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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4210-15T1

MARTIN ROGERS,

Appellant,

v.

NEW JERSEY DEPARTMENT  
OF CORRECTIONS,

Respondent.

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Submitted July 12, 2017 – Decided September 12, 2017

Before Judges Simonelli and Carroll.

On appeal from the New Jersey Department of  
Corrections.

Martin Rogers, appellant pro se.

Christopher S. Porrino, Attorney General,  
attorney for respondent (Lisa A. Puglisi,  
Assistant Attorney General, of counsel;  
Suzanne Davies, Deputy Attorney General, on  
the brief).

PER CURIAM

Appellant Martin Rogers appeals from the August 6, 2015 final  
agency decision of respondent New Jersey Department of Corrections  
(DOC), which affirmed the decision of a hearing officer finding

him guilty of, and imposing disciplinary sanctions for, committing prohibited acts \*.004, fighting with another person, and \*.402, being in an unauthorized area, in violation of N.J.A.C. 10A:4-4.1(a). For the following reasons, we affirm.

Rogers is serving a forty-year term of imprisonment with a twenty-two-year period of parole ineligibility for convictions of robbery, aggravated assault, resisting arrest, terroristic threats, possession of a weapon, and receiving stolen property. He is presently incarcerated at Northern State Prison.

The record reveals that on July 20, 2015, Rogers was an inmate at South Woods State Prison (SWSP). On that day, Senior Corrections Officer Hunter was seated at his desk near the area of the religious services room when he heard loud arguing coming from the room and went to investigate. When he entered the room, he saw Rogers and inmate Summers arguing and acting aggressively. Rogers was supposed to be returning to his unit and Hunter had not given him permission to be in the religious services room. Summers was seated at a desk inside the religious services room and Rogers was standing on the other side with his hands on the desk. Hunter ordered them to separate and for Rogers to leave the room. Ignoring Hunter's order, Rogers remained in the room, moved from where he was standing, put his hand up to Summers' chest, and pushed him. Summers pushed Rogers' hand away. Rogers then swung

at Summers and Summers punched Rogers in the head, rendering him unconscious. Hunter called a Code 33<sup>1</sup> and both inmates were escorted to detention.

Summers gave a statement that corroborated the above facts. Summers also said he was permitted to be in the religious services area, Rogers was not, and Rogers became aggressive and initiated the confrontation.

Rogers gave a different version of the incident. He said in his initial statement that Summers got upset because he could not walk up and down stairs to complete his required paralegal work due to his disability, and thus, Summers struck him in the head, causing him to fall to the floor unconscious. In a later statement, Rogers added that he "politely asked Summers" a question, at which point "Summers began to get loud," so he told Summers to "calm down!" Hearing this, Hunter ordered Rogers out of the room and Summers struck him in the head as he was leaving. Rogers denied fighting with, pushing, or swinging at Summers.

On July 21, 2015, the DOC served Rogers with the disciplinary charges. The hearing, initially scheduled for July 22, 2015, was postponed because Rogers requested a polygraph, claiming Hunter blatantly lied about witnessing a fight, and he was the subject

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<sup>1</sup> A Code 33 signals an emergency situation and alerts other corrections officers to respond and provide assistance.

of retaliation because he had filed a federal lawsuit against several corrections officers at the SWSP. On July 27, 2015, SWSP administrator denied the request for a polygraph, finding no credibility issues regarding Hunter or the investigation, and no new evidence pertaining to the issue of credibility.

On July 31, 2015, the hearing officer asked Hunter certain confrontation questions Rogers had propounded. The hearing officer denied certain questions and stated the reason for such denial in accordance with N.J.A.C. 10A:4-9.14(d) and (f).

The hearing began on August 3, 2015. Rogers pled not guilty, requested and received counsel substitute, was offered the opportunity to confront/cross-examine witnesses, and declined the opportunity to call witnesses on his behalf. As to charge \*.004, Rogers stated Summers struck him first, rendering him unconscious; there were inconsistencies in Hunter's reports and confrontation answers; and he was the only one in the fight to sustain injury. As to charge \*.402, Rogers stated Hunter was the relief officer and the regular officer always allowed him to enter the religious services room.

After reviewing the evidence, the hearing officer found Rogers guilty of the charges and, in accordance with N.J.A.C. 10A:4-9.15, issued a summary of the facts supporting each charge. The hearing officer determined that Summers was not the initial

aggressor; Summers could not retreat; and Summers did not use more force than necessary to defend himself. The hearing officer also found Rogers was in an unauthorized area without permission. The hearing officer sanctioned Rogers to 120 days' administrative segregation, 120 days' loss of commutation time, and 15 days' loss of recreation privileges.

On August 3, 2015, Rogers filed an administrative appeal, requesting leniency, and again requesting a polygraph. On August 6, 2015, the assistant superintendent upheld the hearing officer's decision and sanction. The assistant superintendent determined there was no misinterpretation of facts, the sanction was appropriate, and Rogers was not entitled to leniency. This appeal followed.

On appeal, Rogers raises the following contentions:

POINT I

THE HEARING OFFICER DEPRIVED ROGERS OF DUE PROCESS OF LAW DURING CONFRONTATION AND CROSS-EXAMINATION.

- (a) The hearing officer omitted portions of Hunter's testimony.
- (b) The hearing officer failed to ask Hunter questions she pre-approved.

POINT II

THE HEARING OFFICER FAILED TO PROPERLY CONSIDER THE CONFLICTING EVIDENCE IN THE

RECORD THAT WEIGHED AGAINST GUILTY FINDINGS  
ON BOTH THE [\*004] AND [\*402] CHARGES.

POINT III

THE ADMINISTRATOR'S DENIAL OF ROGERS'  
POLYGRAPH REQUEST WAS ARBITRARY, CAPRICIOUS  
AND UNREASONABLE.

"[We] have 'a limited role' in the review of [agency] decisions." In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). "[A] 'strong presumption of reasonableness attaches to [an agency decision].'" In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)), certif. denied, 170 N.J. 85 (2001). We reverse an agency's decision only where it is arbitrary, capricious, unreasonable, or unsupported by credible evidence in the record. Henry, supra, 81 N.J. at 579-80; Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005). An adjudication of guilt for a charge against an inmate must be supported by "substantial evidence." N.J.A.C. 10A:4-9.15(a). "'Substantial evidence' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 192 (App. Div. 2010) (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)). The term has also been defined as "evidence furnishing a reasonable basis

for the agency's action." McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 562 (App. Div. 2002).

A prison disciplinary proceeding "'is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply.'" Avant v. Clifford, 67 N.J. 496, 522 (1975) (quoting Morrissey v. Brewer, 408 U.S. 471, 480, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484, 494 (1972)). However, in such proceedings, prisoners have certain procedural due process rights, including a limited right to call witnesses and present documentary evidence, as well as a right to confront and cross-examine witnesses where necessary "for an adequate presentation of the evidence, particularly when serious issues of credibility are involved[.]" Id. at 529-30.

An inmate's due process rights do not automatically include a right to a polygraph examination. See Johnson v. N.J. Dep't of Corr., 298 N.J. Super. 79, 83 (App. Div. 1997) (stating that an inmate's mere request for a polygraph examination shall not be sufficient cause, in and of itself, for granting the request); Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23-24 (App. Div. 2005) (explaining that N.J.A.C. 10A:3-7.1 "is designed to prevent the routine administration of polygraphs, and a polygraph is clearly not required on every occasion that an inmate denies a disciplinary charge against him.") "[A]n inmate's right to a

polygraph is conditional and the request should be granted when there is a serious question of credibility and the denial of the examination would compromise the fundamental fairness of the disciplinary process." Id. at 20. Regarding the issue of fundamental fairness, the Ramirez court held that:

Impairment [of fundamental fairness] may be evidenced by inconsistencies in the [officer's] statements or some other extrinsic evidence involving credibility, whether documentary or testimonial, such as a statement by another inmate or staff member on the inmate's behalf. Conversely, fundamental fairness will not be effected when there is sufficient corroborating evidence presented to negate any serious question of credibility.

[Id. at 24.]

Based upon our review of the record, we are satisfied that Rogers was not entitled to a polygraph. There are no inconsistencies in Hunter's two reports of the incident or his answers to Rogers' confrontation questions that would raise an issue of credibility. Accordingly, the denial of Rogers' request for a polygraph did not compromise the fundamental fairness of the disciplinary process.

We are also satisfied that Rogers was afforded all due process protections required by Avant, supra, 67 N.J. at 525-33; the hearing officer's decision was based on substantial evidence that Rogers committed the prohibited acts; and the DOC's decision was



not arbitrary, capricious, or unreasonable. Ramirez, supra, 382  
N.J. Super. at 23 (citing Henry, supra, 81 N.J. at 579-80);  
N.J.A.C. 10a:4-9.15(a).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION