

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

FROM:	Employing Agency Name Corrections-EMCFW	Address/Phone Number Clinton, NJ	Date 8-30-10
	Attorney representing your agency should this matter be appealed DAG	Address/Phone number/Email address	
TO:	Employee Name Erick Melgar	Permanent Civil Service Title SCO	Social Security Number ***
	Address/Phone Number		

You are hereby notified that the following charge(s) have been made against you: *(If necessary, use additional sheets and attach)*

Charges:

N.J.A.C. 4A: 2-2.3 (a) 6: Conduct unbecoming an employee,
 N.J.A.C. 4A: 2-2.3 (a) 11 Other sufficient cause. Human Resource Bulletin 84-17 as amended (C-11) Conduct unbecoming an employee. Human Resource Bulletin 84-17 as amended (E-1) Violation of a rule, regulation, policy, procedure, order, or administrative decision. Human Resources Bulletin 84-17 (D-4) as amended Improper of unauthorized contact with an inmate, undue familiarity with inmates, parolees, their families, or friends. Human Resources Bulletin 84-17 (C-3) as amended: Physical or mental abuse of an inmate, patient, client, resident, or employee.

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

A report by the Special Investigations Division has revealed that you touched the breasts of Inmate Streater as well as rubbed your penis on her back. Further, you took her commissary items and then made her beg, sing and do pushups to get said items back. Additionally, you threw cold water on inmates, hit them with rulers, twisted their nipples and digitally penetrated them among other inappropriate acts. Your conduct can not and will not be tolerated by the Department.

If checked, charges are continued on attached page.

If checked, incidents are continued on attached page.

You are hereby suspended effective 8/30/10 pending pretermination hearing
(Check box to indicate if employee is suspended pending final disposition of the matter)

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within _____ *days of receipt of this form. If you request a hearing it will be held on _____ at (time) _____ at (place of hearing) _____

**Must be a minimum of five days*

The following disciplinary action may be taken against you:

- Suspension for _____ working days, beginning _____ and ending _____
- Indefinite suspension pending criminal charges effective (date) _____
- Removal, effective (date) _____
- Demotion to position of _____ effective (date) _____
- Resignation not in good standing, effective (date) _____ Other Disciplinary Action
- Fine amount which is equal to number (number of working days)

Appointing authority or authorized agent's signature and title.

Signature *William J. Adams* Title *Administrator*

This form must be personally served on the employee or sent by certified or registered mail.

- Certified or Registered Mail Receipt Number UPS 1Z V36 V51 23 1001 6201
- Signature of Server _____ Date of personal service _____

DISCIPLINARY APPEAL PROCEEDING
Erick Melgar, Senior Correction Officer
Edna Mahon Correctional Facility for Women
Employee Relations # 2010-243

HEARING DATE: July 6, 2011

HEARING OFFICER: Peter L. Gerke, Personnel Asst. 2
Office of Employee Relations

IN ATTENDANCE: Erick Melgar, Senior Correction Officer
Appellant

Ronald Ricci, Esq.
Appellant's Representative

Alan Tompkins, Correction Captain
Appointing Authority's Representative

Witnesses

Renee Caldwell, Investigator
Luis Rios, Senior Correction Officer

CHARGES:

See attached.

SPECIFICATIONS:

See attached.

RECOMMENDED SANCTION:

Removal

Both sides chose to waive their opening statements.

APPOINTING AUTHORITY'S EXHIBITS:

- M-1 Special Report 9/14/10 – SCO Luis Rios
- M-2 SID Report 8/23/10 – Principal Investigator Kathleen Zdonowski
- M-3 SID Report 11/22/10 – Principal Investigator Kathleen Zdonowski
- M-4 Sworn Deposition 12/8/10 – SCO Janette Bennett

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APPOINTING AUTHORITY'S PRESENTATION:

Testimony of Luis Rios, Senior Correction Officer:

SCO Rios identified Exhibit M-1 as his document, and said he couldn't remember the exact date that on which the incident in the report occurred. He said that he was working second shift that day and he and SCO Melgar had switched posts. He said that he observed Melgar pushing and shoving an inmate back and forth using both of their arms; he (Rios) subsequently told him to stop. He said that the only time an officer is allowed to touch an inmate is during a medical emergency or a restraint situation; this did not fall under either category.

Under cross examination, SCO Rios said that he had been contacted by SID to produce Exhibit M-1 and that they asked him if he had ever observed SCO Melgar engage in horseplay or have sexual contact with an inmate. He also stated that he had no union representation when he gave the statement. He said that he only worked with Melgar once or twice, and he said that although he had no first hand knowledge of it, he was aware that there were rumors that he (Melgar) had had sex with inmates. He went on to say that he never reported the incident in Exhibit M-1 to a supervisor because he did not consider the behavior to be outrageous and the inmate did not complain. He characterized SCO Melgar's relationship with the inmates as strict, and he said that Melgar would try to establish relationships with inmates to gain their cooperation.

