SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3124-20

IN THE MATTER OF
KHALID NASH, ESSEX
COUNTY, DEPARTMENT
OF CORRECTIONS.

Submitted November 30, 2022 – Decided December 6, 2022

Before Judges Haas and DeAlmeida.

On appeal from the New Jersey Civil Service Commission, Docket No. 2020-0426.

Arleo & Donohue, LLC, attorneys for appellant Khalid Nash (Frank P. Arleo, on the briefs).

Jerome St. John, Essex County Counsel, attorney for respondent Essex County Department of Corrections (Jeanne-Marie Scollo, Assistant County Counsel, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Eric A. Reid, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Appellant Khalid Nash appeals from the June 4, 2021 final administrative decision of the Civil Service Commission (Commission) removing him from his position as a corrections officer with the Essex County Department of Corrections (County). The Commission adopted the findings of fact and conclusions of law from the initial decision of Administrative Law Judge (ALJ) Danielle Pasquale, who found that removal was warranted based upon the infractions committed by Nash in this case and his voluminous prior disciplinary record. We affirm.

The procedural history and facts of this case are fully set forth in ALJ Pasquale's May 6, 2021 initial decision following an evidentiary hearing. Therefore, we need only briefly summarize them here.

The County had previously disciplined Nash on twenty-seven occasions for a variety of infractions, including neglect of duty, lateness, bringing contraband into the jail, insubordination, undue familiarity with an inmate, and other attendance issues. The County imposed penalties for these offenses ranging from official written reprimands to a thirty-day suspension. The County also provided counseling and in-service training to Nash in an attempt to address his deficiencies.

The present case involved two incidents that occurred on separate dates. In the first matter, Nash arrived to work late on November 1, 2018. He then walked off the job and left the premises to buy coffee. When his supervisors discovered his actions and questioned him, Nash fabricated a story about his whereabouts. The County charged Nash with a number of offenses, including neglect of duty, conduct unbecoming a public employee, and violation of departmental rules and regulations.

In the second incident, Nash brought his cell phone into the jail. Internal Affairs officers searched Nash and found additional contraband, including a smart watch, nail clippers, a handcuff key, and cigarettes. The County charged defendant with violating the jail's contraband policy.

ALJ Pasquale carefully considered the testimony presented by the County's witnesses and by Nash. She found that the County's witnesses were credible and that Nash's accounts of his actions were "wholly incredible." ALJ Pasquale sustained the charges listed above. The ALJ also found that Nash's chronic history of misconduct "show[ed] a pattern of just ignoring the policies and procedures of the [County]." Nash's behavior did not improve even though the County engaged in a lengthy course of progressive discipline. Therefore, ALJ Pasquale found that Nash's removal from employment was warranted.

The Commission thereafter adopted the ALJ's findings of fact and conclusions of law. This appeal followed.

On appeal, Nash argues that: (1) the Commission's "final determination is based upon . . . flawed fact finding and credibility determinations" and (2) "the extreme penalty of termination runs afoul of principles of progressive discipline." We disagree.

Established precedents guide our task on appeal. Our scope of review of an administrative agency's final determination is limited. In re Herrmann, 192 N.J. 19, 27 (2007). "[A] 'strong presumption of reasonableness attaches'" to the agency's decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993)). Additionally, we give "due regard to the opportunity of the one who heard the witnesses to judge . . . their credibility." In re Taylor, 158 N.J. 644, 656 (1999) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)).

The burden is upon the appellant to demonstrate grounds for reversal. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002); see also Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (holding that "[t]he burden of showing the agency's action was arbitrary, unreasonable[,] or capricious rests upon the appellant"). To that end, we will

"not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008).

When an agency decision satisfies these criteria, we accord substantial deference to the agency's fact-finding and legal conclusions, acknowledging "the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). It is not our place to second-guess or substitute our judgment for that of the agency and, therefore, we do not "engage in an independent assessment of the evidence as if [we were] the court of first instance." Taylor, 158 N.J. at 656 (quoting State v. Locurto, 157 N.J. 463, 471 (1999)).

Our deference to agency decisions "applies to the review of disciplinary sanctions as well." Herrmann, 192 N.J. at 28. "In light of the deference owed to such determinations, when reviewing administrative sanctions, 'the test . . . is whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness.'" Id. at 28-29

(alteration in original) (quoting In re Polk, 90 N.J. 550, 578 (1982)). "The threshold of 'shocking' the court's sense of fairness is a difficult one, not met whenever the court would have reached a different result." Id. at 29.

Applying these principles, we discern no basis for disturbing the Commission's well-reasoned determination that Nash should be removed from employment as a corrections officer for the offenses charged in this case. Nash's abysmal disciplinary record demonstrated that progressive discipline did not persuade Nash to curb his misbehavior and, under those circumstances, his removal from employment does not shock our sense of fairness. Polk, 90 N.J. at 578. We therefore affirm the Commission's final administrative decision substantially for the reasons expressed by the Commission, which incorporated the detailed findings of fact and conclusions of law rendered by ALJ Pasquale in her comprehensive written opinion.

Affirmed.