

COMMONWEALTH OF PENNSYLVANIA

Jose Cortina	:	State Civil Service Commission
	:	
v.	:	
	:	
State Correctional Institution at Chester,	:	
Department of Corrections	:	Appeal No. 31106
Robert T. Vance, Jr.		Suzanne Edwards
Attorney for Appellant		Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Jose Cortina challenging his demotion from regular Corrections Officer 4 employment to regular Corrections Officer 3 employment with the State Correctional Institution at Chester, Department of Corrections (hereinafter “appointing authority”). A hearing was held on November 21, 2023, via video, before Commissioner Pamela M. Iovino.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority has established just cause for appellant’s demotion.

FINDINGS OF FACT

1. By letter dated April 5, 2023, appellant was demoted from regular Corrections Officer 4 employment to regular Corrections Officer 3 employment with the State Correctional Institution at Chester (hereinafter “appointing authority”), effective April 16, 2023. Comm. Ex. A.
  
2. In its April 5, 2023 letter, the appointing authority charged appellant with violating: 1) Department of Corrections (hereinafter “DOC”) Policy No. 6.4.1, Unit Management; 2) DOC Policy No. 6.7.1, Incident Command System Procedure Manual; and 3) the DOC Code of Ethics. Comm. Ex. A.
  
3. The April 5, 2023 letter informed appellant the charges were based on the following conduct:

Specifically, you violated these policies when you received the initial report via telephone of the medical emergency happening on BD unit. At this time, you exited the control center and personally responded to the affected area, failing to properly report the incident over the radio system, failing to dispatch a lieutenant to the incident, remain in the control center and assume the role as the incident

commander. Additionally, you made and executed command decisions while being directly in the affected area which violated the incident command structure.

Comm. Ex. A.

4. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018. Comm. Exs. C, D.
5. On September 4, 2022, appellant was promoted from Correction Officer 3 (rank of Lieutenant) to Corrections Officer 4 (rank of Captain). N.T. p. 144; AA Ex. 4.
6. By letter dated December 6, 2022, appellant received a written reprimand for three DOC Code of Ethics violations that occurred on September 14, 18, and 19, 2022. N.T. pp. 146-149; AA Ex. 5.
7. On February 19, 2023 at or around 3:30 a.m., an inmate suffered a medical emergency on the appointing authority's BD Housing Unit. N.T. p. 28; AA Ex. 10 (p. 1).

8. Officer Hopkins was alerted to the medical emergency by the inmate's cellmate while she was conducting a security round. N.T. p. 28; AA Ex. 10 (p. 1).
9. The Post Order in effect on February 19, 2023 required a commissioned officer and two staff members to be present before opening a cell during the 2200 to 0600 shift. N.T. p. 32.
10. Appellant and Lieutenant Kaiser were the only commissioned officers on the 2200 to 0600 shift on February 18 going into February 19, 2023. N.T. p. 41; AA Ex. 10 (p. 2).
11. Appellant was the Shift Commander for the 2200 to 0600 shift on February 18 going into February 19, 2023. N.T. pp. 29, 89-90; AA Ex. 1 (p. 81).
12. On the 2200 to 0600 shift, the Shift Commander is the highest-ranking person on duty and responsible for all aspects of an emergency response. N.T. pp. 118-119; AA Exs. 2 (p. 9), 3 (pp. 5, 7).
13. Officer Hopkins telephoned appellant and informed him of the medical emergency. N.T. pp. 38-39, 198-199; AA Exs. 1 (p. 81) 10 (p. 2).

14. When Officer Hopkins telephoned, appellant was in the Shift Commander's Office and Lieutenant Kaiser was in the control center. N.T. pp. 30, 199, 206.
15. The Shift Commander's Office is attached to the control center. N.T. p. 30.
16. After being informed of the medical emergency, appellant did not make a radio transmission to alert staff members of the emergency. N.T. p. 34; AA Ex. 1 (p. 81).
17. Appellant walked to the infirmary to alert medical personnel of the emergency. N.T. pp. 30, 198-199; AA Exs. 1 (p. 81), 10 (p. 2).
18. Appellant waited for medical personnel to get their equipment before going to the location of the emergency. N.T. p. 206.
19. Medical personnel are familiar with the institution and do not need to be accompanied by the Shift Commander during a medical emergency. N.T. pp. 95-96.

20. Upon arriving at the location of the emergency, appellant directed staff to open the cell, handcuff the cellmate, and place him on the bottom tier. N.T. p. 31; AA Ex. 1 (p. 81).
21. After securing the cellmate, appellant positioned himself outside the cell from where he made command decisions, to include: readying a transport; notifying 911; and directing staff members to isolate and find a cell for the cellmate. N.T. p. 33; AA Ex. 1 (pp. 81-82).
22. Appellant directed Lieutenant Kaiser to prepare two officers for transport and to call EMS. N.T. p. 202; AA Ex. 1 (pp. 81-82).
23. Lieutenant Kaiser remained in the control center during the incident. N.T. p. 30.
24. By letter dated March 13, 2023, appellant was notified a pre-disciplinary conference (hereinafter “PDC”) was scheduled for March 23, 2023. N.T. p. 154; AA Ex. 9 (p. 1).

25. The March 13, 2023 letter informed appellant he would have an opportunity to respond to alleged violations of DOC Policy Nos. 6.4.1 and 6.7.1 and the DOC Code of Ethics. N.T. p. 155; AA Ex. 9 (pp. 1-2).
26. The PDC was held on March 23, 2023, as scheduled. N.T. p. 156.
27. During the PDC, appellant responded to the charges set forth in the March 13, 2023 letter. N.T. p. 157; AA Ex. 10.
28. Section 1(D)(3) of DOC Policy No. 6.4.1 provides, in pertinent part:

...In the event of an emergency, the Shift Commander shall assume command of the entire facility until he/she is relieved in accordance with Department policy 6.7.1, "Incident Command System...."

AA Ex. 2 (p. 9)
29. Section 1(B)(1) of DOC Policy No. 6.7.1 provides:

The [Incident Commander (hereinafter "IC")] is the highest-ranking staff member of the facility able to assume immediate command at the time a critical incident is reported. The IC is the person responsible for all aspects of an emergency response; including

quickly developing incident objectives, managing all incident operations, application of resources, as well as responsibility for all persons involved. The IC has the ultimate authority for all decisions and the responsibility for the overall management of the incident.

AA Ex. 3 (p. 5).

30. Section 1(B)(3)(a) of DOC Policy No. 6.7.1 provides the Incident Commander shall “manage the critical incident and determine the immediate priorities.” AA Ex. 3 (p. 7).
31. The Incident Commander is announced at the beginning of each shift after all radio communications are checked. N.T. p. 89.
32. To be an Incident Commander, the employee must successfully complete the following trainings: ICS-100; 200; 300; 400; 700; and 800. N.T. p. 85.
33. All Shift Commanders are required to successfully complete ICS-100; 200; 300; 400; 700; and 800. N.T. p. 85.



34. Appellant successfully completed the required ICS courses and was qualified to serve as the Incident Commander on February 19, 2023. AA Ex. 13.
  
35. Prior to the February 19, 2023 incident, appellant had served on the statewide All Hazards Incident Management Team, was the Critical Incident Manager at the appointing authority for a time, and served as the Incident Command System Specialist at the appointing authority for a time. N.T. p. 99; AA Ex. 12 (p. 8).
  
36. Section B.10 of the DOC Code of Ethics provides:

Employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated.

AA Ex. 7 (p. 4).
  
37. By signed acknowledgment dated February 7, 2005, appellant certified he received, read, and agreed to abide by the DOC Code of Ethics. AA Ex. 8.

## DISCUSSION

By letter dated April 5, 2023, the appointing authority removed appellant from regular Corrections Officer 4 employment and demoted him to regular Corrections Officer 3 employment. Comm. Ex. A. Appellant challenged this action under Section 3003(7)(i) of Act 71 of 2018 (hereinafter “Act 71”).<sup>1</sup> 71 Pa.C.S. § 3003(7)(i). Thus, the sole issue before the Commission is whether the appointing authority has established just cause for the demotion.

