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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3098-20**

MARTEL CHISOLM,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted November 28, 2022 – Decided December 21, 2022

Before Judges Bishop-Thompson and Puglisi.

On appeal from the New Jersey Department of
Corrections.

Martel Chisolm, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondent (Donna Arons, Assistant Attorney General,
of counsel; Christopher C. Josephson, Deputy Attorney
General, on the brief).

PER CURIAM

Martel Chisolm, an inmate in the custody of the New Jersey Department of Corrections (DOC), appeals from the DOC's February 11, 2021 final agency decision upholding a disciplinary hearing officer's finding of guilt and imposition of sanctions for committing institutional infraction *.004,¹ fighting with another person, in violation of N.J.A.C. 10A:4-4.1(a)(2). We affirm.

We discern the following facts from the record. On February 6, 2021, Officer Billero was working on a housing unit at East Jersey State Prison. He heard yelling coming from one of the prison tiers and responded to the noise. Upon arriving at Chisolm's cell, Billero heard sounds of fighting. The window of the cell was blocked, but Billero looked through an opening on the side of the cell door and observed Chisolm and his cellmate, Jerome Bearfield, engaged in a fight. He ordered both inmates to stop fighting but they did not separate. He then called a code for additional assistance, to which other officers responded and opened the cell door. Chisolm and Bearfield had separated, and Chisolm was lying on the floor.

Both inmates were placed in restraints and escorted off the unit to the infirmary for evaluation. Bearfield did not have any injuries from the incident.

¹ An asterisk offense is "considered the most serious and result[s] in the most severe sanctions." N.J.A.C. 10A:4-4.1(a).

Chisolm sustained a small cut under his right eye and a small bruise on his left shoulder. Chisolm appeared to be under the influence of an unknown substance and was very restless, agitated and incoherent, repeating that he was "shot through the wall." He was administered a dose of Narcan and was transported to the hospital.

In addition to the *.004 charge, both inmates were charged with *.306, conduct which disrupts or interferes with the security or orderly running of the correctional facility. Chisolm was also charged with prohibited act *.552, being intoxicated. On February 8, 2021, Sergeant Stanicki served the charges on Chisolm, conducted an investigation and referred the charges to a disciplinary hearing officer (DHO) for further action.

On February 9, 2021, the DHO conducted the disciplinary hearing. Chisolm requested and was granted the assistance of a counsel substitute and pleaded "not guilty" to the charge. He provided a handwritten statement to the DHO claiming he and Bearfield were not fighting, but rather Bearfield was trying to help him because he was having a panic attack. Chisolm admitted to "using something" that he was not supposed to use, and as a result thought he was being shocked by electricity. Although he said he could not remember the incident clearly, Chisolm thought he passed out and when he woke up he was

on the floor "kicking and screaming for help" because he thought he was dying. The statement further indicated that neither inmate hit the other.

Counsel substitute acknowledged that Chisolm had been under the influence of drugs and engaged in disruptive conduct, but claimed that he was not fighting with his cellmate. Chisolm was offered and declined the opportunity to call witnesses on his behalf and to confront adverse witnesses at the hearing.

After reviewing the evidence and considering Chisolm's statement and counsel substitute's argument, the DHO found Chisolm guilty of the charges.² The DHO relied on Billero's report that he had observed Chisolm engaged in a physical altercation with his cellmate. The DHO found the statements of Chisolm and counsel substitute failed to provide any evidence to discredit the officer's report. The DHO imposed sanctions of sixty days in the Restorative Housing Unit, sixty days' loss of commutation time and thirty days' loss of recreational privileges (LORP) consecutive to the LORP sanction imposed on the *.306 charge.

On February 10, 2021, Chisolm administratively appealed the DHO's determination, claiming the DHO's decision was not supported by substantial

² Chisolm does not appeal the decisions regarding the *.306 and *.554 charges.

evidence. He argued his and Bearfield's actions did not constitute fighting and Billero misinterpreted what he had observed in the cell. He further argued the consecutive LORP sanction imposed on the *.004 charge was excessive.

On February 11, 2021, the Assistant Superintendent upheld the guilty finding and sanctions, noting there was compliance with procedural due process, the decision of the DHO was based on substantial evidence and the sanctions imposed were appropriate. The Assistant Superintendent found no misinterpretation of the facts and denied Chisolm's requests for a reduced or suspended sanction and for leniency. On April 16, 2021, Sergeant Reynolds served Chisolm with the disposition of disciplinary appeal. This appeal followed.

Chisolm argues that there was insufficient evidence to support the guilty finding; the DHO's decision was arbitrary, capricious and violated his right to due process and fairness; and the DOC violated his right to procedural due process by not timely serving him with the disposition of disciplinary appeal.

