

COMMONWEALTH OF PENNSYLVANIA

Brian K. Rodemoyer : State Civil Service Commission  
 :  
 v. :  
 :  
 State Correctional Institution :  
 at Mercer, :  
 Department of Corrections : Appeal No. 30278

Charles E. Steele  
Attorney for Appellant

Brian L. Hokamp  
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Brian K. Rodemoyer challenging his demotion from regular Corrections Officer 4 to Corrections Officer 3 employment with State Correctional Institution at Mercer, Department of Corrections. Hearings were held on November 19 and 20, 2019 at the State Correctional Institution at Mercer in Mercer, Pennsylvania before Hearing Officer Odelfa Smith Preston.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issue before the Commission is whether there is just cause for appellant's demotion.

## FINDINGS OF FACT

1. By letter dated June 14, 2019, appellant was demoted from his position as Corrections Officer 4, regular status, to Corrections Officer 3, effective June 16, 2019. Appellant was charged with violating Department of Corrections Code of Ethics Section B-9 because he allegedly “made no attempt to notify the Superintendent or Duty Officer following a lockdown at SCI Mercer on April 17, 2019, and failed to receive authorization to return to normal operations, as previously directed by Superintendent Adams.” Appellant was also charged with violating DOC policy 6.3.1; Section 17, Reporting of Extraordinary Occurrences, because he allegedly, “made no attempt to notify the Superintendent or Duty Officer regarding an occurrence that resulted in activation of emergency plans and a lockdown at SCI Mercer on April 17, 2019,” and did not “complete an EOR on the event.”  
Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.<sup>1</sup>

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<sup>1</sup> Appellant’s request for a hearing under Section 3003(7)(ii) was denied due to an insufficient allegation of discrimination. Comm. Ex. C.

3. Department of Corrections Code of Ethics Section B-9 provides:

Lawful orders by a supervisor to a subordinate must be executed promptly and faithfully by the subordinate even though the employee may question the wisdom of such order. The privilege of formally appealing the order may be done at a later date through either the supervisory command structure, civil service appeal, or the grievance machinery.

Ap. Ex. 9.

4. DOC policy 6.3.1; Section 17, "Reporting of Extraordinary Occurrences" provides, in relevant part:

An extraordinary occurrence is any occurrence that has a significant impact, or potential for significant impact, upon the public, staff, inmates, physical plant, operation of the facility and/or state owned property under the jurisdiction of the Department, that requires staff action or response, but may not necessitate activation of the facility emergency plan. Proper reporting of an extraordinary occurrence requires completion of the **DC-121, Part 1, Extraordinary Occurrence Form/Duty Officer Report (Attachment 17-A); DC-121, Part 2, Extraordinary Occurrence**

**Report (Attachment 17-B) which is created in WebTAS, and the DC-121, Part 3, Employee Report of Incident (Attachment 17-C).**

AA Ex. 2 (emphasis in original).

5. The appointing authority's organizational structure includes an Administrative Duty Group consisting of the Superintendent, two Deputy Superintendents, the CCPM,<sup>2</sup> and the Major of the Guard. N.T. pp. 45, 52.
6. Melinda Adams has been the Superintendent of the appointing authority since May 2018. N.T. p. 252.
7. At the times relevant to the present appeal, Shane Dady served as the Deputy Superintendent of Centralized Services and William Woods served as the Deputy Superintendent for Facilities Management. N.T. pp. 126, 174.
8. Woods has worked for the Department of Corrections since 1996 in a number of positions. N.T. p. 175.

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<sup>2</sup> CCPM is a Program Manager, but the full title of this position is not indicated in the record. At the times in question, the position was held by Lisa Graves. N.T. pp. 45, 372; Ap. Ex. 3.

9. From June 2015 to July 2018, Woods served as the appointing authority's Deputy Superintendent of Centralized Services. N.T. p. 176.
10. Since July 1, 2018, Woods has served as the Deputy Superintendent for Facilities Management. N.T. p. 176.
11. As Deputy Superintendent for Facilities Management, Woods is responsible for oversight of corrections officers as well as the maintenance department. In this capacity, Woods is the immediate supervisor of the Major of the Guard. N.T. pp. 174-175.
12. Paul Brocklehurst has worked for the Department of Corrections since 2005 in various corrections officer positions. N.T. p. 24.
13. Brocklehurst began working at the appointing authority in August 2012. N.T. p. 24.
14. From 2015 until 2018, Brocklehurst served as a Captain (Corrections Officer 4). N.T. p. 23.

15. In September 2018, Brocklehurst was promoted to Major of the Guard. N.T. p. 23.
16. As Major of the Guard, Brocklehurst is the highest-ranking corrections officer at the institution, and his primary duty is supervision of the commissioned officers, which includes all Lieutenants (Corrections Officer 3s) and Captains (Corrections Officer 4s). N.T. pp. 24-25.
17. Brocklehurst served as appellant's immediate supervisor prior to his demotion. N.T. p. 25.
18. In 1999, appellant began working for the Department of Corrections as a Corrections Officer Trainee at the appointing authority. N.T. p. 347.
19. Appellant progressed through a series of promotions at the appointing authority and reached the rank of Lieutenant in 2011. N.T. p. 347.
20. In 2013, appellant began working out-of-class as an Inspections Captain at the Department of Corrections Central Office for approximately eighteen months. N.T. pp. 347, 355.

21. During the time he worked as an Inspections Captain, appellant worked under Dan Burns, who was the Regional Deputy Secretary for the Department of Corrections Western Region. N.T. p. 355.
22. A significant part of appellant's job as Inspections Officer was auditing correctional facilities' compliance with reporting of extraordinary occurrences. Jt. Stip. 10.
23. In late 2015, appellant began working as a full Captain at the State Correctional Institution at Albion. N.T. p. 347.
24. In 2017, appellant transferred to the appointing authority. N.T. p. 348.
25. On January 11, 2019, Adams issued an order, via e-mail, with a subject "Lockdown Searches." The text of the message stated:
  1. During normal business hours, I am to be notified and must authorize the lockdown to complete a search. If I am not here, the Deputy

- covering in my absence must authorize the lockdown.
2. The same applies at the completion of the search. I am to be notified, during normal business hours, when the search is complete in order to authorize the facility returning to normal operations. If I am not here, the Deputy covering must authorize the return to normal operations.
  3. If you are completing one of your assigned searches in the evening or on the weekend, the same procedure as listed above is to be followed with the Duty Officer being notified.

The above information should be reflected in the Part 2. Thank you all for your cooperation with the search plan.

AA Ex. 1; Ap. Ex. 3

26. Adams' January 11, 2019 e-mail was sent to all members of the Administrative Duty Group as well as all seven Captains that worked at the appointing authority, including appellant. N.T. pp. 45-46; AA Ex. 1.
27. On April 17, 2019, appellant was working as the Shift Commander on the 2:00 p.m. to 10:00 p.m. shift. N.T. p. 362; AA Ex 1.

28. The Shift Commander is in charge of the facility and all its operations if no individual from the Administrative Duty Group is present at the institution. N.T. p. 52.
29. Shortly before 7:00 p.m. on April 17, 2019, Corrections Officer 1 Ed Fry was in a vehicle performing an outer security patrol when he reported a suspicious object inside the secure area of the fence and requested assistance. N.T. p. 26; AA Ex. 1.
30. At that time, Superintendent Melinda Adams was serving as the Duty Officer. Brocklehurst, Woods, and Dady were not at the institution. N.T. pp. 30-31, 39, 177, 255-256.
31. Corrections Officer 1 Nuhfer responded to Fry's request for assistance and found an inmate's shirt in the area reported by Fry which was near the satellite dining hall. This is a restricted area of the institution. An inmate may only be present in this area if escorted by staff. N.T. pp. 26, 360-361.

32. Nuhfer reported what he found to the Control Center, which then contacted appellant and informed him they found an inmate's shirt in a restricted area. N.T. pp. 26-27.
33. Upon being informed by the Control Center that an inmate's shirt had been found, appellant initiated the emergency plan for a possible escape attempt. Appellant ceased all inmate movement, and locked down the facility so that an inmate count could be performed. N.T. pp. 27-28, 427.
34. Appellant then reported to the Control Center and assigned Lieutenant Hicks to conduct an emergency count. He also directed Corrections Officer 1 Muszinski to review the recording from the closed-circuit television system to see if it could be determined how the clothing came to be located in that area, and to see if there were any signs of an inmate in that area or an escape. N.T. p. 29.
35. Every article of inmate clothing has a number on it so they can identify which inmate it belongs to. N.T. p. 35.

36. During Hicks' initial count, the count did not clear, meaning the number of inmates tabulated during the count did not match the master population record, which reflects the total number of inmates that are supposed to be in the institution at that time. The initial count was ten inmates lower than the master population record. N.T. p. 37; AA Ex. 1.
37. Appellant ordered that another count be performed. N.T. p. 36.
38. Approximately five minutes after the initial count had been started, Muszinski found from a review of the video footage that the shirt had been dropped at 1:53 p.m. N.T. p. 361; AA Ex. 1.
39. Appellant reviewed the video footage of the incident, which showed there was a maintenance crew accompanied by inmates. N.T. p. 362. An inmate shirt on the back of a cart being pulled by the inmates as they were leaving the area got caught on one of the wheels and was pulled to the ground. The inmates did not see the shirt fall off the cart, continued walking, and left the area. N.T. pp. 362-364.

40. While performing the recount, Hicks advised appellant he discovered he had made an error during his original count when he entered the wrong number. Appellant did not have Hicks complete the recount after Hicks determined what error he made in his initial count. N.T. pp. 36, 414-415; AA Ex. 1.
41. Appellant ended the lockdown and resumed normal operations of the institution. Appellant did not contact Adams and obtain authorization from her before ending the lockdown and resuming normal operations. N.T. pp. 39, 46, 431-432; AA Ex. 1.
42. Appellant did not contact Adams as the Duty Officer within one hour of initiating the lockdown and activating the emergency plan. N.T. p. 38.
43. Appellant did not complete a Part 2 Extraordinary Occurrence Report documenting the incident and lockdown of the institution. N.T. pp. 368, 412.
44. Appellant never identified the inmate to whom the shirt belonged, nor did he physically verify the specific inmate whose shirt was found was present in the institution. N.T. p. 37.

45. At 10:32 p.m. on April 17, 2019, appellant sent an e-mail to the Administrative Duty Group recounting several events that occurred during his shift.

Regarding the lockdown, the message stated:

We found an inmates [sic] Brown Shirt behind the Satellite dining hall tonight at 1853. We locked the jail down at 1856 and cleared the walks and called emergency count at 1905. Count cleared at 1926. We reviewed footage at around the same time count was going on and found one of the inmates [sic] shirts fell off the inside grounds cart when they were back there earlier today. Had a little sick feeling, but after seeing video and clearing on the first go around, was pretty impressed with the shift. 😊

AA Ex. 1.

46. Appellant never confirmed which inmate the shirt belonged to before returning the institution to normal operations. N.T. p. 435.
47. On April 17, 2019, Officer Fry completed a Part 3 Employee Incident Report reporting his discovery of a what appeared to be a brown garment behind the satellite dining hall while performing his perimeter patrol. N.T. p. 33; AA Ex. 1.

48. Appellant wrote on the bottom of Fry's completed Incident Report that the institution was locked down and an emergency count was called that cleared. Appellant further indicated that video showed that a brown shirt fell off a cart when an inmate grounds crew was cutting the grass. AA Ex. 1.
  
49. Adams became aware of the incident involving the inmate's shirt on April 18, 2019, when she was reviewing an e-mail which included Fry's Part 3 incident report. N.T. pp. 254-255.
  
50. Brocklehurst performed a fact-finding investigation into the April 17, 2019 incident on April 22 when he returned to the institution. N.T. pp. 31-33.
  
51. As part of his fact-finding investigation, Brocklehurst, interviewed appellant, reviewed Fry's Part 3 Employee Incident Report, and reviewed the e-mail sent by appellant on April 17 regarding what occurred during the course of his shift. N.T. p. 33; AA Ex. 1.

52. Brocklehurst also completed an Investigative Summary following completion of the fact-finding and recommended that a pre-disciplinary conference (hereinafter “PDC”) be convened. N.T. pp. 32-33; AA Ex. 1.
53. Lori Mahlmeister is employed by the Office of Administration and serves as the Field Human Resources Officer for the appointing authority. N.T. p. 146.
54. Mahlmeister handles labor relations and disciplinary proceedings at the appointing authority. N.T. p. 148.
55. Mahlmeister served as the chair of the PDC panel which also included Deputy Woods and Deputy Dady. N.T. pp. 149-150.
56. The PDC panel found that appellant had violated Department of Corrections Code of Ethics Section B-9 as well as Section 17 of DOC policy 6.3.1, Facility Security Procedures Manual for reporting extraordinary occurrences. N.T. pp. 151, 224.

57. After the PDC was completed, Adams reviewed the report from the fact-finding, the PDC minutes, and a synopsis of the PDC. N.T. p. 261. Adams recommended that appellant be demoted to a Corrections Officer 3. N.T. pp. 261-263.
58. Adams' recommendation was ultimately sent to the Department of Corrections Central Office, which authorized Adams to demote appellant. N.T. pp. 262-263.