Under Section 2503 of Act 71, 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). Since a demotion of a regular status employee is the removal of the employee from a higher-level position, the appointing authority must establish just cause for removal. *See Pennsylvania Liquor Control Board v. Flannery*, 141 Pa. Commw. 228, 232, 595 A.2d 685, 687 n.2 (1991) (approving the Commission’s application of the just cause standard to a regular demoted employee because a demotion is actually a “removal” from the higher-level position). Factors supporting the just cause removal of a civil service employee must be related to the employee’s job performance and touch in some logical manner upon the employee’s competency and ability to perform his job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006).

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<sup>1</sup> Act of June 28, 2018, P.L. 460, No. 71, § 1.

In support of its charges, the appointing authority presented the testimony of Captain Peter Bacco,<sup>2</sup> Deputy Superintendent Scott Bowman,<sup>3</sup> Human Resources (hereinafter “HR”) Analyst 3 Jason Hadley,<sup>4</sup> and Superintendent Gina Clark.<sup>5</sup> Appellant testified on his own behalf and presented the testimony of Captain Eric Verosky.<sup>6</sup> There is no dispute as to the underlying facts of the incident which resulted in appellant’s demotion. These facts are summarized below.

On February 19, 2023 at or around 3:30 a.m., an inmate suffered a medical emergency on the appointing authority’s BD Housing Unit. N.T. p. 28; AA Ex. 10 (p. 1). Officer Hopkins was alerted to the medical emergency by the inmate’s cellmate while she was conducting a security round. N.T. p. 28; AA Ex. 10 (p. 1). Officer Hopkins was not permitted to open the cell because the Post Order required a commissioned officer and two staff members to be present. N.T. p. 32. A commissioned officer is a lieutenant or higher. N.T. p. 33.

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<sup>2</sup> Bacco serves as the Intelligence-Gathering Captain for the Internal Security Department at the appointing authority. N.T. p. 22. The civil service classification for this position is Corrections Officer 4. N.T. p. 23. Bacco has held this position for approximately one and a half years and has worked for the Department of Correction (hereinafter “DOC”) for fifteen years. N.T. pp. 23-24, 46. Bacco was responsible for conducting the internal investigation of the incident which resulted in appellant’s demotion. N.T. p. 25.

<sup>3</sup> Bowman is the Deputy Superintendent for Facilities Management for the appointing authority. N.T. p. 76. In that capacity, Bowman is responsible for unit management, maintenance, and fire safety at the appointing authority. N.T. p. 128. Bowman has held this position for approximately two years and has worked for DOC for twenty-six and a half years. N.T. pp. 76-77. Bowman has also held positions within the Incident Command System since 2006, to include: Critical Incident Manager at the State Correctional Institution (hereinafter “SCI”) at Graterford; Alternate Critical Incident Manager Coordinator at SCI-Camp Hill; member of the statewide All Hazards Incident Management Team; and Primary Critical Incident Manager Coordinator for the Commonwealth. N.T. pp. 78, 83-84.

<sup>4</sup> Hadley has served as an HR Analyst 3 since August 2021. N.T. pp. 141-142. In that capacity, he is responsible for processing and reviewing all investigations conducted by the appointing authority. N.T. pp. 142-143.

<sup>5</sup> Clark is the Superintendent for the appointing authority and in that capacity, she oversees the entire facility. N.T. pp. 167-168. Clark has held this position for a little over one year and has worked for DOC for approximately twenty-two years. N.T. p. 168.

<sup>6</sup> Verosky is employed by the appointing authority as a Corrections Officer 4, which is the rank of Captain. N.T. p. 186. Verosky has held this position since 2017, during which time he has acted as a Shift Commander. N.T. p. 187.

Officer Hopkins telephoned appellant, who was the Shift Commander, and informed him of the medical emergency. N.T. pp. 29, 38-39, 89-90, 198-199; AA Exs. 1 (p. 81), 10 (p. 2). When Officer Hopkins called, appellant was in the Shift Commander's Office. N.T. p. 30. The other commissioned officer on duty, Lieutenant Kaiser, was in the control center. N.T. pp. 30, 199, 206. The Shift Commander's Office is attached to the control center. N.T. p. 30.

Upon being informed of the medical emergency, appellant left his office and walked to the infirmary to alert medical staff of the emergency. N.T. pp. 30, 198-199; AA Exs. 1 (p. 81), 10 (p. 2). Appellant waited for medical personnel to get their equipment before going to the location of the emergency. N.T. p. 206. Upon arriving at the location of the emergency, appellant directed staff to open the cell, handcuff the cellmate, and place him on the bottom tier. N.T. p. 31; AA Ex. 1 (p. 81). Staff and medical then entered the cell and started life-saving measures. N.T. p. 31.

Appellant positioned himself outside the cell from where he made command decisions, to include readying a transport, notifying 911, and directing staff members to isolate and find a cell for the cellmate. N.T. p. 33; AA Ex. 1 (pp. 81-82). Appellant also directed Lieutenant Kaiser to prepare two officers for transport and to call EMS. N.T. p. 202; AA Ex. 1 (pp. 81-82). The inmate was pronounced dead after approximately forty-five minutes. N.T. p. 31. Thereafter, an internal investigation of the inmate's death was conducted. N.T. p. 25; AA Ex. 1.

After the investigation was completed, a pre-disciplinary conference (hereinafter "PDC") was held with appellant on March 23, 2023. N.T. p. 156; AA Ex. 10 (p. 1). Deputy Superintendent Scott Bowman, Deputy Superintendent Keith

Miller,<sup>7</sup> and HR Analyst 3 Jason Hadley served on the PDC panel. N.T. pp. 100-101, 128, 156; AA Ex. 10 (p. 1). During the PDC, appellant had an opportunity to respond to the three charges, which were the same as the charges listed on the April 5, 2023 demotion letter—violations of DOC Policy Nos. 6.4.1 and 6.7.1 and Section B.10 of the DOC Code of Ethics. N.T. p. 101; AA Exs. 9, 10.

The PDC panelists unanimously substantiated the charges for violating DOC Policy Nos. 6.4.1 and 6.7.1. N.T. pp. 102, 124, 160, 164; AA Ex. 10 (p. 4). Regarding the charge for violating Section B.10 of the DOC Code of Ethics, one panelist (Deputy Superintendent Miller) did not substantiate the charge. N.T. pp. 124, 160, 164; AA Ex. 10 (p. 4). The split decision regarding Section B.10 of the DOC Code of Ethics stemmed from a difference in interpretation of the requirement that appellant act properly and professionally. N.T. pp. 125-126. Deputy Superintendent Miller reasoned that both were required to substantiate the charge, whereas the other two panelists interpreted the requirement in the disjunctive. N.T. pp. 125-126, 128.

Substantiation of the charges is not the same as a determination of discipline. N.T. pp. 157-158. The PDC panel's opinions related to the charges are merely a recommendation to the Superintendent. N.T. p. 158. After the PDC is held, the Superintendent reviews the PDC minutes and the panel's recommendation to determine what, if any, discipline will be imposed. N.T. pp. 158-160. The

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<sup>7</sup> Miller is the Deputy Superintendent for Centralized Services at the appointing authority. N.T. p. 128. In that capacity, he oversees the appointing authority's program services, clergy, food service, and medical. N.T. pp. 128-129.

ultimate authority to determine discipline rests with the Superintendent. N.T. pp. 158-161, 168. Thus, the Superintendent may deviate from the PDC panel's recommendation. N.T. pp. 159-160.

In the present matter, Superintendent Gina Clark determined demotion was appropriate. N.T. p. 169; Comm Ex. A. Clark explained she demoted appellant because she lost confidence in him as a Shift Commander based on how he handled the February 19, 2023 emergency coupled with his prior disregard of policy which resulted in a written reprimand.<sup>8</sup> N.T. pp. 169, 176, 179.

Based upon our review of the uncontested facts, we find appellant failed to properly effectuate his responsibilities under DOC Policy Nos. 6.4.1 and 6.7.1 and the DOC Code of Ethics.<sup>9</sup> DOC Policy No. 6.4.1 provides that during an emergency, the Shift Commander shall assume command of the entire facility until he or she is relieved in accordance with DOC Policy No. 6.7.1. *See* Finding of Fact 28. DOC Policy No. 6.7.1 sets forth the Incident Command System, which the appointing authority uses when responding to emergencies. N.T. p. 80; AA Ex. 3. Under the Incident Command System, the Incident Commander is responsible for all aspects

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<sup>8</sup> By letter dated December 6, 2022, appellant received a written reprimand for smoking cigars on three occasions at the appointing authority in violation of the DOC Code of Ethics. N.T. pp. 107, 147; AA Ex. 5. The violations occurred approximately two weeks after appellant was promoted to Captain. N.T. pp. 146-149; AA Ex. 5. Deputy Superintendent Bowman recalled, at the time of this incident, he asked Superintendent Clark not to demote appellant. N.T. p. 107. Bowman characterized the cigar incident as a "dumb mistake." N.T. p. 108. Since appellant was a new Captain and still on probation, it was decided that appellant's probation would be extended. N.T. pp. 108, 169; AA Ex. 6.

<sup>9</sup> It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

of an emergency response, to include determining the immediate priorities, quickly developing incident objectives, managing all incident operations and application of resources, as well as responsibility for all persons involved. *See* Finding of Fact 29-30.

During the February 19, 2023 emergency, appellant was the Incident Commander because he was the highest-ranking person on duty. *See* Findings of Fact 12, 29. Thus, appellant was responsible for all aspects of the emergency response. N.T. pp. 118-119; AA Exs. 2 (p. 9), 3 (pp. 5, 7). This included determining the immediate priorities and managing all aspects of the response. AA Ex. 3 (pp. 5, 7). We find the following decisions reflect appellant's inability to prioritize and manage the emergency response as required under the appointing authority's policies: 1) failing to immediately dispatch a commissioned officer to the emergency; 2) failing to properly report the emergency over the radio system; 3) walking to the infirmary to alert medical personnel of the emergency; and 4) making command decisions while being in the affected area.

First, appellant should have immediately dispatched a commissioned officer to the location of the emergency. N.T. p. 34. The Post Order, in effect at the time of the emergency, required a commissioned officer and two staff members to be present before opening a cell during the 2200 to 0600 shift. N.T. p. 32. Appellant and Lieutenant Kaiser were the only commissioned officers on the 2200 to 0600 shift. N.T. p. 41; AA Ex. 10 (p. 2). Captain Peter Bacco explained appellant should have dispatched Lieutenant Kaiser to the location of the emergency and established himself as the Incident Commander in the control center. N.T. pp. 41, 58, 66.

At the time appellant was notified of the emergency, Lieutenant Kaiser was merely staffing overtime for the 0600 to 1400 shift. N.T. pp. 199, 206-207; AA Ex. 10 (p. 3). Therefore, she was available and could have been dispatched to the location of the emergency. N.T. pp. 34-35. Also, we note there were no exigent circumstances which would have necessitated Lieutenant Kaiser acting as the Incident Commander.<sup>10</sup> N.T. p. 59. Thus, appellant should have dispatched her to the location of the emergency. Appellant's failure to do so caused a delay in providing care to the inmate because a commissioned officer is required to be present to open the cell.<sup>11</sup> N.T. pp. 58, 66.

All corrections officers employed by the appointing authority are trained in lifesaving measures, to include CPR. N.T. p. 33. As such, life-saving measures could have been started earlier if Lieutenant Kaiser was directly dispatched to the emergency. Therefore, we find by failing to dispatch Lieutenant Kaiser, appellant failed to effectively prioritize and manage the emergency as required under the appointing authority's policies.