Testimony of Renee Caldwell, Investigator:

Inv. Caldwell stated that she was in the Training Academy during this investigation and confirmed that Exhibits M-2 and 3 were authored by Inv. Zdonowski; she said that she was aware of credible testimony given by Inmate Bernat in other cases.

Under cross examination; Inv. Caldwell stated that she never sat in on any of the interviews conducted during this investigation, nor did Inv. Zdonowski speak to her about this investigation.

Capt. Tomkins introduced Exhibit M-4, and cited the following examples of SCO Bennett's sworn allegations against SCO Melgar which corroborate the substance of Exhibit M-2.

Page 6 Lines 5, 9
Page 10 Lines 2-8, 24, 27
Page 14 Lines 1-29

DOC012

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Page 18 Line 40
Page 19 Line 25
Page 21 lines 14-32

Mr. Ricci rebutted that Exhibit M-4 does not corroborate the charges or SCO Rio's testimony.

APPELLANT'S EXHIBITS:

A-1 Special Report 8/13/10 – SCO Janette Bennett
A-2 Inmate Statements

APPELLANT'S PRESENTATION:

Mr. Ricci stated that in Exhibit A-1 (Page 3, last line), SCO Bennett denied hearing SCO Melgar use the "C" word, negating Exhibit M-4 (Page 14, lines 1-29). He also said that the inmate letters in Exhibit A-2 shed doubt on any other inmate statements being relied on in this case.

Captain Tompkins rebutted that Exhibit M-4 was given under oath; Exhibit A-1 was not.

APPELLANT'S SUMMATION:

Mr. Ricci stated that the investigative process is in place to protect the rights of State employees; these are very serious charges and he was unable to challenge Exhibit M-2 without the investigator who authored the report present to cross examine. He pointed out that the inmate's statements changed from Exhibit M-2 to M-3 and were not consistent. He said that these inmates were convicts with serious records and psychological issues; each one knew what the others were going to say. Mr. Ricci went on to say that SCO Rios testified that the behavior he observed by SCO Melgar was not egregious enough to report. He said that SCO Bennett was not being truthful as evidenced by discrepancies in her statements; he also felt that it was perfectly appropriate for Melgar to call Bennett to find out what was going on. He further said that cursing is not a reason for removal; he said that nothing has been proven and he asked that SCO Melgar be reinstated with back pay.

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APPOINTING AUTHORITY'S SUMMATION:

Capt. Tompkins stated that Management has shown that SCO Melgar has violated the disciplinary code as specified in the charges. He asked that the charges and sanction be upheld.

DECISION:

After consideration of the documents and testimony presented, the Hearing Officer notes and finds the following:

Management presented Exhibits M-2 and 3 in support of its position. A review of those documents reveals that Inv. Zdonowski interviewed and subsequently uncovered allegations by 5 inmates (Hernandez, Dwight, Clark, Leon, Bernat) of either sexual abuse by or consensual sex with the Appellant. Inv. Zdonowski also uncovered allegations by 15 inmates (Murphy, Robinson, Streater, Paulson, Afdahl, Ebersson, Canada, Eng, Latta, Chen, Cicchinelli, Jaboby-Irwin, Fletcher, Hall, McLaughlin) of either having observed or been the victim of inappropriate conduct or behavior by the Appellant.

The Appellant's position is that there are inconsistencies in the inmate reports which require the dismissal of the charges against the Appellant. Regarding this issue, Exhibits M-2 and 3 were authored by a professional investigator who is charged with assessing the credibility of witnesses regularly. The investigator must do this by observing behavior at interviews and comparing statements and written reports. This constituted the method by which Inv. Zdonowski reached her conclusions of credibility in the above referenced exhibits. Furthermore, the sworn testimony of the Appellant's own partner (SCO Janette Bennett) supports many of the inmate's statements: specifically that she had conversations with Inmate Bernat, that she spoke to Inmate Afdahl regarding the status of a report on his behalf, that the Appellant asked her to pass messages to inmates and that she would switch posts with the Appellant. Also, the Appellant agreed with some parts of the inmate's reports in his statements to SID (Exhibit M-2), but was unable to rebut other parts of the same reports, other than to simply say that they did not happen.

While Mr. Ricci noted inconsistencies in inmate reports, the credibility of Inv. Zdonowski, her methods and conclusions, as well as that of the inmates interviewed went unchallenged, nor was there any allegation of a conspiracy against the Appellant. This Hearing Officer therefore accepts Exhibits M-2 and 3 to be credible, and expects that any inconsistencies were taken into account and analyzed in the subsequent findings and conclusions by the investigator. At a

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certain point, the totality of the circumstantial evidence and allegations against the Appellant tend to erode his credibility.