### DISCUSSION

The issue in the present appeal is whether the appointing authority established just cause for appellant's demotion. Under Section 2503 of Act 71 of 2018, an appointing authority may demote an employee to a position in a lower class if the employee does not satisfactorily perform the duties of the position the employee holds, and the employee is able to perform the duties of the lower class position. 71 Pa.C.S. § 2503(a). The language is substantially the same as the language of Section 706(a) of Act 286 of 1941. 71 P.S. § 741.706(a). Commonwealth Court has interpreted this language as requiring that the appointing authority establish just cause for the demotion of a regular status employee since a demotion is the removal of the employee from a higher level position. *See Pennsylvania Liquor Control Board v. Flannery*, 141 Pa. Commw. 228, 232, 595 A.2d 685, 687 n.2. (1991) ("We approve of the Commission's application of the just cause standard to a regular status demoted employee because a demotion is actually

a “removal” from the higher level position.”). Consequently, the issue in an appeal of a demotion under Act 71 is whether the appointing authority has established just cause for removal. Just cause must be job related and in some manner rationally and logically touch upon the employee’s competency and ability to perform. *Mihok v. Department of Public Welfare, Woodville State Hospital*, 147 Pa. Commw. 344, 348, 607 A.2d 846, 848 (1992).

The appointing authority charged appellant with violating Code of Ethics Section B-9 and DOC policy 6.3.1; Section 17, “Reporting of Extraordinary Occurrences,” in connection with a lockdown at the appointing authority on April 17, 2019. Comm. Ex. A. The appointing authority alleged appellant violated Code of Ethics Section B-9 because he “made no attempt to notify the Superintendent or Duty Officer following lockdown,” and “failed to receive authorization to return to normal operations, as previously directed by Superintendent Adams.” The appointing authority alleged appellant violated DOC policy 6.3.1; Section 17, Reporting of Extraordinary Occurrences, because he “made no attempt to notify the Superintendent or Duty Officer regarding an occurrence that resulted in activation of emergency plans and a lockdown,” and “did not complete an EOR on the event.” Comm. Ex. A.

In support of its demotion, the appointing authority presented the testimony of Paul Brocklehurst, Lori Mahlmeister, William Woods, and Melinda Adams. In response, appellant testified on his own behalf and presented the testimony James Cyphert. The parties also entered into joint stipulations in lieu of testimony by Dan Burns.

Paul Brocklehurst, appellant's immediate supervisor prior to his demotion, has worked at the appointing authority since August 2012. N.T. pp. 23, 25. From 2015 until 2018, Brocklehurst served as a Captain. N.T. p. 23. Brocklehurst testified he was promoted to Major of the Guard in September 2018. N.T. p. 23. As Major of the Guard, Brocklehurst is the highest-ranking corrections officer at the institution, and his primary duty is supervision of the commissioned officers, which includes all Lieutenants and Captains. N.T. pp. 24-25. The appointing authority's structure includes an Administrative Duty Group consisting of the Superintendent, two Deputy Superintendents, the CCPM, and Brocklehurst as Major of the Guard. N.T. pp. 45, 52. Brocklehurst reports to Deputy Superintendent for Facility Management, William Woods. N.T. p. 174; AA Ex. 1. Shane Dady is Deputy Superintendent for Centralized Services. N.T. p. 126. As of January 2019, there were seven Captains working at the institution. N.T. p. 45. As part of his duties, appellant served as a Shift Commander. N.T. pp. 41, 52. The Shift Commander is in charge of the facility and all its operations if no individual from the Administrative Duty Group is present at the institution. N.T. p. 52.

Brocklehurst performed a fact-finding investigation into the April 17, 2019 incident that resulted in the charges against appellant. N.T. pp. 31, 33. As part of the fact-finding investigation, among other things, Brocklehurst interviewed appellant and reviewed the only incident report that was filed, a DC-121 Part 3 Employee Incident Report completed by Corrections Officer 1 Ed Fry on April 17. N.T. p. 33; AA Ex. 1. Brocklehurst also reviewed an e-mail sent by appellant regarding what had occurred during the course of his shift on April 17. N.T. p. 33.

Brocklehurst testified about a number of the underlying facts, which are not disputed by the parties, regarding the incident that led to the charges on which the demotion is based. On April 17, 2019, appellant was working as the Shift Commander on the 2:00 p.m. to 10:00 p.m. shift. N.T. p. 362; AA Ex 1. Woods, Dady, and Brocklehurst were not were present at the institution at the time of the incident. N.T. pp. 30-31, 177. Superintendent Melinda Adams was serving as the Duty Officer at the time. N.T. pp. 39, 255-256. At approximately 7:00 p.m., Fry was in a vehicle performing an outer security patrol when he reported a suspicious object inside the secure area of the fence and requested assistance. N.T. p. 26; AA Ex. 1. Corrections Officer 1 Nuhfer responded and found an article of inmate clothing in the area reported by Fry. This is a restricted area of the institution. An inmate may only be present in this area if escorted by staff. N.T. p. 26. If an inmate is not escorted by staff, the inmate is simply not authorized to be present in the area. N.T. p. 26. Nuhfer reported what he found to the Control Center. N.T. p. 26. The Control Center, in turn, contacted appellant and informed him they had found an article of inmate clothing (a shirt) in a restricted area. N.T. p. 27. Appellant initiated the emergency plan for a possible escape attempt. N.T. p. 28. Appellant ceased all inmate movement, and locked down the facility so that an inmate count could be performed. N.T. p. 27. Appellant reported to the Control Center and assigned Lieutenant Hicks to conduct an emergency count. He directed Corrections Officer 1 Muszinski to review the recording from the closed-circuit television system to see if it could be determined how the clothing came to be located in that area, and to see if there were any signs of an inmate in that area or an escape. N.T. p. 29.

Lieutenant Hicks initial inmate count did not “clear.” N.T. p. 36. In order for a count to clear, the number of inmates tabulated during the count must match the master population record, which reflects the total number of inmates that

are supposed to be in the institution at that time. N.T. p. 37. When Hicks' initial count did not clear, appellant ordered that another count be performed.<sup>3</sup> N.T. p. 36. While performing the recount, Hicks advised appellant he discovered he had made an error during his original count when he entered the wrong number. N.T. p. 36; AA Ex. 1. Appellant did not have Hicks complete the recount after Hicks determined what error he made in his initial count. N.T. pp. 36, 414-415; AA Ex. 1.

During a review of the closed-circuit television recording, an inmate was seen dropping the shirt, prior to 2:00 p.m. that afternoon, in the area where it was subsequently found as a result of the perimeter patrol. The inmate was part of a work crew that was authorized to be in that area of the institution and the crew was accompanied by appointing authority staff. N.T. pp. 362-363; AA Ex. 1. Appellant ended the lockdown and ordered the institution to resume normal operations. AA Ex. 1. Appellant did not contact the Superintendent and obtain authorization from her before ending the lockdown and resuming normal operations. N.T. pp. 39, 46, 431-432; AA Ex. 1. Appellant also did not complete a Part 2 Extraordinary Occurrence Report. N.T. pp. 368, 412. He did send an e-mail at 10:32 p.m. on April 17 to the Administrative Duty Group. AA Ex. 1. The message indicated several events that occurred during his shift. Regarding the lockdown, the message stated:

We found an inmates [sic] Brown Shirt behind the Satellite dining hall tonight at 1853. We locked the jail down at 1856 and cleared the walks and called emergency count at

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<sup>3</sup> Brocklehurst testified that if a count does not clear for any reason, another count must be performed. N.T. pp. 36-37.

1905. Count cleared at 1926. We reviewed footage at around the same time count was going on and found one of the inmates [sic] shirts fell off the inside grounds cart when they were back there earlier today. Had a little sick feeling, but after seeing video and clearing on the first go around, was pretty impressed with the shift. 😊

AA Ex. 1.

In his interview during the fact-finding, appellant indicated that the inmate's shirt was found at 6:53 p.m. and appellant became aware of it at 6:56 p.m., at which point the institution was locked down. AA Ex. 1. During Hicks' initial count, they were missing ten inmates. A recount was started, but was not completed: Hicks' reviewed his initial handwritten count and determined that he entered the wrong number into the computer during the initial count. According to appellant, that initial count then cleared. Approximately five minutes after the initial count had been started, Muszinski found that the shirt had been dropped at 1:53 p.m. Appellant noted that the 4:00 p.m. count had cleared. Appellant acknowledged during the interview that he was aware of Adams' January 11, 2019 directive, but he did not know that it applied to this situation. AA Ex. 1. He stated he was not aware he had to contact the Duty Officer prior to resuming normal operations. AA Ex. 1. He indicated that if he had not located the shirt, he would have contacted Adams as the Duty Officer. When he found out the details regarding the shirt, appellant thought he did not need to contact her for something he considered to be like an alertness drill. AA Ex. 1. Appellant acknowledged during the interview he did not know which inmate the shirt belonged to. AA Ex. 1.

Brocklehurst testified he was not present at the institution at the time that the clothing was found and was on leave April 18 and 19, 2019. He did not return to the institution until April 22. N.T. pp. 30-31. Brocklehurst became aware of the incident in the morning on April 18, 2019, when he received an e-mail from Superintendent Adams indicating appellant had failed to notify her of an incident that occurred the prior evening and she was ordering a fact-finding. N.T. p. 31. Brocklehurst conducted the fact-finding on April 22 when he returned to the institution. N.T. p. 32. Brocklehurst also completed an Investigative Summary following completion of the fact-finding. N.T. pp. 32-33; AA Ex. 1.

Brocklehurst also testified concerning appellant's actions during the incident. He testified appellant was correct to lock the facility down and institute the emergency plan when the inmate's shirt had been found and reported to him. N.T. p. 34. He explained this was a possible escape attempt and the facility would be locked down and the emergency plan in place until it was determined that there was not threat to the institution or the public. N.T. p. 34. Appellant was also correct to order the inmate count and the review of the closed-circuit television recording. N.T. p. 33. Brocklehurst testified however, that during the course of the fact-finding, he found a number of appellant's actions raised questions with Brocklehurst about his judgment. N.T. p. 34. Specifically, appellant never identified which inmate's shirt had been found during the perimeter search. N.T. p. 35. Appellant left the article of clothing with the corrections officer who removed it from the area where it had been found, and did not bring it to the Control Center to identify who it belonged to. N.T. p. 35. Every article of inmate clothing has a number on it so they can identify which inmate it belongs to. N.T. p. 35. Brocklehurst testified that since

this was a possible escape attempt, the first thing appellant should have done after the facility was secured was determine which inmate might be missing by determining which inmate the shirt belonged to. N.T. p. 35. If he had done so, he would have been able to verify that specific inmate was present in the institution. N.T. p. 35.

Brocklehurst further testified about other problems with appellant's handling of the situation. He explained that when appellant directed Hicks to conduct a recount after his first count did not clear, the policy requires that the recount had to clear. N.T. p. 36. The recount was never finished: appellant stopped the recount when Hicks told him he believed he discovered the error he made in the initial count. The initial count showed ten fewer inmates than the master population record. N.T. p. 36; AA Ex. 1. Brocklehurst testified that once appellant believed he had discovered the source of the discrepancy in the count, and believed that Muszinski had determined where the shirt came from, appellant concluded there was no escape. N.T. pp. 36-37. Brocklehurst testified that appellant had three major lapses in judgment: he did not identify which inmate the shirt belonged to, he did not physically verify that specific inmate was present in the institution, and he did not clear the count he initiated. N.T. p. 37.

Brocklehurst further testified that appellant also did not follow the proper procedure for reporting the lockdown. N.T. p. 38. Specifically, appellant did not follow the notification procedure which requires that the Duty Officer be notified within one hour of the emergency plan being activated. N.T. p. 38. Brocklehurst

testified that DOC policy 6.3.1, the Facility Security Procedures Manual; Section 17, Reporting of Extraordinary Occurrences, provides that any activation of the emergency plan, including a drill, requires the on-duty manager be notified within one hour. N.T. pp. 38-39.

Brocklehurst also testified that appellant's failure to notify Adams as the Duty Officer at the time violated an order issued by Adams on January 11, 2019. N.T. pp. 39, 46. This order was sent by e-mail to a number of individuals at the institution, including all seven Captains. N.T. p. 45. The message stated, in relevant part:

I want to make sure we are all on the same page with the lockdown searches:

1. During normal business hours, I am to be notified and must authorize the lockdown to complete a search. If I am not here, the Deputy covering in my absence must authorize the lockdown.
2. The same applies at the completion of the search. I am to be notified, during normal business hours, when the search is complete in order to authorize the facility returning to normal operations. If I am not here, the Deputy covering must authorize the return to normal operations.
3. **If you are completing one of your assigned searches in the evening or on the weekend, the same procedure as listed above is to be followed with the Duty Officer being notified.**

The above information should be reflected in the Part 2. Thank you all for your cooperation with the search plan.

AA Ex. 1; Ap. Ex. 3 (emphasis added).

The appointing authority also submitted for the record the relevant provisions of DOC policy 6.3.1, the Facility Security Procedures Manual; Section 17, Reporting of Extraordinary Occurrences. AA Ex. 2. *See* Finding of Fact 4. This policy defines extraordinary occurrence and mandates what reports must be filed in the event such an occurrence happens. AA Ex. 2. Extraordinary occurrence is defined in the policy as, “any occurrence that has a significant impact, or potential for significant impact, upon the public, staff, inmates, physical plant, operation of the facility and/or state owned property under the jurisdiction of the Department, that requires staff action or response, but may not necessitate activation of the facility emergency plan.” AA Ex. 2. It further provides “Proper reporting of an extraordinary occurrence requires completion of the **DC-121, Part 1, Extraordinary Occurrence Form/Duty Officer Report (Attachment 17-A); DC-121, Part 2, Extraordinary Occurrence Report (Attachment 17-B)** which is created in WebTAS, and the **DC-121, Part 3, Employee Report of Incident (Attachment 17-C).**” AA Ex. 2 (emphasis in original).

Brocklehurst testified that he also reviewed appellant’s supervisory file as part of his investigation, and there had been two minor incidents he had previously with appellant. N.T. pp. 39-40. In January 2019, Deputy Woods spoke with appellant regarding a mistake appellant made with reporting an extraordinary occurrence. N.T. pp. 40-41. The Deputy directed Brocklehurst to document in appellant’s file that the Deputy had spoken to appellant about the proper procedures to be followed with an extraordinary occurrence. N.T. p. 41. The second incident occurred in February 2019, when appellant locked down and searched the Restricted Housing Unit and resumed normal operations without notifying anyone. N.T.

pp. 41-42. Brocklehurst testified that this, again was in direct contradiction to Adams' January directive regarding the procedures to be followed. N.T. p. 42. Both Woods and Brocklehurst spoke to appellant about the incident and Brocklehurst documented it. N.T. p. 42.

Brocklehurst also testified about the magnitude of appellant's actions during the April 17 incident. N.T. p. 53. Brocklehurst testified that an escape is the worst event that can happen at the institution. N.T. pp. 53-54. The appointing authority's primary purpose is to serve the Commonwealth and protect citizens from people who are incarcerated. N.T. pp. 53-54. During the April 17 incident, there was a possibility one of the inmates had escaped, and appellant failed to follow the procedures properly to deal with the situation. N.T. p. 54. Brocklehurst concluded from his investigation that appellant had substituted his own judgment for what was in the written policy and what had been directed by the superintendent. N.T. p. 54. Brocklehurst found that unacceptable. N.T. p. 54. Once Hicks had determined where the error was made in his first count, and Muszinski determined how the inmate shirt came to be located in the restricted area, appellant concluded there was no escape, even though he never identified which inmate the shirt belonged to, did not verify that inmate was still in the institution, and did not clear the recount. N.T. pp. 36-37.

Based on his fact-finding, Brocklehurst recommended a pre-disciplinary conference (hereinafter "PDC") be convened based upon two charges. N.T. p. 49; AA Ex. 1. The first was insubordination for appellant locking the facility down, then subsequently resuming normal operations, and failing to notify the Duty

Officer and obtain authorization to re-open. N.T. p. 49. Brocklehurst noted in his Investigative Summary from the fact-finding investigation that this constituted a violation of Code of Ethics Section B-9. Brocklehurst testified:

I charged Captain Rodemoyer with insubordination in the fact that he locked the facility down, he resumed normal operations, and he failed to notify the duty officer. And the Superintendent had made it very clear that she expected that to occur. And policy had changed within several months where that was actually required by policy.

N.T. p. 49. Code of Ethics Section B-9 provides:

Lawful orders by a supervisor to a subordinate must be executed promptly and faithfully by the subordinate even though the employee may question the wisdom of such order. The privilege of formally appealing the order may be done at a later date through either the supervisory command structure, civil service appeal, or the grievance machinery.

Ap. Ex. 9.

The second charge Brocklehurst recommended was a violation of DOC policy 6.3.1; Section 17, Reporting of Extraordinary Occurrences.<sup>4</sup> N.T. p. 49. Brocklehurst testified that he did not have any decision-making authority regarding the level of discipline that is imposed. N.T. p. 54. As the person who conducted the fact-finding, Brocklehurst presents the charges at the PDC, but he does not make the decision regarding whether discipline is imposed following the PDC. N.T. pp. 54-55.

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<sup>4</sup> Brocklehurst testified that while appellant also violated DOC policy 6.3.1, Section 9 regarding the count procedures, he did not file a separate charge against appellant because it was encompassed in the violation of Section 17. N.T. pp. 49-50.

On cross-examination, Brocklehurst was questioned in detail about his basis for determining appellant's conduct was insubordination. Brocklehurst testified that he charged appellant with insubordination because appellant had received written directions about the procedures to be followed once the facility had been locked down as well as the reporting requirements for those incidents. Additionally, discussions regarding the change in policy occurred at the meetings of commissioned officers. N.T. p. 58. At those meetings, the officers were advised that they were required to call the Duty Officer or Superintendent before resuming normal operations. N.T. p. 58. Brocklehurst acknowledged that he did not believe appellant was being defiant or malicious when he failed to follow the order and procedures. N.T. pp. 59, 64.

Brocklehurst also acknowledged he had previously encouraged appellant to exercise more judgment and make more decisions without seeking direction, Brocklehurst testified that as the Shift Commander, appellant had a tendency to call the Duty Officer to ask what to do. N.T. pp. 87-88, 114. As the Shift Commander, appellant is the individual who was entrusted to run the institution when no one from the Administrative Duty Group was present at the institution. N.T. p. 115. Brocklehurst advised appellant that rather than just asking the Duty Officer what to do, appellant should exercise his judgment to come up with a plan prior to calling the Duty Officer, and then advise the Duty Officer of what the situation was and the plan appellant was proposing. N.T. p. 115. However, Brocklehurst further testified that his recommendation to appellant to exercise more judgment did not allow appellant to violate policy. N.T. pp. 87-88. Once the emergency plan was in place, appellant was required to follow that plan and the

written directive from Adams as the Superintendent. N.T. p. 88. He further testified that DOC policy 6.3.1; Section 17 does not allow for discretion on the part of the Shift Commander to determine whether to report an extraordinary occurrence to the Duty Officer. N.T. p. 130. Brocklehurst testified that he did not accept appellant's assertion during the fact-finding that he considered the situation similar to an alertness drill once it was determined how the shirt came to be located where it was, and appellant therefore did not need to contact the Duty Officer. N.T. p. 113. Brocklehurst testified that this was not an alertness drill appellant had control over. He further noted that even for an alertness drill, appellant was required to notify the Duty Officer.<sup>5</sup> N.T. pp. 113-114.

Brocklehurst also testified that there is no formal charge of insubordination in the Department of Corrections: the charge is included under Code of Ethics Section B-9. N.T. p. 132.

Department of Corrections Code of Ethics Section B-9 provides:

Lawful orders by a supervisor to a subordinate must be executed promptly and faithfully by the subordinate even though the employee may question the wisdom of such order. The privilege of formally appealing the order may be done at a later date through either the supervisory command structure, civil service appeal, or the grievance machinery.

Ap. Ex. 9.

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<sup>5</sup> While appellant failed to call Adams regarding the lockdown, Brocklehurst testified that appellant called him at approximately 8:30 p.m. on April 17, 2019 and discussed how to handle a situation with an insubordinate CO I. N.T. pp. 135-136. Brocklehurst testified that appellant never brought up finding an inmate's shirt or the lockdown of the facility during the call. N.T. p. 136.

Lori Mahlmeister is employed by the Office of Administration and serves as the Field Human Resources Officer for the appointing authority. N.T. p. 146. Mahlmeister handles labor relations and disciplinary proceedings at the institution. N.T. p. 148. Mahlmeister served as the chair of the PDC panel which also included Deputy Woods and Deputy Dady. N.T. pp. 149-150. Mahlmeister explained why the panel concluded the charges against appellant were substantiated. N.T. p. 151. According to Mahlmeister, when appellant was asked if he read Adams January 11 e-mail, he stated that he had, but also admitted he did not follow the direction in it. N.T. pp. 150-151. Similarly, according to Mahlmeister, when appellant was asked about DOC policy 6.3.1; Section 17, Reporting of Extraordinary Occurrences, he admitted that he was well-versed in the policy but did not follow that policy either. N.T. p. 151.

Woods testified that he became aware of the incident when he received an e-mail from Adams asking what he knew about the lockdown. N.T. p. 177. Woods was not present at the institution at the time of the incident, and did not know anything about it. N.T. p. 177. He looked into the incident further by first reviewing the April 17 incident reports. N.T. p. 177. Woods explained that each day, a packet of information comes through the Shift Commander's office, including a daily report that includes all incident reports filed that day. N.T. p. 177. When Woods reviewed those reports, there was only one report: the report from Fry reporting that he had found an inmate's shirt while he was on the outside perimeter patrol. N.T. p. 177.

Woods testified that DOC policy 6.3.1, the Facility Security Procedures Manual; Section 17, Reporting of Extraordinary Occurrences, provides that a lockdown is an extraordinary occurrence and notification of the Duty Officer and/or Superintendent is required. N.T. p. 186. Woods further testified that this applies to

lockdowns that are conducted as part of a drill. N.T. pp. 186-187. Woods testified that he had multiple conversations with appellant about extraordinary occurrences. N.T. p. 209.

Regarding appellant's PDC, Woods testified there were two charges being considered: whether appellant violated Code of Ethics Section B-9 and whether he violated Section 17 of DOC policy 6.3.1 Facility Security Procedures Manual for reporting extraordinary occurrences. N.T. p. 224. Appellant was asked at the PDC and indicated that he had violated Code of Ethics Section B-9 and Section 17 of the Facility Security Procedures Manual. N.T. pp. 224-225. Woods testified that appellant admitted he did not follow Adams' direction regarding lockdowns. N.T. p. 187. The last segment of the PDC provided appellant with the opportunity to provide his statement regarding what happened and provide any justification. N.T. p. 189. Woods testified that he did consider appellant's defense from the PDC and what he provided in mitigation. N.T. p. 226. After the completion of the PDC, Woods concluded that the charges against appellant were substantiated. N.T. pp. 186, 189.

Woods concluded appellant made a mistake, and that it was an egregious and very significant mistake. N.T. p. 226. While Woods acknowledged that no inmates escaped on April 17, that did not mean appellant's failure to follow the policy was not egregious. N.T. p. 228. Woods testified that looking at the history of prison escapes, inmates often set up something in one area of the institution and then escape from another area. N.T. p. 228. This was a significant mistake for a Shift Commander who is responsible for the institution to have made this large of a mistake. N.T. p. 229. Woods testified when the Shift Commander is in charge of the institution, Woods relies on that person's ability to make good judgments and to

follow policies and procedures to ensure the safety and security of the staff, inmates, and public. N.T. pp. 190, 192. Woods testified he felt appellant made the wrong call, failed to follow policies and procedures, and in doing so, put the institution and public at risk. N.T. pp. 190, 192.

Melinda Adams testified that she has been the Superintendent of the appointing authority since May 2018. N.T. p. 252. Adams became aware of the incident involving the inmate's shirt on April 18, 2019, when she was reviewing an e-mail which included all of the documentation generated on April 17. N.T. p. 254. Adams saw Officer Fry's incident report indicating a shirt had been found near the fence and there was an indication (written on the report by appellant) that the facility was locked down and an emergency count performed. N.T. p. 255. Adams testified that this was an emergency situation and the facility needed to be locked down by the Shift Commander. She further testified, however, that at the first opportunity, appellant should have notified her of the situation as the Superintendent and as the Duty Officer. N.T. pp. 255-256. She further testified that she should have been notified prior to the institution resuming normal operations. N.T. p. 256. Adams testified that as the Shift Commander, appellant also should have completed a Part 2 Extraordinary Occurrence Report, which he did not do. N.T. pp. 257-258.

Adams testified that the Shift Commander runs the daily operations of the institution. N.T. pp. 259-260. Additionally, when Adams and the Deputy Superintendents are not present, the Shift Commander is in charge of the entire institution. N.T. pp. 259-260. Adams testified that based upon the information that came out during the fact-finding, Adams had serious concerns about the decisions appellant made, and did not feel comfortable with him continuing to serve as the Shift Commander. N.T. p. 259.

After the PDC was completed, Adams reviewed the report from the fact-finding, the PDC minutes, and a synopsis of the PDC. N.T. p. 261. Adams recommended that appellant be demoted to a Corrections Officer 3. N.T. pp. 262-263. This recommendation was ultimately sent to the Department of Corrections Central Office. Central Office authorized Adams to demote appellant. N.T. pp. 262-263. Adams testified that she was asked by two of her superiors if she was certain that she only wanted to demote appellant to Corrections Officer 3 rather than to Corrections Officer 1. N.T. pp. 263, 297.

