer to an agency's expertise and superior knowledge of a particular field." *Greenwood,* 127 N.J. at 513. "The governing standard is, of course, whether the findings made could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge their credibility." *In re Grossman,* 127 N.J.Super. 13, 22-23 (App.Div., 1974), certif. denied, 65 N.J. 292 (1974). The reviewing court must determine "whether pertinent principles of law were properly interpreted and applied to the facts as found by the trier thereof." *Id. at 23.*

In the appeal at bar, the CSC adopted the Initial Decision of Judge Delanoy. To that end, the findings and conclusions govern.

Throughout her brief, the Appellant argues that the ALJ's skewed findings are insufficient to support her removal. The testimony of Sergeant Mauro and Officer Bellamy are clearly at odds. But what separates their testimony?

Judge Delanoy relied on his careful assessment of the credibility of the witnesses to guide his efforts. Judge Delanoy – not a four-person commission – observed the witnesses, their demeanor, their presentation and weighed their testimony accordingly. He was in the best position to make that assessment and did so twice.

In reviewing credibility determinations, the appellate court should give "due regard" to the ability of the fact finder to judge credibility and, where an agency's expertise is a factor, to that expertise. *State v. Locurto*, 157 N.J. 463, 470-71 (1999); *Close v. Kordulak Bros.,* 44 N.J. 589, 599 (1965). "If the factual findings are supported by competent evidence**,** they will be upheld. It is not ordinarily our function to weigh the evidence, to determine the credibility of the witness, to draw inferences and conclusions from the evidence, and to resolve conflicts therein." *In re Grossman,* 127 N.J.Super. at 2.

In the present matter, Judge Delanoy properly and correctly noted that Appellant disputed the testimony of the witnesses by offering her take of the events of September 12, 2022. (Pa214). Judge Delanoy made credibility determinations, as

was his obligation, as to the witnesses' testimony. He found that Sergeant Mauro offered credible testimony that Appellant behaved in a contumacious manner and was therefore insubordinate. (Pa215).

During the hearing, Sergeant Mauro recounted the many instances of disrespectful behavior that, when taken as a whole, constituted the Appellant's insubordination. In an attempt to cast a better light on her behavior, the Appellant claimed that she acted respectfully. She denied any contemptuous behavior. On cross examination, the Appellant rejected the veracity of her disciplinary history without offering substantial proof as to why the disciplinary history was inaccurate. The ALJ duly noted that the Appellant's version of events "must be considered in light of what she has at stake." (Pa216). (T88-18 to 90-8).

Sugar coating and confabulation do nothing to enhance credibility. On the contrary, that strategy hurts credibility.

The ALJ, in the Second Initial Decision, went to great lengths to disuss how he assessed the witnesses. In the long run, based on the prepondence of the credibile evidence, the ALJ determinated that Sergeant Mauro's credible testimony outweighed the testimony of the Appellant. "Once again, Mauro was a credible witness, and from my experience, knowledge, and common observation, I can accept his testimony as more probable than Bellamy's under the circumstances." (Pa217).

As such, this Court should give "due regard" to the ALJ's ability to judge the credibility of the parties and the respective witnesses. *Locurto,* 157 N.J. at 470-71; *Kordulak Bros.,* 44 N.J. at 599. Moreover, the ALJ's factual findings are supported by competent evidence. *In re Grossman,* 127 N.J.Super. at 23. As such, this Court should not disturb those findings.

POINT II

THE ADMINISTRATIVE LAW JUDGE CORRECTLY FOUND THAT THE EGREGIOUSNESS OF THE APPELLANT'S CONDUCT WARRANTED HER REMOVAL.

Upon reviewing a disciplinary action imposed on a correction officer, the administrative body should consider "discipline, safety and security as well as the effect a breach of duty may have on the institution, the inmates and other employees." *Bowden v. Bayside State Prison*, 268 N.J. Super. 301, 303 (App.Div. 1993), cert. den., 135 N.J. 469 (1994).

