

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-3107-20**

**IN THE MATTER OF CARLOS
PIMENTEL, STATE PAROLE
BOARD.**

Submitted May 3, 2023 – Decided May 24, 2023

Before Judges Currier and Mayer.

On appeal from the New Jersey Civil Service Commission, Docket No. 2019-3434.

Michael P. Rubas, attorney for appellant Carlos Pimentel.

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey State Parole Board (Melissa H. Raksa, Assistant Attorney General, of counsel; Christopher C. Josephson, Deputy Attorney General, on the brief).

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

PER CURIAM

Carlos Pimentel appeals from a June 2, 2021 final agency decision by the Civil Service Commission (Commission), removing him from his position as a senior parole officer with the New Jersey State Parole Board (Board). The Commission upheld Pimentel's removal based on his inability to perform the duties of a parole officer. Pimentel was removed because he was subject to a final restraining order (FRO), which prohibited Pimentel's possession of a firearm and he was required to carry a gun for his job as a senior parole officer. We affirm.

We summarize the relevant facts from the summary decision proceeding before an administrative law judge (ALJ). Pimentel, as senior parole officer, was required to carry a weapon while on duty. A Family Part judge issued a November 27, 2018 FRO against Pimentel, which prohibited him from possessing a firearm.

The Board issued a Preliminary Notice of Disciplinary Action to Pimentel based upon the FRO. After a departmental hearing, the Board subsequently issued a Final Notice of Disciplinary Action, removing Pimentel from his position. The matter was transferred to the Office of Administrative Law as a contested case. The ALJ held the matter in abeyance while Pimentel sought to rescind or modify the FRO.

Pimentel filed motions in the Superior Court of New Jersey, seeking to rescind or modify the FRO by eliminating the weapons prohibition. The motions were denied and the matter returned to the ALJ for adjudication of a summary decision motion filed by the Commission.

With the consent of the parties, the ALJ limited her review to whether the Board properly removed Pimentel based on his inability to perform the essential duties of a parole officer as a result of the FRO prohibiting him from possessing a weapon.

The ALJ determined Pimentel was "prohibited from carrying a firearm and that the requirement of the job require[d] him to carry a firearm." She found "[i]t is undisputed that [Pimentel could not] meet the requirements of the job due to the restraining order" and his removal under the circumstances was supported by case law. Thus, the ALJ concluded it was "not an abuse of discretion to remove someone who cannot meet the requirements of the job" and upheld Pimentel's removal. However, the ALJ modified the Board's termination "to a resignation in good standing" because the Board did not pursue removal of Pimentel based on the charge of conduct unbecoming.

The Board filed exceptions to the ALJ's decision to modify Pimentel's removal to a resignation in good standing. The Commission reviewed the matter

and upheld the Board's decision to remove Pimentel, but disagreed that the removal should be modified to a resignation in good standing. The Commission concluded:

The underlying basis for the charge of inability to perform duties was that [Pimentel] was legally barred from carrying a firearm pursuant to a FRO based on a domestic violence proceeding. While the Commission has modified removals to resignations under certain circumstances, such a modification is inappropriate to the case at bar. In previous matters, such a modification was appropriate where the employee's inability to perform his duties was based on, for example, a serious, chronic and debilitating medical or psychological condition or disability that came about through no fault of the employee. . . . The Commission will not make such a modification where the circumstance leading to the inability to perform was brought about by the employee's underlying misconduct, such as this matter. In this regard, the FRO based on a domestic violence proceeding led to [Pimentel's] legal inability to perform the essential functions of his position. To modify the removal to a resignation in good standing under these circumstances would essentially be rewarding [Pimentel] for the underlying conduct which led to the FRO and his subsequent inability to perform.

On appeal, Pimentel argues the Commission's removal decision was arbitrary, capricious, and unreasonable. We disagree.

Our review of an agency decision is limited. In re Herrmann, 192 N.J. 19, 27 (2007). An administrative agency's final quasi-judicial decision "will be sustained unless there is a clear showing that it is arbitrary, capricious, or

unreasonable, or that it lacks fair support in the record." Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). The burden of proving a decision was arbitrary, capricious, or unreasonable is on the party challenging the agency's action. Lavezzi v. State, 219 N.J. 163, 171 (2014). A strong presumption of reasonableness attaches to a decision by the Commission. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001).

When reviewing whether an agency decision is arbitrary, capricious, or unreasonable, we consider: (1) whether the agency action violated "express or implied legislative policies"; (2) whether there was substantial evidence in the record to support the agency's decision; and (3) whether in applying the law to the facts, the agency reached a conclusion "that could not reasonably have been made on a showing of the relevant factors." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)). If the agency satisfies these requirements, we "owe[] substantial deference to the agency's expertise and superior knowledge of a particular field." Herrmann, 192 N.J. at 28.

Our deference to agency decisions "applies to the review of disciplinary sanctions as well." Ibid. "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 (quoting In re Polk, 90 N.J. 550, 578 (1982)).

Having reviewed the record, and applying our well-settled standard of review for agency decisions, we are satisfied the Commission's decision was not arbitrary, capricious, or unreasonable and was supported by substantial credible evidence in the record. Pimentel's FRO prevents him from possessing a firearm at any time, whether on or off-duty. Under the Board's policy, Pimentel was required to carry a state-issued firearm while on duty. Because the FRO prohibits Pimentel from possessing a firearm, he is unable to perform his job duties and removal from his position as a senior parole officer was warranted.

Pimentel is solely responsible for his inability to perform his job duties based on his own misconduct resulting in the issuance of an FRO. This was not a situation where the inability to perform the job duties came about through no fault of the employee. Moreover, the ALJ adjourned the summary decision motion to allow Pimentel to file applications to rescind or modify the FRO. However, Pimentel was unsuccessful in his efforts in that regard and he remains prohibited from possessing weapons.

To the extent we have not addressed Pimentel's remaining arguments, they are without sufficient merit to warrant 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