Finally, while Mr. Ricci worked diligently to discredit the evidence presented, neither he nor the Appellant himself actually ever denied, either by word or written documentation, that he was guilty of these charges. It is well settled that a ruling authority may draw a negative inference regarding an Appellant who is not willing to testify on his/her own behalf; this Hearing Officer draws that negative inference; and finds that the Appointing Authority has met its burden of proof in this case; therefore the charges are hereby sustained.

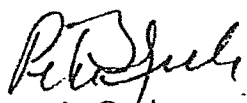
PENALTY:

The Appellant's work history reflects the following related disciplinary action:

2/25/10 E-1 Violation of a rule, regulation, et al. Fine

Where appropriate, progressive discipline involving penalties of increasing severity are used in imposing a reasonable sanction. Factors to be considered are: the nature of the offense, the concepts of corrective and progressive discipline, and the employee's prior record. In assessing the propriety of such sanctions in any civil service disciplinary action, the primary concern is the public good. Progressive discipline is only required in those cases where an employee is guilty of a series of offenses, none of which is sufficient in and of itself to justify removal. Progressive discipline does not apply, however, where, as here, the offense committed is in itself sufficient to warrant removal.

Under the guidelines provided by Human Resources Bulletin 84-17 (as amended) relative to progressive discipline for the aforementioned infraction, the Hearing Officer finds that the recommended penalty of Removal is appropriate and is also hereby sustained.



Peter L. Gerke
Hearing Officer

Civil Service Commission - STATE OF NEW JERSEY

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service after a departmental hearing (if one is requested) if one of the following types of disciplinary actions is taken (a) suspension or fine for more than five working days at one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. If the employee does not request or does not appear at the Department hearing, this notice must be served as the final action. A copy of this notice must be sent to the Civil Service Commission and served on the employee by personal service or by certified or registered mail.

FROM:	Employing Agency Name Edna Mahan Correctional Facility for Women	Address/Phone Number P.O. Box 4004 Clinton, NJ 08809	DATE July 26, 2011
	Attorney representing your agency should the matter be appealed Office of the Attorney General, Division of Law	Address/Phone number/Email address R.J. Hughes Justice Complex, P.O. Box 112, Trenton, NJ 08625	
TO:	Employee Name Erick Melgar	Permanent Civil Service Title Senior Correction Officer	Social Security Number ***-**-****
	Address/Phone Number [REDACTED]		

On August 30, 2010 you were served with a Preliminary Notice of Disciplinary Action (31A) and notified of the pending disciplinary action.
 You requested a hearing which was held on July 6, 2011.
 You did not request a hearing.
 You requested a hearing and did not appear.

Disciplinary Charges:
 J.A.C. 4A:2-2.3 (a) 6. Conduct unbecoming an employee.
 J.A.C. 4A:2-2.3(a)11 Other sufficient cause. HRB 84-17 as amended (E-11) Conduct unbecoming an employee. HRB 84-17 as amended (E-1) Violation of a rule, regulation, policy, procedure, order, or administrative decision. HRB 84-17 as amended (D-4) Improper or unauthorized contact with an inmate, undue familiarity with inmates, parolees, their families, or friends. HRB 84-17 as amended (C-3) Physical or mental abuse of an inmate, patient, client, resident, or employee.

Incident(s) occurred:
 SEE PREVIOUS PAGE

If checked, charges are continued on attached page

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$ 42
 Certified Fee \$
 Return Receipt Fee (Endorsement Required) \$
 Restricted Delivery Fee (Endorsement Required) \$
 Total Postage & Fees \$

ANNANDALE NJ 08804
 AUG - 1 2011
 USPS

Sent To: ERICK MELGAR
 Street, Apt. No. or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2005 See Reverse for Instructions

The following disciplinary action has been taken:
 Suspension for _____ working days, beginning _____ and ending _____
 Indefinite suspension pending criminal charges
 Removal, effective (date) 07/26/11
 Demotion to position of _____
 Resignation not in good standing, effective _____
 Fine _____ which is equal to _____
 Amount

Appointing authority or authorized agent's signature
 [Signature]
 Peter L. Gerbasi

This form must be personally served on the employee.
 Certified or Registered Mail
 Signature of Server

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 ERICK MELGAR

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 [Signature] Agent Addressee

B. Received by (Printed Name)
 ERICK MELGAR

C. Date of Delivery
 8/12/11

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type:
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number 7007-0710-0000-0338-7614
 (Transfer from service label)

APPEAL PROCEDURE TO THE EMPLOYEE: You must file this form and must be sent to the Civil Service Commission until a copy of this form is received. DO NOT FILE ANY APPEAL POSTMARKED AFTER THE 20th DAY OF THE MONTH. Move your filing in the event of lost or misdirected mail.

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

CONFIDENTIAL DOC 1043

For more information on the rules that govern Major Discipline and the appeals process, please visit our website at: www.state.nj.us/csc