Adams explained the reasons she believed appellant's conduct merited a demotion. This was a serious situation involving a possible escape attempt, for which no notifications were made and appellant failed to determine the identity of the inmate involved. N.T. p. 263. Adams found it unacceptable that appellant, as the Shift Commander and an employee with approximately twenty years of experience working for the Department of Corrections, failed to properly perform notifications, which are required when the emergency plans are activated. N.T. p. 264. Under DOC policy 6.3.1, the Facility Security Procedures Manual; Section 17, this incident involved the activation of the emergency plans. N.T. p. 265. Appellant's conduct also violated her January 11, 2019 order. N.T. p. 264. Adams also considered the fact that appellant had been counseled on several occasions about reporting and extraordinary occurrence practices. N.T. p. 265. Adams testified that the inmate's identity should have been determined and his presence in the institution verified. N.T. p. 265. Appellant should have confirmed that the situation was not a diversion. N.T. p. 265. Adams testified that if appellant had called Adams, they could have discussed these matters. N.T. p. 265. Instead, Adams learned the institution had been locked down and an emergency count conducted due to a potential inmate escape by reading an incident report from a CO 1. N.T. pp. 265-

266. Adams testified that she no longer felt she had confidence in the appellant to run the institution when she was not present, and a demotion was appropriate. N.T. p. 266.

On cross examination, Adams testified the charge covered under Code of Ethics Section B-9 was for failure to follow an order.<sup>6</sup> N.T. p. 270. Similarly, the charge under DOC policy 6.3.1, the Facility Security Procedures Manual; Section 17, Reporting of Extraordinary Occurrences was also for failure to follow that procedure. N.T. p. 270. Adams based her decision to demote based upon her assessment appellant's conduct was a serious violation of policy—namely, her order and the DOC policy for Reporting of Extraordinary Occurrences. N.T. pp. 272-273. To Adams, that constitutes insubordination. N.T. pp. 274-275.

In response to the appointing authority's presentation, appellant testified that he began working for the Department of Corrections as a Corrections Officer Trainee at the appointing authority in 1999. N.T. p. 347. Appellant progressed through a series of promotions at the appointing authority and reached the rank of Lieutenant in 2011. N.T. p. 347. In 2013, appellant began working out-of-class as an Inspections Captain at the Department of Corrections Central Office. N.T. p. 347. In late 2015, appellant began working as a full Captain at the State Correctional Institution at Albion. N.T. p. 347. In 2017, appellant transferred to the appointing authority. N.T. p. 348. Prior to his service with the Department of Corrections, appellant served in the Marine Corps. N.T. p. 349.

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<sup>6</sup> Adams expressly indicated that her determination appellant violated her order and Section B-9 was due to a failure to follow orders rather than a "refusal" to do so. N.T. p. 270.

During the time he worked as an Inspections Captain, appellant worked under Regional Deputy Secretary Dan Burns for approximately eighteen months. N.T. p. 355. Appellant and Burns would visit each of the Department of Corrections facilities in the Western Region and review their policies and procedures to ensure the facilities were doing what was required. N.T. p. 351. Appellant also performed investigations of events that occurred at certain facilities. Appellant testified that a large part of his duties involved reviewing Extraordinary Occurrence Reports as well as ensuring that policies and procedures of the institutions were being followed. N.T. pp. 352-353. Appellant testified that the appointing authority was one of the nine institutions in the Western Region. N.T. p. 355.

Appellant also submitted a number of his prior Employee Performance Reviews (hereinafter “EPRs”) into the record. Ap. Ex. 2. These included an annual EPR in his position as Captain for the rating period of December 2016 to December 2017 in which appellant received an Overall Rating of Commendable. Ap. Ex. 2. On an EPR for the rating period of December 2017 to December 2018, appellant received an Overall Rating of Commendable. Brocklehurst was the Rater for this 2018 EPR and Woods was the Reviewing Officer. Ap. Ex. 2.

Appellant also testified about the April 17, 2019 incident. Appellant testified that the shirt was found near the satellite dining hall, and confirmed that is an area where inmates can only be present if they are accompanied by inside grounds maintenance crew. N.T. pp. 360-361. Appellant locked the jail down. N.T. p. 361. According to appellant, as soon as he directed the emergency count to be performed, he was advised that the recording of the shirt being dropped was located, and it indicated that it happened at 1:55 p.m. N.T. p. 361. Appellant reviewed the video footage of the incident, which showed there was a maintenance crew accompanied

by inmates. N.T. p. 362. The inmates were pulling a cart as they were leaving the area. A shirt on the back of the cart got caught on one of the wheels and was pulled to the ground. N.T. p. 362. The inmates did not see the shirt fall off the cart, continued walking, and left the area. N.T. pp. 363-364. Appellant determined that nothing “was amiss,” felt that they had the situation covered, and he did not feel at any time there was any danger to the community. N.T. p. 365. Appellant testified that while the event initially was an extraordinary occurrence, he believed after he had the additional information from review of the video that as the Shift Commander, he could re-characterize the event as not being an extraordinary occurrence. N.T. p. 370. Appellant testified that he let the institution know what happened when he sent his e-mail to the Administrative Duty staff at 10:32 p.m. on April 17. N.T. p. 377.

Appellant further testified that he believed he did not have to complete a Part 2 report regarding the shirt incident because “it was a nonevent.” N.T. pp. 368, 412. Appellant testified to his mind, the situation could be categorized as an alertness drill. N.T. p. 368. According to appellant, there are many incidents “which entail alertness drills,” during which the emergency plan is initiated when they do not complete a Part 2 report. N.T. pp. 368, 411. Appellant acknowledged, however, that ultimately, the Superintendent determines if a Part 2 report needs to be completed. N.T. p. 411. Appellant further testified that there was no reason to interview the inmate. N.T. p. 418. At the time the inmate’s shirt fell off the back wheel of the cart, the inmates’ backs were turned. N.T. p. 418. Appellant further testified his handling of the incident on April 17 was complying with Brocklehurst’s prior direction that appellant should exercise more judgment. N.T. pp. 397-399.

Appellant acknowledges that he initiated the emergency plan on April 17 and initiated a lockdown. N.T. p. 427. He further acknowledged this was not a situation where he had been advised it was an alertness drill. N.T. pp. 427-428. Appellant testified that initiating a lockdown and activating the emergency plan does not require all of the reporting requirements of an extraordinary occurrence. N.T. pp. 427-428. Appellant admitted he never confirmed which inmate the shirt belonged to before returning the institution to normal operations. N.T. p. 435.

Appellant also acknowledged that Adams' January 11, 2019, e-mail was an order and that it applied to lockdown searches. N.T. p. 440. Appellant testified that at the time of the January 11 e-mail, preplanned searches were a topic at the institution. N.T. p. 441. Appellant testified that he received an e-mail during that time period regarding how staff was to handle pre-planned searches. N.T. p. 379. He further testified that pre-planned searches were the topic of conversation at meetings of the commissioned officers. N.T. p. 380. He interpreted the e-mail at the time to only apply to pre-planned searches, but he now realizes that was a mistake. N.T. p. 380. He acknowledged that nothing in Adams' January 11 e-mail limited the order to preplanned searches. N.T. p. 441.<sup>7</sup>

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<sup>7</sup> Appellant also offered the testimony of Lieutenant James Cyphert concerning a drill that apparently was held earlier in the day on April 17 to perform an emergency count. Cyphert performed the count but it did not clear, yet the inmates were released for lunch. N.T. pp. 333-334. This testimony was offered ostensibly to demonstrate that counts did not always clear before the institution was returned to normal operations, and that a prior count on April 17 did not clear. N.T. p. 388. But Cyphert further testified the Superintendent has the authority to stop a drill or exercise at any time. N.T. p. 333. Dady, who was acting Superintendent at the time of the drill, stopped the drill. N.T. pp. 333-334. Further, Dady also authorized resumption of normal operations after stopping the drill. N.T. p. 336. Consequently, Cyphert's testimony does not support appellant's position, since the circumstances under which the counts were initiated were entirely different, and the acting Superintendent had expressly approved the return of the facility to normal operations.

The stipulations entered between the parties concerning Dan Burns revolve around Burns' experience as appellant's supervisor for two years when appellant worked as an Inspections Officer. Jt. Stips. 3, 4, 5. Burns, who is retired, served as the Regional Deputy Secretary of the Western Region at the time he supervised appellant. Jt. Stips. 2, 4. A significant part of appellant's job as Inspections Officer was auditing correctional facilities' compliance with reporting of extraordinary occurrences. Jt. Stip. 10. During his supervision of appellant, Burns found appellant respectful of the chain of command and properly deferential to superiors. Jt. Stip. 14. Burns ranked appellant's performance as an Inspections Officer as commendable. Jt. Stip. 13.

### **Analysis of Charges and Just Cause for Demotion**

The appointing authority asserts appellant's failure to notify the Superintendent that the institution was locked down, and failure to receive authorization to return to normal operations, constitute failure to follow an order in violation of Code of Ethics Section B-9, and violated DOC policy 6.3.1; Section 17, Reporting of Extraordinary Occurrences. The appointing authority further asserts appellant's failure to complete a Part 2 Extraordinary Occurrence Report on the event also violated DOC policy 6.3.1; Section 17. After careful review, we find that the appointing authority has presented credible evidence establishing the charges, and further, that they have demonstrated just cause for appellant's demotion from Corrections Officer 4 to Corrections Officer 3.

The appointing authority credibly established that appellant had been notified that he was required to notify the Superintendent when she was serving as the Duty Officer that the facility had been locked down and to receive permission from her prior to reopening the institution. The witnesses for the appointing authority credibly testified that the January 11, 2019 e-mail from Adams constituted an order and that it applied to all situations where the institution was locked down and then re-opened. The record clearly demonstrates that appellant locked down the institution, initiated the emergency plan, and never notified Adams of the lockdown nor did he receive authorization from her to reopen the institution. This was a violation of the order and DOC policy 6.3.1

Appellant characterizes his actions as a mistake. He asserts that since his conduct was not an intentional violation of an order, he did not violate Code of Ethics Section B-9 because that requires insubordination, which in turn he argues requires the appointing authority to establish appellant was defiant or otherwise refused to accept the authority of his superiors. Ap. Bf. p. 17. In support of his position, appellant cites *McCain v. East Stroudsburg State College*, 71 Pa. Commw. 165, 454 A.2d 667 (1983).

*McCain*, however, does not support appellant's position. In *McCain*, unlike the present case, the employee, an electronic systems technician, was charged with insubordination where there was no evidence of a failure of the employee to follow an order or a refusal of the employee to perform a task assigned to him by his supervisor. 71 Pa. Commw. 168, 454 A.2d 669. *McCain* held that insubordination was not *limited* to situations where there was a refusal or failure to follow an order.

The court determined that insubordination was broad enough to include other conduct which did not involve a refusal to follow an order of a superior. This other conduct involved McCain's behavior at a counselling session his supervisor initiated to discuss four areas of perceived inadequacy in McCain's work performance. *Id.* At the end of that counselling session, McCain asked his supervisor "on what basis do you presume to be qualified to counsel me in anything." *Id.* When the supervisor told McCain he had authority to do so as his supervisor, McCain told him he was not questioning his authority but he was questioning the supervisor's qualifications. *Id.* The court determined, "In this context the concept of insubordination denotes either disobedience or defiance or contempt of authority and is quite literally an unwillingness to submit oneself to the authority of organizational superiors." *Id.*

In the present case, appellant did, in fact, fail to follow the Superintendent's order, and failed to comply with the policy regarding reporting extraordinary occurrences and completing the required incident reports. Appellant has presented reasons *why* he did not follow the order, including that he did not understand that it applied to the lockdown on April 17. We do not find appellant's arguments persuasive. Appellant has also provided reasons why he believed he could recharacterize the event as a non-extraordinary occurrence.<sup>8</sup> But he simply did not have authority to do so under the policy after the lockdown occurred and the emergency plan was put in place. Similarly, he lacked the discretion to not complete the Part 2 report.

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<sup>8</sup> Appellant's assertion that the situation was similar to an alertness drill is particularly unpersuasive. Both Brocklehurst and Woods credibly testified that even when there is a drill, the Duty Officer is required to be notified.

The Commission also does not find demotion of appellant to Corrections Officer 3 to be disproportionate to the infractions that have been established by the appointing authority. The appointing authority credibly established the magnitude of appellant's actions and the seriousness of his failure to understand and follow the policies, as well as the Superintendent's express order, regarding notifications of lockdowns and obtaining authorization prior to re-opening the institution. As Shift Commander, appellant's position requires that he follow orders and procedures, and that he understand those areas where he simply does not have discretion to exercise his personal judgment in a way that contravenes policies and orders that do not permit such discretion. Appellant acknowledges he made a mistake and that he did not intend to violate the policies or the order. But the record makes it clear that Adams took this into account—as well as appellant's good performance history—when deciding to demote appellant to Corrections Officer 3 rather than Corrections Officer 1. The Commission does not find any disproportionality between the discipline and appellant's actions. We find that the appointing authority established that appellant failed to execute his duties properly, and that his failure to understand and follow the order and policies directly reflected on his competency and ability to perform as a Captain, and exercise the judgment required of that position. This clearly demonstrates just cause for appellant's demotion to Corrections Officer 3. Accordingly, we enter the following:

CONCLUSION OF LAW

The appellant was properly demoted in accordance with the requirements of Section 2503 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Brian K. Rodemoyer challenging his demotion from regular Corrections Officer 4 to Corrections Officer 3 employment with the State Correctional Institution at Mercer, Department of Corrections and sustains the action of the State Correctional Institution at Mercer, Department of Corrections in the demotion of Brian K. Rodemoyer from regular Corrections Officer 4 to Corrections Officer 3 employment effective June 16, 2019.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: November 20, 2020