We are unpersuaded by these arguments and affirm because the record contains substantial credible evidence that Chisolm committed the institutional infractions and he was afforded due process during the disciplinary proceeding.

Our review of a final agency decision is limited. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). Reversal is appropriate only when the agency's decision is arbitrary, capricious, or unreasonable, or unsupported by substantial credible evidence in the record as a whole. Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)); see also In re Taylor, 158 N.J. 644, 657 (1999) (holding that a court must uphold an agency's findings, even if it would have reached a different result, so long as there is "sufficient credible evidence in the record to support the agency's conclusions").

A disciplinary hearing officer's decision that an inmate is guilty of a prohibited act must be based on substantial evidence in the record. Figueroa, 414 N.J. Super. at 191. "Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. at 192 (internal quotation marks omitted).

The burden rests on the challenging party to show the administrative agency decision was arbitrary, capricious or unreasonable. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002) (citing Barone v. Dep't of Human Servs., Div. of Med. Asst., 210 N.J. Super. 276, 285 (App. Div. 1986)). We do not perform a perfunctory review of the agency findings but

engage in a careful and principled examination. Williams v. Dep't of Corr., 330 N.J. Super. 197, 203-04 (App. Div. 2000) (quoting Mayflower Sec. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

The limited due process rights to which inmates charged with disciplinary infractions are entitled were first enumerated by our Supreme Court in Avant v. Clifford, 67 N.J. 496, 525-33 (1975), and are codified in DOC regulations, N.J.A.C. 10A:4-9.1 to -9.28. In a disciplinary proceeding, an inmate is not entitled to "the full panoply of rights" afforded to a defendant in a criminal prosecution. Avant, 67 N.J. at 522 (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)). An inmate is entitled to written notice of the charges at least twenty-four hours prior to the hearing; an impartial tribunal; a limited right to call witnesses and present documentary evidence; a limited right to confront and cross-examine adverse witnesses; a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed; and, where the charges are complex, the inmate is permitted the assistance of a counsel substitute. Id. at 525-33.

We are satisfied from our review of the record that the DOC's decision is supported by substantial credible evidence. The DHO considered all the evidence presented at the hearing, including Billero's report detailing his

firsthand observation of Chisolm and his cellmate fighting. The DHO found the report to be credible, and Chisolm was offered the opportunity to cross-examine the officer to contest his observations but declined to do so. The DHO considered and rejected Chisolm's version of events because he failed to provide any evidence to discredit the officer's report.

Chisolm argues that the finding of guilt was arbitrary and capricious because the prohibited act of fighting with another person necessarily requires that another person be involved. He claims that the charge cannot be sustained because his cellmate was not charged with fighting. We reject this argument because the record reflects Bearfield was also charged with fighting. Billero's and two sergeants' reports all indicate that both Chisolm and Bearfield were charged with *.004 and *.306. Thus, Chisolm's argument is unsupported by the record.

Chisolm also argues that his due process rights were violated because the DOC failed to serve the disposition of disciplinary appeal on him within seventy-two hours and the disposition was handed to him by another inmate. Pursuant to N.J.A.C. 10A:4-11.7(a)(1), if an inmate is being held in prehearing disciplinary housing as a result of the charges, "the inmate shall be notified in writing of the results of the review of the inmate's appeal and the reasons

therefor . . . within 72 hours of receipt of the appeal, excluding weekends and holidays, in the absence of exceptional circumstances."

Here, Chisolm filed his appeal of the DHO's decision on February 10, 2021, and an Assistant Superintendent decided the appeal the next day. However, the disposition of disciplinary appeal was not served on Chisolm until April 16, 2021. The DOC explains that as a result of the disciplinary charges, Chisolm was transferred from East Jersey State Prison to Northern State Prison on February 9, 2021, and therefore the delay in serving the disposition on Chisolm was likely due to the transfer in correctional facility.

We note that the disposition of disciplinary form in Chisolm's appendix differs from the one in the DOC's appendix. Chisolm's version of the form indicates that the disposition was served on him on April 8, 2021, and the signature indicating "delivered by" is illegible. The DOC's version indicates that the disposition was served on Chisolm on April 16, 2021, by Sergeant Reynolds. Even considering the latter date, the guilty finding and sanctions were affirmed and Chisolm does not allege any prejudice or harm to him resulting from the delay in service. Thus, we find the delay to be harmless error that does not warrant disturbing the DOC's decision. See Jacobs v. Stephens, 139 N.J. 212, 219-20 (1995).

To the extent that we have not specifically addressed any remaining arguments, it is because we consider them sufficiently without merit to require discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION