



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 15891-13

AGENCY DKT. NO. 2014-1108

**IN THE MATTER OF THOMAS CARACCIO,
HUDSON COUNTY DEPARTMENT OF CORRECTIONS.**

Christopher A. Gray, Esq., for appellant Thomas Caraccio (Sciarra & Catrambone, LLC, attorneys)

Sean D. Dias, Esq., appearing for respondent Hudson County Department of Corrections (Scarinci Hollenbeck, attorneys)

Record Closed: September 19, 2014

Decided: November 5, 2014

BEFORE **JOAN BEDRIN MURRAY, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Hudson County Department of Corrections (“Respondent” or “County”) suspended Thomas Caraccio (“Appellant” or “Caraccio”), County Correction Sergeant for a period of 120 days effective June 19, 2013, in addition to demoting him to Correction Officer effective October 3, 2013, for driving while intoxicated on June 15, 2013 while off duty, and causing substantial property damage as a result. As Caraccio does not dispute that he engaged in said conduct, the issue is whether his actions

constitute insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(2), (6), (7) and (11) so as to warrant a 120-day suspension by the County and a demotion from Sergeant to Correction Officer.

On June 17, 2013, the County prepared a Preliminary Notice of Disciplinary Action (PNDA) against appellant, suspending him immediately. After a departmental hearing on September 17, 2013, the City prepared a Final Notice of Disciplinary Action (FNDA) on October 10, 2013, suspending Caraccio for 120 working days beginning June 19, 2013, and demoting him to the position of Correction Officer effective October 3, 2013. After Caraccio requested a hearing on October 23, 2013, the Civil Service Commission transmitted the contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 TO -13, to the Office of Administrative Law (OAL), where it was filed on November 1, 2013. After being adjourned by the parties, the matter was heard on June 26, 2014, by the undersigned. The record closed on September 19, 2014, after the receipt of post-hearing submissions and exhibits.

FACTUAL DISCUSSION AND FINDINGS

The facts of this matter are not in dispute. Accordingly, based on the testimonial and documentary evidence, I **FIND** them to be the **FACTS** of this case.

Appellant began his employment with the County on June 13, 1994 as a Correction Officer. On November 19, 2005, he was promoted to County Correction Sergeant after taking the promotional exam. The jail is a maximum security facility located in Kearny. In his role as Sergeant, Caraccio had supervisory authority over other correction officers. He testified that he supervised anywhere from nine to fifteen officers and civilian staff. He was also responsible for dealing with grievances.

On June 15, 2013 at approximately 1:00 a.m., Caraccio, while off duty and extremely inebriated, drove home to the XYZ¹Court apartment complex in the Village of

¹ The address is modified for privacy purposes.

Ridgefield Park. Although Caraccio did not testify as to what his intent was at the time, it appears that he was attempting to park his car in the complex parking lot. Instead, he drove it over a concrete curb and onto a grassy area, then across a set of concrete stairs, after which he struck the first of four parked vehicles. He then continued to drive on the grass and struck a light post, knocking it over. The light post did not strike any parked vehicles as it fell. Next, he drove over a second set of concrete stairs and struck a second parked vehicle, then drove over a parked motorcycle, and finally struck a fourth parked vehicle. Caraccio stated that he remembers the path of his car, and striking the first vehicle and not stopping. However, he doesn't remember running into the light post or striking the motorcycle or the other two vehicles.

Ridgefield Park police officers were dispatched to the apartment complex on a report that several parked cars had been struck by another vehicle, and that an individual was trying to get into one of the apartments. Upon arriving at the scene, they found Caraccio urinating on a bush near the front door of 10 XYZCourt. He had been trying to get inside the unit, apparently mistaking #10 for his own apartment at 15 XYZCourt on the other side of the parking lot. Caraccio had great difficulty communicating with Patrolman Agelis, and was unable to perform two sets of standard field sobriety tests. Based on his observations of Caraccio and the scene in general, Agelis arrested him for driving while intoxicated and careless driving, and took him to police headquarters. There, Caraccio gave two breath samples which indicated a blood alcohol concentration of .20%.

Caraccio's vehicle was towed from the parking lot. The police officers ascertained who owned the four damaged vehicles and then knocked on the appropriate apartment doors to advise them of the incident and obtain additional information

Throughout the investigation of the incident at the scene and in police headquarters, Caraccio was cooperative, polite, and apologetic. Since he was off duty, he was not in uniform. Further, he did not identify himself as a correction officer or use his position in order to gain an advantage with the arresting officer.

