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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1687-15T4

IN THE MATTER OF JOHN
HUGATE, DEPARTMENT OF
TRANSPORTATION.

Submitted June 6, 2017 – Decided July 17, 2017

Before Judges Gilson and Sapp-Peterson.

On appeal from the New Jersey Civil Service
Commission, Docket No. 2015-1715.

Kamensky, Cohen & Riechelson, attorneys for
appellant John Hugate (Mark D. Laderman, on
the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Department of
Transportation (Melissa H. Raksa, Assistant
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brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Civil Service
Commission (Pamela N. Ullman, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

John Hugate appeals from a final administrative determination of the Civil Service Commission (Commission) that found that the Department of Transportation (DOT) had properly suspended and then terminated Hugate's employment because he threatened his supervisor and threatened to shoot a co-worker. We affirm.

Hugate was employed as an automotive mechanic for the DOT from 2004 to 2013. In 2013, Hugate felt that his supervisors and co-workers were harassing him. A supervisor and some of Hugate's co-workers, in contrast, believed that Hugate was not performing his job duties and was engaging in threatening conduct.

On June 6, 2013, Hugate was asked to meet with Richard Lawrence, who was one of his supervisors, and Steven Kryzwicki, who was the president of the local union. At that meeting, Hugate was told that either he could resign or criminal charges would be brought against him. Hugate refused to resign and believed he had done nothing wrong. Hugate secretly recorded the meeting.

Following the June 6, 2013 meeting, Hugate suffered from stress and depression and took a two-month leave of absence from work. Hugate returned to work on August 2, 2013.

On August 6, 2013, James Caffey, a co-worker, informed Hugate that their immediate supervisor would be on leave and Lawrence would be supervising him. Caffey testified that Hugate told him "if [Lawrence] hounds me all day, I'm going to end up hurting

him." Caffey reported that statement and a workplace violence incident report was later filed with the DOT's Office of the Inspector General.

On August 30, 2013, Hugate was informed that he would be working in the garage and that the state vehicle that he normally drove would not be available to him. Therefore, Dean Gephart, who was another supervisor, told Hugate that Kryzwicki would be taking him home to pick up his own vehicle. According to Gephart, Hugate responded that problems would develop and he would shoot Kryzwicki and drag him into the house. Gephart reported that threat.

Based on the reported threats, Hugate was suspended without pay. Thereafter, the DOT determined that Hugate should be removed from his employment. Hugate challenged that decision and the matter was referred to the Office of Administrative Law for a contested hearing. An administrative law judge (ALJ) heard four days of testimony.

The ALJ found that Caffey and Gephart were credible and based on their testimony found that Hugate had threatened Lawrence on August 6, 2013, and that Hugate had also threatened to shoot Kryzwicki on August 30, 2013. The ALJ found that the conduct constituted a major disciplinary action warranting Hugate's removal from employment.

During the contested hearing, the ALJ also heard testimony from Lawrence and Kryzwicki. The ALJ found their testimony to be incredible. The ALJ also found, however, that that testimony did not undercut the facts that Hugate had made the threats.

Hugate filed an administrative appeal to the Commission. On November 9, 2015, the Commission issued a final agency decision. The Commission adopted the fact-findings made by the ALJ. The Commission then reviewed the disciplinary penalties de novo and found that Hugate had been appropriately disciplined with a fifteen-day suspension for the threat against Lawrence and with termination for the threat to shoot a co-worker.

On appeal, Hugate makes two arguments. First, he contends that the Commission's decision was arbitrary, capricious, or unreasonable and was not supported by sufficient credible evidence in the record. Second, he argues that the Commission erroneously applied progressive discipline and he should not have been terminated. We disagree.

Our review of a final agency decision is limited, and we "do not ordinarily overturn such a decision 'in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence[.]'" In re Carter, 191 N.J. 474, 482 (2007) (quoting Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)). Moreover, we may not substitute our

judgment for that of the agency's when "substantial credible evidence supports [the] agency's conclusion[.]" Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). To determine whether an agency action is arbitrary, capricious, or unreasonable, we examine

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;

(2) whether the record contains substantial evidence to support the findings on which the agency based its action; and

(3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Carter, supra, 191 N.J. at 482-83).]

Deference to agency decisions applies to the review of disciplinary sanctions. In re Herrmann, 192 N.J. 19, 28 (2007). "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. Accordingly, we will modify a sanction "when necessary to bring the agency's action into conformity with its delegated authority." Id. at 28 (quoting Polk, supra, 90 N.J. at 578). Moreover, we will affirm a sanction that is not illegal or unreasonable. Ibid.

Applying these principles, we are satisfied that there is no basis to reverse the Commission's decision sustaining appellant's suspension and removal. A civil service employee's rights and duties are governed by the Civil Service Act (the Act), N.J.S.A. 11A:1-1 to 12-6. A civil service employee may be subject to major disciplinary action for a variety of offenses. See N.J.A.C. 4A:2-2.3 (enumerating general causes for discipline). In such major disciplinary actions, the employer has the burden of proof by a preponderance of the evidence. N.J.A.C. 4A:2-1.4; Polk, supra, 90 N.J. at 560.

Here, the Commission adopted the ALJ's findings of fact that Hugate had threatened both a supervisor and a co-worker on two separate occasions. Those findings were supported by the substantial credible testimony of Caffey and Gephart. Indeed, the ALJ found that both Caffey and Gephart testified credibly.

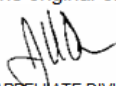
The Commission also found that Hugate had a "disturbing propensity for violent threats," and that his threat to shoot a co-worker was sufficiently egregious to support the penalty of

removal. Terminating Hugate's employment was not disproportionate to the offense, in light of the circumstances, and does not rise to the level of shocking the court's sense of fairness. Accordingly, we find no basis for disturbing the Commission's decision to affirm the DOT's suspension and removal of Hugate.

In that regard, we note that progressive discipline is not "'a fixed and immutable rule to be followed without question' because 'some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.'" Stallworth, supra, 208 N.J. at 196 (quoting Carter, supra, 191 N.J. at 484). Thus, we discern no abuse of discretion in the Commission's conclusion that Hugate's conduct warranted his removal.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION