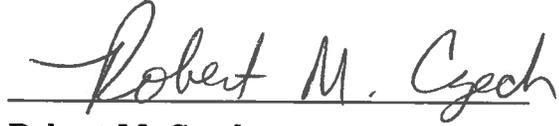




Re: Kenneth Pettiford

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
JULY 30, 2014

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, New Jersey 08625-0312

attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSR 00808-14

AGENCY DKT. NO. N/A

2014-1478

**IN THE MATTER OF KENNETH PETTIFORD,  
DEPARTMENT OF CORRECTIONS.**

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**Mark C. G. Lawrence, Esq.,** for appellant (Forman, Cardonsky & Lawrence,  
attorneys)

**Nicole M. DeMuro,** Deputy Attorney General, for respondent (John J. Hoffman,  
Attorney General of New Jersey, attorney)

Record Closed: May 27, 2014

Decided: June 24, 2014

BEFORE **LAURA SANDERS,** Acting Director and Chief ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Senior correction officer (SCO) Kenneth Pettiford appeals the action by the Central Reception Facility within the New Jersey Department of Corrections (the Department) terminating his employment on grounds of conduct unbecoming, specifically, inserting himself into a police investigation so vociferously that he was arrested.

SCO Pettiford was served with Preliminary Notices of Disciplinary Action (PNDA) on October 16 and October 19, 2013, both in relation to the same incident. Following a departmental hearing on November 8, 2013, SCO Pettiford was advised by a Notice of Final Disciplinary Action dated November 12, 2013, that he had been terminated effective November 12, 2013. On December 4, 2013, SCO Pettiford appealed the termination to the Civil Service Commission (CSC), but did not simultaneously file with the Office of Administrative Law (OAL), as required under N.J.S.A. 40A:14-202(d). Under N.J.S.A. 40A:14-201(a) and (b), the 180 days before a terminated law enforcement officer goes back onto the payroll pending a decision runs from the OAL filing date, which is December 24, 2013, the date the OAL received the appeal paperwork from the CSC. A hearing was scheduled for April 28, 2014, at which time the parties appeared, and appellant's recently assigned attorney requested an adjournment related to discovery he had only recently received. This was granted; however, the time between April 28 and May 27 is not countable under N.J.S.A. 40A:14-201(b)(2). The hearing was held on May 27, 2014, and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

While there are significant factual and legal disputes concerning the appropriateness of the termination, the parties agree on some aspects of what happened.

On June 9, 2013, SCO Pettiford was attending a backyard barbecue at his cousin's house in Jersey City, following his aunt's funeral earlier in the day. The house is located on a cul-de-sac which abuts Merritt Street in Jersey City. SCO Pettiford was packing things into his truck, which was parked along a curb close to the segment of the cul-de-sac visible from Merritt Street, when his two sons and grandson arrived. Around the same time, approximately 9 p.m., police assigned to the Violent Crimes Unit received a call about several shots having been fired in that neighborhood. As an unmarked car carrying three police officers in plainclothes headed toward the area in which the shots were reportedly fired, two of the officers noticed a green Honda surrounded by four black males in a cul-de-sac near Merritt Street. As they passed, they saw one of the males go around the Honda and bend down out of view. This

appeared to the officers to be suspicious activity, and so they circled around, finding their way shortly into the cul-de-sac. Leaving the police car in the middle of the cul-de-sac, lights aiming at the door of the Honda, they approached the car. At that point, there were two males sitting in the car, and some other people generally milling about outside the various houses. The two males were SCO Pettiford's sons, Kenneth Jr., then twenty-four, and Mauriz, then twenty-one. Kenneth Jr.'s one-year-old son was strapped in the baby seat in the back seat.

All parties agree that as police officer Mark Hennessey walked toward the Honda, SCO Pettiford began approaching him, wanting to know what was going on, and pointing out that those were his sons. Police officer Vincent Alberto shouted a warning to Hennessey and intercepted the appellant. SCO Pettiford stated he was "on the job," and flipped his wallet open to show his identification. By their own description, Officers Hennessey and Alberto already were in a heightened state when they left the police car, because they were trying to determine whether someone had a gun and was dangerous. Someone, perhaps the third officer, called for backup and the street filled quickly with marked police cars. Everyone who testified stated that the entire incident took a very short space of time, generally estimated at five to ten minutes.

What they do not agree about it is whether SCO Pettiford behaved in a way that obstructed a police investigation, or whether the police essentially victimized SCO Pettiford. The testimony included mutual allegations and denials of unprofessionally profane language.

Officer Alberto testified that SCO Pettiford approached Hennessey very quickly—yelling, cursing, waving his arms, and saying he was a cop. Alberto told him to step back, he would talk to him in a minute, but Pettiford continued. When Officer Alberto asked for identification, the appellant handed him his entire wallet. But as Alberto started to pull out the plastic card, SCO Pettiford snatched everything back. Shortly, SCO Pettiford was standing nose-to-nose with Officer Hennessey, shouting things such as "what are you doing here," and "nothing has happened here," and "I am a f### cop." Appellant's hands were down at his side, balled up. By then a large crowd had gathered, and a backup contingent of approximately twenty-five officers had arrived.

Officer Alberto grabbed SCO Pettiford's arm, telling him he was under arrest. SCO Pettiford pulled away, and then a group of officers jumped him, bending him over the Honda and trying to force his hands back into handcuffs.

With regard to the shouting match, Officer Hennessey testified that he told SCO Pettiford to step back, and he would deal with him in a minute. In Officer Hennessey's view, the person with the obligation to step back and calm down was SCO Pettiford, since Officer Hennessey was the person at work. It was a warm day, a lot of people were outside, there was a lot of noise, and his objective was to determine whether there was a gun present, and if so, get it off the street. He contended that SCO Pettiford's behavior kept him from ever completing the investigation.

SCO Pettiford testified that from the first moment he headed toward the officers, they were at what he described as "level ten," very angry. He was told to get over to the side, and replied, no, he would not, because those were his two sons and his grandson and he wanted to know what the police thought they had done. The officer said to get the f### to the side, which caused SCO Pettiford to repeat his response. Then realizing he was not getting anywhere, he told them he was "on the job," a phrase he believed would let them know that he is also a member of law enforcement. Officer Alberto told him he was under arrest. By this point, SCO Pettiford's cousin, Tonya, also was there, really upset and hostile, demanding to know why the officers were treating him and the rest of the family that way. SCO Pettiford recognized that the situation needed to calm down and was not engaging further.

The appellant is six feet, two inches, tall, and at that point weighed about 280 pounds. He previously boxed professionally, and has some martial arts training. When, having told him he was under arrest, Officer Alberto grabbed his left arm, pulling it up and behind him painfully, such that the appellant thought the officer was likely to break it, the appellant moved his arm in a way that reversed the lock on his arm, essentially shrugging Officer Alberto off. This caused a minimum of five officers to launch at him, slamming him over the car, dragging his arms back, and one pulling his leg up sharply. They handcuffed him, and took him to the station, where he was charged, eventually pleading guilty to a disorderly persons offense of breach of the peace.

Certain of Pettiford's family members also testified. Tonya Miller stated that she did not see the beginning of the incident; when she arrived SCO Pettiford was asking to know what was going on with his sons in a manner she did not perceive as rude or threatening. She recalled Officer Alberto yelling at her, profanely demanding that she be quiet. She said one officer had Kenneth Pettiford, Jr., in a full-nelson wrestling move, while another one was about to use a police dog to search the car. She was very concerned about the baby strapped into the backseat, because the officers with the dog seemed to have no consciousness that the child was there.

Kenneth Pettiford, Jr., testified that he was sitting in the driver's seat when the police arrived. He beeped his horn to get his father's attention, and got out of the car when told to do so. The police were patting him down when the other cars pulled in. He did recall them asking about a gun and telling them there was no gun. He kept telling them about his son, but when they paid no attention, he asked his cousin and another cousin to get the baby, which set the police off further. The police were telling everyone to get back, and the next thing he knew a group of them had his father over the top of the car.

Mauriz Pettiford testified that at about the time the police went by, he had gotten out of the car and walked toward his father, who was parked a bit away. By the time the police arrived in the cul-de-sac, he had gotten back in the car. He recalled his father repeatedly asking what was going on, and the police telling him to step back. His father demanded to know why, and what his sons had done. In Mauriz Pettiford's recollection, his father was standing with his hands relaxed in front of him. A police woman pulled Mauriz Pettiford aside, keeping him away from the others, telling him not to do anything, although he was repeatedly saying "that's my dad," as he watched the officers throw his father across the hood.

Kyle McGovern is the administrative major at the Central Reception and Assignment Facility. He pointed to the Department's "Rules of Conduct" for Law Enforcement Personnel, which in Article 1, Section 1, state, "No officer shall violate the laws, statutes, or ordinances of the United States . . . or of any state . . . or of any

political subdivision thereof.” (R-10.) He also addressed the Standards of Professional Conduct for correction officers. These state under Section III, Policy:

Employees of the Department of Corrections hold a special position of trust as public employees. Because the Department of Corrections is a law enforcement agency, employees must meet an enhanced standard of personal conduct and ethical behavior which shall hold the respect and confidence of the citizens of the State. Whether on or off duty, the individual conduct of Department employees reflects upon the employee and, in some circumstances, upon the Department of Corrections and the State of New Jersey.

[R-12.]

Similar language is present in the Department Code of Ethics. (R-13.)

McGovern testified that in his opinion, there was nothing improper about SCO Pettiford’s identification of himself as a law enforcement officer. The problem was the repeated failure to follow the police orders, with which he should have complied, which in turn resulted in his guilty plea to a breach of the peace, which is a violation of local law.