In disciplinary proceedings, courts have found that an officer's "past record is inherently relevant." *Town of West New York v. Bock*, 38 N.J. 500, 523 (1962) . In *Bock,* the New Jersey Supreme Court acknowledged that discipline based in part on consideration of past misconduct can be a factor in determining the appropriate penalty for present misconduct. *Id.* at 522-523. *Bock* created the outline for the progressive discipline approach utilized in New Jersey. For instance, the *Bock* Court

held that dismissal generally can result from habitual tardiness or similar chronic conduct because numerous occurrences over a reasonable short space of time, even though sporadic, may demonstrate an "attitude of indifference amounting to neglect of duty." *Id.* at 522.

In some cases, courts have found the seriousness of an employee's conduct requires a more severe penalty than generally afforded through a system of progressive discipline. "Progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property." *In the Matter of Herrmann,* 192 N.J. 19, 33 (2007).

In her brief, the Appellant argues that her conduct does not warrant termination. Throughout her argument, the Appellant argues that her conduct did not rise to a level that justifies removal. This assertion is merely disingenuous, however, since the ALJ found in the Initial Decision that removal is appropriate based on the quality of Appellant's conduct. (Pa224 to Pa226).

The Appellant engaged in egregious behavior, purposefully acting in an insubordinate manner. For the third, maybe the fourth time, the Appellant committed an act of insubordination. (Pa26 to Pa29).[1] Based on the Appellant's history and her

[1] The Disciplinary History offered in evidence lists two instances of insubordination. Included in the exhibits offered at time of hearing was an FNDA dated September 17, 2021. (Pa9 to Pa10). This FNDA was not listed in the

conduct in the present matter, the Respondent sought the Appellant's removal from public employment. The egregiousness of her conduct dictated that result. The spirit of the ruling in *Bock* justifies that conclusion. See also *City of Newark v. Massey*, 93 N.J.Super 317, 322-25 (App. Div. 1967).

In his Initial Decision, the ALJ found that Appellant engaged in conduct that warranted the forfeiture of her employment. (Pa225). Notably, the ALJ found that the Appellant had committed the offense of insubordination so many times that the County had no choice but to pursue termination. (Pa225). See also *In the Matter of Jillian Baron, Hudson County Department of Corrections,* 2023 N.J.AGEN.LEXIS. 2 (2023).[2]

Removal from public employment is appropriate in the following circumstances: 1. when the misconduct is severe; 2. when it is unbecoming to the employee's position; 3. when it renders the employee unsuitable for continuation in the position; or 4. when application of the principle would be contrary to the public interest. *Herrmann,* 192 N.J. at 33.

What made the Appellant's conduct severe? Sergeant Mauro testified that the Appellant treated him like a child. Subsequent telephone conversations and in-

Disciplinary History as the Appellant had filed an appeal with CSC/OAL. The ALJ took judicial notice of the OAL hearing and the CSC's Final Agency Determination that dismissed the appeal of this FNDA. (Pa224 to Pa225). Arguably, this present matter constitutes the Appellant's **fourth** insubordination.

[2] Pursuant to *Court Rule* 1:36-3, this unpublished decision is attached under separate cover and certification.

person discussion did nothing to abate the attitude that fueled Appellant's insubordination. The piece de resistance was the incident report Sergeant Mauro asked Appellant to prepare. As noted, the report failed to address the Sergeant's concerns or answer his specific request. (Pa8).

Corrections Officers, like law enforcement officers, are held to a higher standard than a civilian public employee. *Moorestown v. Armstrong,* 89 N.J.Super. 560, 566 (App.Div. 1965), cert. denied, 47 N.J. 80 (1966). The court in *Moorestown* recognized that police officers held a special public position whose "primary duty is to enforce and uphold the law … He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." *Id;* see also *In re Phillips,* 117 N.J. 567, 576-577 (1990).

Appellant was duty-bound to promote adherence to the rules and regulations of the correctional facility. In a paramilitary organization, respect for the chain of command must be observed. Appellant ignored that simple rule. She ignored this for the third, maybe fourth, time in which her conduct was disrespectful and deemed worthy of discipline. On re-direct examination, Sergeant Mauro confirmed that the Appellant was well known for her obstuptrive behavior. That only aggravates the situation.

The Appellant expects this Court to set aside the well-supported, well-reasoned opinion of the ALJ. In do soing, the Appellant petitions this Court to do what it cannot do: inappropriately substitute its view for that of the appointing authority and the Commission. Accord *In re Carter,* 191 N.J. 474, 487 (2007).

