SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3612-20

IN THE MATTER OF
STEPHEN JUI AND THE
TOWN OF SECAUCUS.[1]

Argued January 10, 2023 – Decided February 28, 2023

Before Judges Rose and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket Number L-4120-19.

David J. Altieri argued the cause for appellant Stephen Jui (Galantucci & Patuto, attorneys; David J. Altieri, on the brief).

David J. Heintjes argued the cause for respondent Town of Secaucus (Weiner Law Group, LLP, attorneys; David J. Heintjes, of counsel and on the brief; Rachel E. Smith, on the brief).

PER CURIAM

Following an administrative determination of unfitness for duty, misconduct, and other disciplinary charges, Stephen Jui filed an action in lieu

[1] The Town of Secaucus was improperly pled as "Township of Secaucus."

of prerogative writs against his employer, the Town of Secaucus, seeking reinstatement to his position as a police officer with the Secaucus Police Department, back pay, and counsel fees. After conducting a de novo review of the record before the neutral hearing officer, the trial court affirmed the disciplinary convictions and issued an order on June 29, 2021, dismissing Jui's complaint. Jui now appeals from the Law Division order. Because the court's decision was supported by substantial credible evidence, we affirm.

I.

The genesis of Jui's termination was a November 20, 2018 incident with motorist Bianca Witter that occurred while Jui was directing traffic at the intersection of Paterson Plank Road and Harmon Meadow Boulevard. According to Witter's statement, instead of turning right as directed by Jui, she drove "around him and made a left turn." Thereafter, Jui "ran behind [her] car [and] threw his walkie [sic] or flashlight (a black item) which shattered [her car's] rear glass [window]." As Witter "slammed" the car's brakes, she looked in her mirror and saw Jui fall. He then called for assistance.

Jui's account of the incident varied. Jui initially informed dispatch: "A vehicle . . . uh, hit me, and I fell on it." Thereafter, Jui made contradictory statements to the responding officers and emergency medical technicians

(EMTs). Jui provided the same false narrative, claiming he tripped into the windshield, or could not recall how the windshield broke. Jui's varying accounts prompted an internal affairs (IA) investigation.

During his December 13, 2018 IA interview, Jui's account continued to evolve. Jui initially stated "he tripped over himself" and "land[ed] on the back of the car." Jui later indicated "his body did not touch the car," and "[h]e now kn[ew] that he was not struck by the vehicle." Claiming he was "very embarrass[ed]" that he fell, Jui told the IA officers, he wished he had "purposely tapped on the car instead of tripping over his own feet" because "he was more worried about what other people were going to think of him." Jui recalled "seeing a hole in the corner of the window," but "continued to make excuses [as to] how he could not have seen the shattered window."

Surmising Jui was angry that Witter ignored his commands, the Department concluded Jui's account of the incident was not plausible. Because "Jui pose[d] a direct threat to his own safety and that of others," the Department recommended a fitness-for-duty evaluation.

On January 14, 2019, Nicole Rafanello, Ph.D., deemed Jui unfit for duty and "unlikely to be . . . restored to the extent that he could resume police work in the future." Dr. Rafanello's evaluation was based on her interviews and

psychological testing of Jui, and her review of the reports regarding the underlying incident and Jui's personnel file, which included remedial training related to several prior incidents.

Two days after Dr. Rafanello released her findings, the Department issued a preliminary notice of disciplinary action (PNDA), charging Jui with violating Department rules and regulations pertaining to misconduct; care of departmental property and equipment; obedience to laws, ordinances, and written directives; providing false information; truthfulness; and courtesy to public, for the November 18, 2018 incident, and recommending a ten-day suspension. On the same day, the Department issued a PDNA and notice of suspension based on Dr. Rafanello's determination that Jui was unfit for duty and not restorable.

Jui contested his removal and because Secaucus is a non-civil service jurisdiction, sought an administrative hearing under the framework established by N.J.S.A. 40A:14-147 to -151. Prior to the hearing, Jui was evaluated by a psychologist of his own choice, Dennis H. Sandrock, Ph.D., who opined Jui was "psychologically cleared to return to work on restricted duty, which limits his ability to work with the public and be armed." Dr. Sandrock recommended Jui "attend no fewer than [fourteen] sessions of interpersonally focused counseling with a qualified mental health professional familiar with law enforcement."

The two-day departmental hearing was held on April 4, 2019 and May 20, 2019, during which several officers and Rafanello testified on behalf of the Department. Jui did not testify, but presented the testimony of Dr. Sandrock and an officer.

On October 9, 2019, the hearing officer issued a written report, sustaining all departmental charges and penalties. The hearing officer weighed the evidence adduced as to each charge. Addressing the unfitness-for-duty charge, the hearing officer

> [a]cknowledg[ed] the existence of the positives about . . . Jui during his career record taken as a whole . . . [noting,] this is not an issue of whether . . . Jui has done good in his career, but rather whether he is restorable and would be receptive to even further restorability treatments. . . . Jui has continued to act against the lessons taught to him in prior various counseling, therapy, and teaching sessions, leading to the conclusion . . . . Jui is not being receptive to these forms of restorability. Given that a plethora of restorability actions have already been implemented in regard to . . . Jui and that each has been seemingly fruitless, after giving due weight to the opinion of Captain [Dennis] Miller, it is my determination that further treatment would prove little to no benefit to . . . Jui or the Secaucus Police Department, and thus . . . Jui should be deemed unrestorable as an officer and removed accordingly.

The Town thereafter adopted the hearing officer's decision, terminating Jui's employment as of October 11, 2019. Jui then sought de novo review in the Law Division pursuant to N.J.S.A. 40A:14-150.