Based on the testimony, I **FIND** as **FACT** that because the call started as a report of a gun being fired, the three police officers who arrived first on the scene were already in an intense state, worried about their own safety and that of others who might be at risk. I **FIND** that from SCO Pettiford’s perspective, the situation was one in which a law enforcement official and responsible father was entitled to inquire why the police had come zooming into the neighborhood and were accosting his sons. I **FIND** that it is likely, in part due to his size and the speed with which he came forward, that his approach upset the police. The fact that a large number of additional cars arrived almost immediately underlines how jumpy police were from the moment Officers Alberto and Hennessey got out of their car. I **FIND** that as emotions flared, they all engaged in profanity. I **FIND** that the police did tell appellant repeatedly to step back, and he did not. I am persuaded that shrugging off the arm lock was a purely defensive reflex,

triggered by the martial arts training. Additionally, SCO Pettiford's testimony that by the time Officer Alberto yanked his arm he was focusing on mentally disengaging was credible. Unfortunately, however, the move also triggered a defensive reflex from the police, who then jumped him in a gang.

### **LEGAL ANALYSIS AND CONCLUSIONS**

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Here, as a result of the incident, SCO Pettiford is charged with conduct unbecoming because he refused a police order to step aside and that refusal created an incident that resulted in significant delay in the investigation into who had been firing shots in the neighborhood.

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

Here, SCO Pettiford violated the Department's policies by refusing to step back in the face of repeated demands by both Officer Alberto and Officer Hennessy to do so.

In addition, he pled guilty to breach of the peace, which is a violation of the law. While any responsible parent would be worried about his children in this situation, the matter was within the jurisdiction of the Jersey City police, and he had a duty to comply with their directives. Moreover, because he did not comply, the situation escalated very rapidly, turning a response to a call about gunshots into a major scene. Therefore, I **CONCLUDE** that SCO Pettiford did, in fact, conduct himself in a manner that violated department policy and falls within the definition of conduct unbecoming.

The remaining question is whether termination is appropriate. SCO Pettiford's disciplinary history during his ten years with the Department reflects one official reprimand for attendance and, in 2007, a sixty-day suspension. In general, principles of progressive discipline apply. W. New York v. Bock, 38 N.J. 500, 523 (1962). However, some infractions are so serious that termination is warranted. In re Carter, 191 N.J. 474, 484 (2007) (citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense)); see also In re Herrmann, 192 N.J. 19, 33 (2007).

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). Both police officers and correction officers represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

The Department cites the unpublished Appellate Division decision In re Valentin, No. A-5737-11T4 (App. Div. June 24, 2013), <<http://njlaw.rutgers.edu/collections/courts/>>, in support of its argument that the offense, coupled with the prior history, merits termination. In Valentin, a senior correction officer interfered with police attempts to arrest a friend, to the point that one of the officers used mace, and SCO Valentin continued to refuse to cooperate following his arrest. On one hand, SCO Valentin's conduct was worse than that of SCO Pettiford, as the appellant here did not threaten the police officers, did not require mace to subdue, and did not present continued noncooperation to his arrest, unlike Valentin, who continued to

present a problem at the police station. On the other hand, Valentin had no prior discipline, while SCO Pettiford has a prior sixty-day suspension. Based on the seriousness of the incident coupled with the previous discipline, I **CONCLUDE** that the Department has met its burden and that removal is warranted.

**ORDER**

The removal is hereby **AFFIRMED**, and the appeal is **DISMISSED** with **PREJUDICE**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

June 24, 2014  
DATE

Laura Sanders  
**LAURA SANDERS**  
Acting Director and Chief  
Administrative Law Judge

Date Received at Agency:

June 24, 2014

Date Mailed to Parties:

June 24, 2014

/caa

**WITNESSES**

**For appellant, Kenneth Pettiford**

Tonya Miller  
Kenneth Pettiford, Jr.  
Mauriz Pettiford  
Kenneth Pettiford Sr.

**For respondent, NJ Department of Corrections**

Vincent Alberto  
Mark Hennessey  
Kyle McGovern

**EXHIBITS**

**For appellant, Kenneth Pettiford**

No exhibits

**For respondent, NJ Department of Corrections**

- R-1 Preliminary Notice of Disciplinary Action served October 19, 2013
- R-2 Preliminary Notice of Disciplinary Action dated October 16, 2013
- R-3 Final Notice of Disciplinary Action dated November 12, 2013
- R-4 Disciplinary history
- R-5 Department of Corrections Human Resources Bulletin 84-17 as Amended
- R-6 Jersey City Police Department Investigation Report dated June 9, 2013
- R-8 Report from Kenneth Pettiford to Major Kyle McGovern
- R-9 Jersey City Municipal Court disposition dated October 21, 2013
- R-10 NJ DOC Law Enforcement Personnel Rules and Regulations
- R-11 NJDOC Handbook of Information and Rules
- R-12 NJDOC Standards of Professional Conduct
- R-13 NJDOC Code of Ethics