We further find appellant failed to effectively prioritize and manage the emergency when he failed to report the emergency over the radio system and instead walked to the infirmary to alert medical personnel. N.T. pp. 30, 34. Captain Bacco

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<sup>10</sup> Captain Bacco and Deputy Superintendent Bowman explained a Lieutenant may be permitted to make command decisions in a situation where the Captain is in the affected area when the incident is called and the Lieutenant is in the control center. N.T. pp. 59-60, 91-92. This could occur when the Shift Commander is doing their rounds, which are required walkthroughs of the facility. N.T. pp. 91-92. In the present matter, both appellant, who was the Shift Commander, and Lieutenant Kaiser were in the area of the control center. N.T. p. 30.

<sup>11</sup> Captain Bacco testified there was approximately a fourteen-minute delay from the time Officer Hopkins notified appellant to the time the medical staff arrived and began life-saving measures. N.T. pp. 25, 31, 50. While appellant suggests the delay may have been less, the length of the delay is irrelevant. There is no dispute a delay (however long) occurred.



explained reporting the medical emergency over the radio: 1) allows staff to begin moving toward the emergency; and 2) alerts the medical infirmary officer, who is responsible for directing the charge nurse to ready the medical equipment and respond.<sup>12</sup> N.T. pp. 34, 41. Failing to use the radio system creates an unnecessary delay. N.T. p. 41.

Additional unnecessary delays were also caused by appellant's decision to walk to the infirmary and wait for medical personnel before responding to the emergency. Deputy Superintendent Bowman explained medical personnel are familiar with the institution and do not need to be accompanied by the Shift Commander during a medical emergency. N.T. pp. 95-96. As such, appellant caused secondary delays by going to the infirmary instead of the emergency because life-saving measure could not begin without a commissioned officer present to open the cell. N.T. pp. 35, 95-96. Deputy Superintendent Bowman noted that had appellant gone directly to the affected area, the cell door could have been opened and life-saving measures started. N.T. p. 97. With that said, Bowman asserted this was not the best response because appellant should not have left the control center and instead should have dispatched Lieutenant Kaiser directly to the location of the emergency. N.T. pp. 96-98.

Captain Bacco further explained appellant should have remained in the control center and established himself as the Incident Commander. N.T. p. 41. The Incident Commander is not to be in the location of the emergency. N.T. p. 62.

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<sup>12</sup> The medical infirmary officer is the officer assigned to the infirmary area of the prison. N.T. p. 42. The charge nurse is located in the same area as the medical infirmary officer. N.T. p. 42.

Command decisions are to be made outside of the affected area. N.T. p. 62. This is taught to employees during the required trainings to serve as an Incident Commander.<sup>13</sup> N.T. p. 64.

Appellant successfully completed the required trainings and was qualified to serve as the Incident Commander on February 19, 2023. *See* Finding of Fact 34. Also, prior to the February 19, 2023 incident, appellant had served on the statewide All Hazards Incident Management Team, was the Critical Incident Manager at the appointing authority for a time, and served as the Incident Command System Specialist at the appointing authority for a time. *See* Finding of Fact 35. Therefore, appellant had more than a basic understanding of the Incident Command System. N.T. pp. 99-100. Nonetheless, despite his training and experience, appellant chose to make command decisions from the location of the emergency. N.T. p. 36.

Captain Bacco explained it is unsafe and inappropriate for the Shift Commander to be in the location of the emergency. N.T. pp. 43-44. For example, if the situation escalates or is a ruse, there is a risk staff could be taken hostage, thereby creating a situation where appellant could be making command decisions under duress. N.T. p. 43. Captain Bacco testified inmates have faked medical emergencies to get out of their cells and attack staff. N.T. p. 71.

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<sup>13</sup> To serve as an Incident Commander, the employee must successfully complete the following trainings: ICS-100; 200; 300; 400; 700; and 800. N.T. p. 85. The ICS designation before the courses stands for Incident Command System. N.T. p. 39. ICS-100, 200, 700, and 800 are completed first. N.T. p. 85. These are online trainings provided by the Federal Emergency Management Agency and are prerequisites for ICS-300 and 400. N.T. p. 85. ICS-300 and 400 are classroom courses facilitated by instructors. N.T. p. 85. ICS-300 is a three-day course and ICS-400 is a two-day course. N.T. p. 85. All Shift Commanders are required to successfully complete these courses. N.T. p. 85.

Additionally, Deputy Superintendent Bowman reasoned it made no sense for appellant to leave the control center and set up command at the location of the emergency. N.T. p. 93. Deputy Superintendent Bowman testified, in this instance, the control center where appellant was initially located should have been used as the command post. N.T. p. 92-93. Bowman explained from the control center, appellant would have access to the security cameras throughout the prison, telephones, and outside lines to contact emergency services and to keep administration informed. N.T. pp. 92-93. Deputy Superintendent Bowman stated the control center is always designated as the initial command post unless it is compromised in some way. N.T. p. 94. There is no evidence that the control center was compromised during February 19, 2023 emergency.

Furthermore, Captain Eric Verosky, who testified on behalf of appellant, indicated this is the procedure he followed when he was the Shift Commander during an incident. N.T. pp. 189-190. Verosky stated he has never left the control room during an incident to go to the affected area.<sup>14</sup> N.T. pp. 187, 189-190. Verosky explained he remained inside the control center and delegated staff responsibility. N.T. p. 190. Accordingly, we find appellant failed to properly perform his duties as the Incident Commander by leaving the control center and making command decisions from the location of the emergency.

We are not persuaded by appellant's suggestion that his actions should be excused because: 1) on two prior occasions, he made command decision from the location of the emergency; 2) the Post Order in effect at the time of the February 19,

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<sup>14</sup> Appellant entered into evidence a report detailing a March 25, 2022 incident during which Verosky was the Shift Commander. Ap. Ex. 5. This report details various command decisions that Verosky made during the incident. Ap. Ex. 5. The report does not indicate from where Verosky made these decisions. Ap. Ex. 5. Also, no testimony or other evidence was provided regarding the incident. Thus, the report was not used to inform our decision.

2023 emergency was subsequently rescinded; 3) he acted as Shift Commander on six separate occasions after he was demoted; and 4) the position from which he was demoted was prematurely posted. Each of these claims are discussed more fully below.

Regarding the first claim, appellant testified on two prior occasions, he responded to the affected area when he was the Shift Commander. N.T. pp. 195-197. Appellant explained based on this prior experience, he decided to go to the affected area during the February 19, 2023 incident. N.T. p. 200. Appellant did not indicate whether his superiors were aware that he went to the affected area on the two prior incidents. Nor is there any evidence that these two violations of the appointing authority's policies were knowingly permitted. Indeed, appellant acknowledged he is not aware of any incidents (other than those with which he was involved) where the Shift Commander left the control room and reported to the location of the incident. N.T. p. 198. Accordingly, we find appellant's past improper behavior does not excuse his present violations of the appointing authority's policies.

Furthermore, we are not persuaded by appellant's suggestion that absent the Post Order, the cell door could have been opened sooner, thereby excusing his failure to immediately dispatch a commissioned officer. N.T. pp. 133-134. We find it is irrelevant that the Post Order was changed after this incident. N.T. pp. 135-136. The issue before the Commission is whether there was just cause to demote appellant based on his failure to follow the procedures in place at the time. The Post Order was very clear as were appellant's responsibilities in addressing the emergency before him.

As the Incident Commander, appellant was responsible for all aspects of the emergency response, including determining the immediate priorities and quickly developing incident objectives. *See* Finding of Fact 29-30. As Deputy Superintendent Bowman explained, if appellant was going to relinquish the incident commander position (which he did not) and go to the affected area, he should have done so immediately rather than first going to medical. N.T. p. 138. However, this is not what happened. The undisputed facts established appellant failed to follow procedure by not only failing to dispatch a commissioned officer immediately to the affected area, but also by failing to alert medical via the radio and making command decisions at the affected area. Thus, appellant's decision related to the Post Order is only one of several decisions where he failed to properly prioritize and manage the emergency. As such, the subsequent rescission of the Post Order does not excuse appellant's repeated failure to prioritize and manage the emergency.

We further find appellant's culpability is not lessened because he acted as Shift Commander on six separate occasions after he was demoted. After appellant was demoted, he acted as a Shift Commander on April 20, 21, 22, 28, 29, and May 28, 2023. N.T. p. 108-115; Ap. Ex. 4 (pp. 2-7). On those dates, there were only two commissioned officers on duty—appellant, who was now a Lieutenant, and another Lieutenant. N.T. pp. 109-111, 113-115; Ap. Ex. 4. On four of the dates (April 20, 21, 22, and May 28, 2023), appellant was the only Lieutenant who had completed the required Shift Commander Training, making him by default the only person who could perform the duty. N.T. pp. 109-111, 115, 120. On the remaining two dates (April 28 and 29, 2023), appellant was assigned with the same individual, who like appellant completed the required training and had prior discipline. N.T. p. 114. It was determined, out of the two Lieutenants, appellant was the better choice to act as Shift Commander on those dates. N.T. p. 114.

Superintendent Clark, who made the decision to demote appellant, did not assign appellant to act as the Shift Commander on the preceding dates. The Major on duty would have been responsible for making all shift assignments, including who would act as the Shift Commander. N.T. pp. 121-123, 173. Superintendent Clark testified as soon as she became aware of the practice, she put an end to it because she did not have confidence in appellant as a Shift Commander. N.T. pp. 170, 173, 178. Superintendent Clark denied stopping the practice because appellant appealed his demotion. N.T. p. 170. We find Superintendent Clark's testimony credible. Accordingly, the improvident assignment of appellant by the on-duty Major does not excuse or lessen the seriousness of the behavior for which he was disciplined.

Lastly, we are not persuaded by appellant's suggestion that his actions should be excused because the position from which he was demoted was prematurely posted. Appellant testified his position was posted before he received notice of his demotion. N.T. pp. 204-205. Appellant did not present any documentary evidence of the posting, nor did he indicate on what day it was posted. There is also no evidence to suggest the alleged posting in any way influenced the decision to demote appellant. Indeed, there is no dispute as to the actions upon which the demotion was based.

Furthermore, this appeal was heard under Section 3003(7)(i) of Act 71. Therefore, any alleged procedural discrimination (*e.g.*, the improper posting of appellant's position) is not properly before us because such claims are only cognizable under Section 3003(7)(ii). Thus, we will not opine on appellant's claim related to the premature posting of his position.

In sum, we find the undisputed facts established appellant failed to follow procedure by failing to dispatch Lieutenant Kaiser immediately to the affected area, failing to alert medical via the radio, and making command decisions at the affected area. These violations of procedure are clearly related to appellant's responsibilities as a Shift Commander which are set forth in DOC Policy Nos. 6.4.1 and 6.7.1. *See Findings of Fact 28-30.* Appellant's failure to properly execute his responsibilities is also a violation of the DOC Code of Ethics, which requires employees to conduct themselves properly at all times. *See Finding of Fact 36.* Thus, we find there was just cause to demote appellant based on his failure to properly prioritize and manage the February 19, 2023 emergency. Accordingly, we enter the following:

#### CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish just cause for demotion under Section 2503 of Act 71 of 2018.

#### ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Jose Cortina challenging his demotion from regular Corrections Officer 4 employment to regular Corrections Officer 3 employment with the State Correctional Institution at Chester, Department of

Corrections, and sustains the action of the State Correctional Institution at Chester, Department of Corrections in the demotion of Jose Cortina from regular Corrections Officer 4 employment to regular Corrections Officer 3 employment, effective April 16, 2023.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Pamela M. Iovino  
Commissioner

Issued: April 18, 2024