Based on the above, the Respondent respectfully submits that Appellant's removal is fully supported by both the credible evidence and public policy. For this reason, the Final Agency Determination and, by reference, the Administrative Law Judge's Initial Decision, should be affirmed.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the Final Agency Determination of November 1, 2023.

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IN THE MATTER OF JUDY BELLAMY, MERCER COUNTY CORRECTIONS CENTER	: Superior Court of New Jersey : Appellate Division : : Docket No: A-000747-23 : : Civil Action : : On Appeal from a Final Administrative Determination of the Civil Service Commission : : Sat Below: Civil Service Commission : : CSC Docket No: 2023-1588

REPLY BRIEF ON BEHALF OF APPELLANT JUDY BELLAMY

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POINT I: RESPONDENT FAILS TO RECOGNIZE SEVERAL IMPORTANT ASPECTS OF THE STANDARD OF REVIEW

In relation to agency fact finding, "the role of the appellate court is that of determining 'whether the findings made could reasonably have been reached on sufficient credible evidence present in the record.'" Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 92 (1973) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). "The appellate application of this standard requires far more than a perfunctory review; it calls for careful and principled consideration of the agency record and findings in the manner." Id. at 93. "An appellate tribunal is . . . in no way bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue." Ibid. Moreover, "where technical or specialized expertise is not implicated . . . [appellate courts] owe no deference to [an] agency." A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Auth., 427 N.J. Super. 389, 394 (App. Div. 2012). Finally, "[a]s far as review of agency imposed sanctions is concerned, there is no doubt of a court's power of review under the tests of illegality, arbitrariness or abuse of discretion and of its power to impose a lesser or different penalty in appropriate cases." Dep't of Health v. Tegnazian, 205 N.J. Super. 160, 173 (App. Div. 1985) (quoting Mayflower, 64 N.J. at 173).

POINT II: RESPONDENT DOES NOT ADDRESS ITS VIOLATION OF PROCEDURAL DUE PROCESS, NOR ITS VIOLATION OF THE ATTORNEY GENERAL GUIDELINES, AND THEREFORE, THOSE ISSUES ARE WAIVED IN FAVOR OF APPELLANT.

Both our federal and state constitutions provide procedural protections for substantive interests in life, liberty, and property. U.S. Const. amend XIV; N.J. Const. art. 1, § 1. A protectable property interest in continued public employment exists if a litigant has a "legitimate claim of entitlement" to such employment. Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972); see also Nicoletta v. N. Jersey Dist. Water Supply Comm'n, 77 N.J. 145, 154-55 (1978) ("The chief ingredient of this kind of property interest such as to quicken the right to protection by procedural due process is a legitimate claim of entitlement.") (internal quotations omitted) (citation omitted). "[T]he sufficiency of [a] claim of entitlement must be decided by reference to state law." Bishop v. Wood, 426 U.S. 341, 344 (1976); see also Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 (1985). ("Property interests . . . are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.") (internal quotations omitted) (citation omitted); Leis v. Flynt, 439 U.S. 438, 442 (1979) ("A claim of entitlement under state law . . . must be derived from statute or legal rule or through a mutually explicit understanding.").

In this case, N.J.S.A. 40A:14-147 provides that:

> [N]o **permanent member** or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for **just cause** as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer.
>
> [N.J.S.A. 40A:14-147 (emphasis added).]

When "just cause" is needed to terminate a "permanent member," a protectable property interest is present. See Nicoletta, 77 N.J. at 154-55; see also Grexa v. State, Dep't of Human Servs., 168 N.J. Super. 202, 207 (App. Div. 1978) ("[P]laintiff was a temporary employee" and therefore "no property interest [was] implicated such as to invoke the due process shield."); Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982) ("The hallmark of property . . . is an individual entitlement . . . which cannot be removed except 'for cause.'").

The CSC defines "permanent employee" as someone "in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period." N.J.A.C. 4A:1-1.3. Generally, a "police training course" must be completed before a "working test period" can begin. N.J.A.C. § 4A:4-5.2(d)(1); N.J.S.A. 52:17B-68. Moreover, "entry level . . . corrections police officers" are required to "serve a 12-month working test period."

N.J.A.C. § 4A:4-5.2(d)(1). Here, Officer Bellamy completed her police training course, and has been serving as a corrections officer for over 20 years. (1T73-74). She is clearly a permanent public employee, to which N.J.S.A. 40A:14-147 applies. As such, Officer Bellamy has a protectable property interest in her continued employment. See Loudermill, 470 U.S. at 539; see also Grexa, 168 N.J. Super. at 207.

"Once it is determined that due process applies, the question remains what process is due." Nicoletta, 77 N.J. at 165. "[T]he significance of the private interest in retaining employment cannot be gainsaid," and courts have "frequently recognized the severity of depriving a person of the means of livelihood." Loudermill, 470 U.S. at 543. "While a fired worker may find employment elsewhere, doing so will take some time and is likely to be burdened by the questionable circumstances under which he left his previous job." Ibid.

"The only meaningful opportunity to invoke the discretion of [a] decisionmaker is likely to be **before** [a] termination takes effect." Ibid. (emphasis added). As such, there must be "notice" and "some kind of hearing" prior to "the discharge of an employee who has a constitutionally protected property interest in his employment." Id. at 542, 546 (quoting Roth, 408 U.S. at 569-70) (internal quotations omitted); see also Caldwell v. N.J. Dep't of Corr., 250 N.J. Super. 592, 615 (App. Div. 1991) ("[A]n employee 'is entitled to oral or written notice of the

charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story.'" (quoting Loudermill, 470 U.S. at 546)); Nicoletta, 77 N.J. at 165 ("[T]he minimum requirements of due process [] include [] written notice of the claimed violations.").

Similarly, N.J.S.A. 40A:14-181 "requires [e]very law enforcement agency in this State to adopt and implement guidelines that are consistent with the guidelines that have been promulgated by the Attorney General." O'Rourke v. City of Lambertville, 405 N.J. Super. 8, 19 (App. Div. 2008) (quoting N.J.S.A. 40A:14-181) (internal quotations omitted). In relevant part, the Attorney General Guidelines, state that:

> 5.1.14 Once a complaint has been received, the subject officer shall be notified in writing that a report has been made and that an investigation will commence. Such notification shall not include the name of the complainant.
>
> 6.0.1 All allegations of officer misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion in conformance with this policy, regardless of whether the officer resigns or otherwise separates from the agency.
>
> 6.2.3 The investigator should interview the complainant, all witnesses and the subject officer, and review relevant reports and documents, gather evidence and conduct any other investigation as appropriate.
>
> 6.3.5 Internal affairs shall notify the suspect officer in writing that an internal investigation has been started,

> unless the nature of the investigation requires secrecy. The internal affairs investigator should interview the complainant, all witnesses and the subject officer, review relevant reports and documents, and obtain necessary information and materials.
>
> 7.1.3 The complainant should be personally interviewed if circumstances permit.
>
> 7.1.4 All relevant facts known to the complainant should be obtained during the interview.
>
> 8.1.6 In all cases where a subject officer is interviewed pursuant to an administrative or criminal investigation, the interview must be audio recorded by the investigator, and should be video recorded, if practical.
>
> [Attorney General, Internal Affairs Policy & Procedures 22-48 (June 2021).]

Here, Officer Bellamy was **not** issued a target letter, and therefore, she did not receive proper notice of the charges. This violated the Attorney General Guidelines, and Officer Bellamy's due process rights. Moreover, Officer Bellamy (the subject officer), Sargeant Mauro (the complainant), and Officer Griffith (a potential witness) were **not** interviewed. This also violated the Attorney General Guidelines. Respondent failed to notify Officer Bellamy of the charges, and could not be bothered to conduct vitally important interviews. As such, it is clear that Respondent did not "thoroughly, objectively, and promptly" investigate this matter to its "logical conclusion." (Attorney General, Internal Affairs Policy & Procedures 24 (June 2021)).

Based on the foregoing, Respondent's removal of Officer Bellamy must be reversed. See O'Rourke, 405 N.J. Super. at 23 ("[W]hen a law enforcement agency adopts rules pursuant to N.J.S.A. 40A:14–181 to implement the Attorney General's Guidelines, the agency has an obligation to comply with those rules. [When] it fail[s] to do so, and [when] the deficiencies taint[] the disciplinary process, the [] decision to remove [an employee] from his position cannot stand.").

Finally, it must be noted that Respondent does **not** address Officer Bellamy's arguments in relation to the Attorney General Guidelines and Procedural Due Process. **Indeed, Respondent does not even mention the issues in its brief.** That is likely because Respondent knows that the merits of Officer Bellamy's position are strong, and that the investigation of Officer Bellamy's case was improper. Nevertheless, Respondent's failure to respond has consequences. Specifically, the Court should find that Respondent has waived these issues. See W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 459 (App. Div. 2008) ("[The respondent's] appellate brief argues in support of that ruling, but [the appellant] fails to address the issue in its appellate briefs. An issue not briefed is deemed waived. Thus, [the respondent prevails] based on the procedural rule and on the merits."); see also Green Knight Cap., LLC v. Calderon, 469 N.J. Super. 390 (App. Div. 2021) ("An issue not briefed on appeal is deemed waived.").

POINT III: THE ENTIRETY OF THE RECORD DEMONSTRATES THAT THE PENALTY OF REMOVAL WAS NOT WARRANTED.

Overall, "[t]here must be fairness" in the "discipline imposed . . . by public employers." In re Stallworth, 208 N.J. 182, 192 (2011). "[T]he question for the courts is whether [a] punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." In re Carter, 191 N.J. 474, 484 (2007) (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)) (internal quotation marks omitted).

On the date of the incident, Officer Bellamy was assigned to the Medical Department in order to supervise inmates that needed to be evaluated. (1T58). A new inmate was subsequently brought in that needed to be medically cleared. (1T60-61). While waiting to be evaluated, the inmate became upset and started yelling about needing to leave. (1T63). Officer Bellamy attempted to de-escalate the situation, but the inmate refused to calm down. (1T63-65). Officer Bellamy subsequently called Sergeant Mauro over the radio and asked for assistance. (1T64-65). Officer Bellamy testified that she could have called an official code, but that calling a code usually involved an emergency, and resulted in a multi-officer response. (1T66, 78). Officer Bellamy testified that she did not feel calling a code was necessary because the inmate started to calm down after additional time passed. (1T66, 78). However, the inmate later stood up and began collecting his

belongings, which made Officer Bellamy believe that he might try to leave. (1T67). As such, Officer Bellamy again called Sergeant Mauro over the radio and asked for assistance. (1T64-65). Officer Bellamy again testified that she did not feel calling a code was necessary and that the inmate calmed down after additional time passed. (1T69). Officer Bellamy also testified that the prison was experiencing staffing shortages, and that she did not want to call a code if it was not necessary. (1T80).

Sergeant Mauro admitted that a code did not need to be called in every situation, and that officers were allowed to ask for supervisor assistance without calling a code. (1T30). He also admitted that calling a code resulted in the physical response of multiple officers and supervisors. (1T48). To this point, Sergeant Mauro admitted that calling a code involved a "heightened response." (1T30).

The insubordination claim at issue arises because Sergeant Mauro believes that Officer Bellamy did not use the title "Sergeant" when asking for his assistance. (1T37-38). Officer Bellamy claims that she used the title "Sergeant" when asking for assistance. (1T67). Officer Bellamy specifically testified:

> To my recollection, I did say "Sergeant Mauro." Our radio[] transmissions sometimes are cut off when you press the button. The first word sometimes is not heard. I try to make it a practice to wait and then respond. After I press the button . . . I try not to just go right over the radio. But in that instant . . . I wanted to see if he could come to Medical so we [could] quell the situation.

[(1T67).]

Following Officer Bellamy's first request for help, Sergeant Mauro testified that he responded "last caller, go for Sergeant Mauro." (1T39). He stated that this communication was a "hint" for Officer Bellamy to use the correct title. (1T39). Officer Bellamy testified she did not hear this communication. (1T67). Following Officer Bellamy's second request for help, Sergeant Mauro testified that he responded "Officer Bellamy, you can call me at 2310." (1T41, 70-71). Officer Bellamy testified she did not hear this communication either. (1T70-71).

Officer Bellamy testified that the inmate was eventually evaluated, medically cleared, and transported to a different location. (1T70). She stated that she called "Master Control" in order to inform them about these updates. (1T70). She was transferred to Sergeant Mauro and the two talked about their previous radio communications. (1T73). Sargeant Mauro stated that he responded twice, and Officer Bellamy stated that she did not hear the responses. (1T73). Officer Bellamy then stated:

> Sarge, you said you responded to me twice and I didn't respond back and you also said you told me to call 2310 and I didn't call. . . .

> Not for nothing, I'm not trying to be funny, but you don't think maybe there was a reason? Maybe you should come and check and see what was going on in the area?[1]
> [(1T73).]

Looking back on the conversation, Officer Bellamy testified that:

> We had a rapport and I just was asking a question. I didn't feel that I was doing or think that I was doing anything wrong. I was just asking a question. I wasn't challenging him or I didn't mean to make him feel that I was challenging him, but it could have been a misunderstanding.
>
> [(1T74).]

Thereafter, Sergeant Mauro went to the Medical Department in order to speak with Officer Bellamy further. (1T75). Officer Bellamy testified that she was respectful throughout the conversation, but that Sergeant Mauro got upset and raised his voice. (1T76-78). Officer Bellamy testified that she left the area in order to "diffuse the situation." (1T77-78). Sergeant Mauro testified that Officer Bellamy stated "we don't need to talk about this anymore, I will just call a code [] for every incident." (1T20). Sergeant Mauro testified that he understood this as a threat to "misuse the code system." (1T20). Sergeant Mauro's report also stated that Officer Bellamy acted in a "belligerent" manner. (Exhibit R-7).

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[1]Officer Bellamy testified that she hung up the phone after confirming that the there was nothing else to talk about. (1T74). Sergeant Mauro testified that "he was going to ask" Officer Bellamy more questions, but that she hung up. (1T36).

Sargeant Mauro subsequently asked Officer Bellamy to complete an incident report. (1T78). Officer Bellamy testified that she "specifically" asked Sergeant Mauro what information should be included in the report, and that he responded "write me an incident report on what happened between you and the inmate that you felt the need to call me." (1T78-80). Sergeant Mauro testified that he asked Officer Bellamy to write a report concerning her alleged insubordination. (1T22).

Based on the above facts, the penalty of removal was absurd and must be overturned. Officer Bellamy has been a corrections officer for 22 years. (1T85). On the date of the incident, an inmate became upset, and Officer Bellamy asked Sergeant Mauro for assistance. Officer Bellamy asked for assistance on two separate occasions. Sergeant Mauro heard both requests for assistance, but did not respond to the scene because Officer Bellamy allegedly omitted his supervisory title when sending the communications. Officer Bellamy testified that the radio cut off the beginning of her communications, and that she addressed Sergeant Mauro with the proper title. Instead of responding to the scene, Sergeant Mauro decided to give Officer Bellamy "hints" on the proper way to address him. Officer Bellamy and Sergeant Mauro communicated thereafter, and gave conflicting accounts of what they stated.

Officer Bellamy should not lose a 22 year position because a radio cut off certain parts of her communications. Moreover, considering the circumstances, it

might be understandable that Officer Bellamy forgot to wait the proper amount of time before speaking into the radio.[2] It might even be understandable if Officer Bellamy forgot to use a proper title. An inmate was screaming that he wanted to leave the Medical Department, and Officer Bellamy was the only law enforcement member present. Indeed, Sergeant Mauro repeatedly testified that Officer Bellamy "absolutely" should have called a code, and that doing so would have resulted in the physical response of multiple officers and supervisors. (1T48-49). If this was the proper course of action, why did Sergeant Mauro not respond to provide assistance? Why did he use the situation as an opportunity to give passive-aggressive feedback to his subordinate? If the situation required calling a code, then Sergeant Mauro should have responded to the scene, and dealt with any counseling or reprimands afterward. Instead, he left Officer Bellamy alone based on the (quite possibly incorrect) belief that she failed to use a proper title. Officer Bellamy proceeded to ask Sergeant Mauro why he did not respond to the scene, and acknowledged that her questions could have been misconstrued as insubordination.

Here, the penalty of removal is "shocking to one's sense of fairness." In re Carter, 191 N.J. at 484 (quoting In re Polk, 90 N.J. at 578). "[F]orfeiture of

[2] Officer Bellamy testified "[o]ur radio[] transmissions sometimes are cut off when you press the button. The first word sometimes is not heard. I try to make it a practice to wait and then respond." (1T67).

[public] office is a harsh penalty." State v. Hupka, 407 N.J. Super. 489, 497 (App. Div. 2009) (quoting State v. Och, 371 N.J. Super. 274, 281 (App. Div. 2004)); see also Loudermill, 470 U.S. at 543 (recognizing the "severity of depriving a person" of their employment). A career in law enforcement that spans 22 years should not end based on the above facts.

Indeed, the CSC ostensibly felt the same when requiring the ALJ to provide "further support" for his original decision. (Pa156). The ALJ responded by issuing a nearly identical opinion. This was shocking considering that the CSC maintains final decision-making authority. See In re Kallen, 92 N.J. 14, 20 (1983) ("An agency head has the exclusive right to decide contested cases in administrative hearings."); see also N.J. Election Law Enf't Comm'n v. DiVencenzo, 451 N.J. Super. 554, 566 (App. Div. 2017) ("ALJs have no independent decisional authority."). Moreover, the CSC failed to vote in favor of adopting the ALJ's second decision. (Pa208). Specifically, in its final agency decision, the CSC stated:

> The matter came before the [CSC] at its November 1, 2023 meeting. At that meeting, one of the five members was not in attendance. A motion was made to modify the removal to a 60 calendar day suspension. Two Commission members voted for this motion while the remaining two members voted to adopt the ALJ's recommendation in full. Since there was a tie vote, the motion was defeated, and no further motions were made, therefore, no decision was rendered by the [CSC]. Under these circumstances, the ALJ's recommended decision

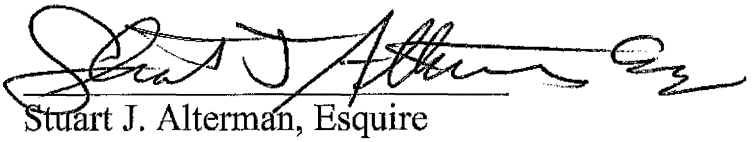
> will be deemed adopted as the final decision in this matter.
>
> [(Pa208) (citations omitted).]

As stated above, it is fundamentally unfair for Officer Bellamy to be removed from her position based on the above record. The facts do not support such a drastic penalty, and the administrative proceedings are riddled with procedural blunders and inconsistencies.

Conclusion

Based on the foregoing, Officer Bellamy must be reinstated to her former position.

Respectfully Submitted,
ALTERMAN & ASSOCIATES, LLC



Dated: August 27, 2024

Stuart J. Alterman, Esquire

State of New Jersey

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Re: In the Matter of Judy Bellamy, Mercer County Corrections Center
Docket No. A-000747-23 Team 02

Dear Mr. Orlando:

Please accept this letter on behalf of the Respondent, Civil Service Commission pursuant to Rule 2:6-11(d) in response to the March 18, 2024 brief and appendix submitted by Appellant, Judy Bellamy.

When this matter came before the Commission at its November 1, 2023 meeting, one of the five members was not in attendance. (Pa208). A motion was made to modify Bellamy's removal to a sixty-calendar day suspension. Ibid. Two Commission members voted for this motion while the remaining two members voted to adopt the administrative law judge's (ALJ) recommendation in full. Ibid. Since

there was a tie vote, the motion was defeated, no further motions were made, and, therefore, no decision was rendered by the Commission. Ibid. As a result, pursuant to N.J.S.A. 52:14B-10(c), the Initial Decision in this matter was deemed adopted by the Commission. Thus, the Commission takes no position on the merits of this appeal.

However, the Commission maintains that its deemed-adopted decision is a legally valid final agency decision that is owed the same deference as if the agency had acted to affirmatively adopt, modify, or reject the ALJ's decision. See In re Hendrickson, 235 N.J. 145, 160 (2018) ("[M]erely because the factual findings and rulings made by ALJs are oftentimes contingent on whether an agency accepts, rejects, or modifies an ALJ's decision does not mean that ALJs are second-tier players or hold an inferior status as factfinders.)."

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

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cc: Counsel of record (via eCourts)