Subsequently, Caraccio entered inpatient rehabilitation for alcohol addiction at Princeton House. He completed an intensive two-week program there and then enrolled in an outpatient program in Paramus. He also attended Alcoholics Anonymous meetings and remains under psychiatric care for his alcoholism.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A:2-2.2, -2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Appellant has been charged with insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. "Insubordination" is not defined in the regulation. Assuming that its presence is implicit, courts generally apply its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended. Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45-46 (App. Div. 2001). Black's Law Dictionary (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." To give one other example, Webster's New International Dictionary 1288 (2d Ed. 1943) defines insubordinate as "not submitting to authority; disobedient; mutinous." See also Jeffrey F. Ghent, J.D., Annotation, What Constitutes "Insubordination" As Ground for Dismissal of Public School Teacher, 78 A.L.R.3d 83 (1977); A.L. Schwartz, Annotation, Employee's Insubordination as Barring Unemployment Compensation, 26 A.L.R.3d 1333 (1969).

“Unbecoming conduct” is broadly defined as any conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

“Neglect of duty” is predicated on an employee’s omission to perform, or failure to perform or discharge, a duty required by the employee’s position and includes official misconduct or misdoing along with negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <http://lawlibrary.rutgers.edu/oal/search.html>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div. 1984), aff’d on other grounds, 99 N.J. 1 (1985). “Other sufficient cause” for the imposition of major discipline may arise from the violation of a bona fide policy of the appointing authority.

Based on the above **FINDINGS OF FACT**, I **CONCLUDE** that the County has proven by a preponderance of the credible evidence that Caraccio engaged in conduct unbecoming a public employee by willfully operating a motor vehicle while intoxicated, causing substantial damage to the property of others as a result, and creating a situation that could easily have turned deadly had there been people on the scene at the time. The fact that at the time of the incident, he was a law enforcement official with the rank of Sergeant makes his conduct particularly untenable and unacceptable.

I also **CONCLUDE** that the charges of insubordination, neglect of duty, and other sufficient cause are not sustained. Caraccio was off duty at the time of the incident, and was not committing an act of disobedience or failing to submit to authority.

Likewise, he was not neglectful as that term pertains to the performance of his duties as Correction Officer Sergeant. Further, the facts do not support a conclusion that other sufficient cause exists.

The sole remaining issue concerns the penalty that should be imposed. Although Caraccio apologized for his actions and took appropriate steps to deal with his alcohol addiction by entering rehabilitation, this does not mitigate the fact that he willfully and knowingly broke the law by allowing himself to become intoxicated and driving himself home. His blood alcohol content of .20% clearly indicates the extent of his inebriation. Further, he caused a tremendous amount of property damage to five vehicles, including his own, as well as property damage to the light post. His car was damaged to the extent that it had to be towed. It is sheer providence that there was no bystander in the parking lot that night. Moreover, Caraccio was a Correction Officer Sergeant who was responsible for supervising other correction officers, civilian staff, as well as inmates in a maximum security facility. He is sworn to uphold and protect the law, and ensure that those reporting to him do the same. He is charged with evaluating the judgments exercised by his subordinates. That is a difficult task when his own judgment is compromised as here. In a work environment such as a correctional facility, it is especially important that a supervisory law enforcement officer commands the respect of his subordinates. Further, it is crucial that he be able to maintain his authority and integrity at all times in order to maintain a safe and sound workplace. These paradigms were violated by Caraccio's egregious behavior on the night of his arrest. Accordingly, I **CONCLUDE** that a 120-day suspension and demotion from Correction Officer Sergeant to Correction Officer is warranted in this matter.

ORDER

It is hereby **ORDERED** that the County's suspension of Caraccio for 120 days and demotion to Correction Officer be **AFFIRMED**. It is further hereby **ORDERED** that Caraccio's appeal be **DISMISSED**. It is further **ORDERED** that Exhibit P-1 be sealed.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

November 5, 2014

DATE

JOAN BEDRIN MURRAY, ALJ

Date Received at Agency:

Date Mailed to Parties:

sej

APPENDIX

WITNESSES

For Appellant:

Thomas Caraccio

For Respondent:

Dino Agelis

Harry Marquez

Thaddeus Caldwell

EXHIBITS

For Appellant:

P-1 Confidential Medical Records of Thomas Caraccio²

P-2 Hudson County Corrections Dept. Employee Evaluation

For Respondent:

R-1 Preliminary Notice of Disciplinary Action dated June 17, 2013,

R-2 Final Notice of Disciplinary Action dated October 10, 2013

R-3 Ridgefield Park Municipal Court Summons

R-4 Ridgefield Park Police Department Officer's Report dated June 15, 2013

R-5 New Jersey Police Crash Investigation Report

R-6 Civil Service Job Description

R-7 Ptl. Angelis's DVD

R-8 CD containing photos

R-9 Employee Profile

R-9(A) Settlement Agreement and Final Notice of Disciplinary Action dated 3/27/2012

² With the consent of both parties, this Exhibit is hereby sealed.