Prior to the hearing, Jui was treated by Richard P. Cevasco, Ed.D. After fifteen psychotherapy sessions, Dr. Cevasco issued a report on June 10, 2020, concluding Jui was fit for duty. However, Dr. Cevasco recommended Jui continue therapeutic treatment for "at least [five] months" to reinforce and continue the "positive gains" Jui had made.

In response, Dr. Rafanello issued a supplemental report on November 9, 2020. Among other observations, Dr. Rafanello noted Dr. Cevasco's "disclaimer with unusual limits of confidentiality" because he was retained to both treat Jui and render an opinion on his fitness for duty. Dr. Rafanello's supplemental report also evaluated Jui's nine commendations, finding none "st[oo]d out as being 'above and beyond' as Dr. Cevasco suggest[ed]."

Following Jui's appeal to the Law Division, the trial court conducted a plenary hearing on January 25, 2021. Jui testified and presented the testimony of Dr. Cevasco; the Town called Dr. Rafanello. The reports of both experts were admitted into evidence. After the close of all evidence, the court reserved

decision, affording the parties the opportunity to submit simultaneous closing briefs after receipt of the hearing transcript.

Conducting a de novo review of the record before the hearing officer, as supplemented by the January 25, 2021 hearing, the court issued a written decision on June 29, 2021, summarizing the record evidence. Crediting Dr. Rafanello's testimony, the court found "[h]er testimony was generally the same" at both hearings. The court further found Dr. Rafanello's conclusions were well supported, "based on tests, records, an interview with Officer Jui and her analysis of this information."

Conversely, the court questioned Dr. Cevasco's opinion, echoing Dr. Rafanello's concerns that Dr. Cevasco both "treated [Jui] and advocated for him." Acknowledging Dr. Cevasco could assume both roles, the court nonetheless concluded Dr. Rafanello's opinions were underscored by Jui's demeanor and testimony. In its assessment of Jui's testimony, the court focused on "why" Jui initially reported "he was struck by the Witter vehicle and why he did not immediately correct the false transmission." The court elaborated:

> During his testimony, Officer Jui said he was disoriented from falling onto the ground. There was no evidence of that.

> The ultimate question of why he told an untruth and did not correct it was not answered – not on the evening of the event nor on the day of the hearing.
>
> The [c]ourt did not find his testimony credible regarding contacting the rear window of the vehicle and why he sent transmissions that evening over the police radio. Officer Jui did not correct that false transmission soon thereafter even knowing it was false. At the [L]aw [D]ivision hearing he still did not have an explanation for his actions. The failure to provide an explanation leads the [c]ourt to confirm Dr. Rafanello's opinion Officer Jui has anger issues when he is disrespected.

This appeal followed.

On appeal, Jui argues the trial court's decision was arbitrary because: (1) its credibility assessment was contradicted by the record evidence; and (2) Dr. Rafanello's opinion was "inherently flawed from the inception" because she failed to review Jui's positive performance evaluations. Jui further contends the judge failed to evaluate each of the seven violations charged, other than truthfulness and fitness for duty.

II.

Pursuant to N.J.S.A. 40A:14-147, a police officer employed by a non-civil service jurisdiction cannot be removed "for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations," and may not "be suspended, removed, fined or reduced in rank" without "just cause."

Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 354 (2013) (quoting N.J.S.A. 40A:14-147). An officer must be apprised of any such charges against him by way of written complaint and is entitled to a hearing. Ibid. The appointing authority bears the burden of proving the charges by a preponderance of the evidence. In re Phillips, 117 N.J. 567, 575 (1990).

If the hearing officer upholds the charges, the officer may seek review of the decision by the Superior Court, which considers the matter de novo on the record. N.J.S.A. 40A:14-150. Although the trial court may allow supplementation of the record by either party, its powers are statutorily limited in that it may only reverse, affirm or modify a conviction; it may not remand to the hearing officer for a new disciplinary hearing. Ruroede, 214 N.J. at 360; see also N.J.S.A. 40A:14-150. The court must provide "an independent, neutral, and unbiased" review of the disciplinary action, and make its own findings of fact. Ruroede, 214 N.J. at 357. Although the court must defer to the hearing officer's conclusions regarding credibility, "those initial findings are not controlling." Ibid. (quoting Phillips, 117 N.J. at 579).

When considering the penalty the municipality imposed upon an officer, a court inquires "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."

In re Carter, 191 N.J. 474, 484 (2007) (quoting In Re Polk License Revocation, 90 N.J. 550, 578 (1982)); In re Herrmann, 192 N.J. 19, 28-29 (2006). The trial court may neither increase nor enhance the penalty. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 201-02 (App. Div. 1997).

Our role in reviewing the de novo proceeding is "limited." Phillips, 117 N.J. at 579. We "must ensure there is 'a residuum of legal and competent evidence in the record to support'" the court's decision. Ruroede, 214 N.J. at 359 (quoting Westin v. State, 60 N.J. 36, 51 (1972)). We do not make new factual findings, but merely "decide whether there was adequate evidence before the . . . [c]ourt to justify its finding of guilt." Phillips, 117 N.J. at 579 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Unless the court's decision is "'arbitrary, capricious or unreasonable' or '[un]supported by substantial credible evidence in the record as a whole,' the de novo findings should not be disturbed." Ibid.

Our review of the Law Division's legal conclusions, of course, is plenary. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Similar to the trial court, we will reverse any penalty disproportionate enough to "shock[] one's sense of fairness." Carter, 191 N.J. at 484 (quoting Polk, 90 N.J. at 578).

As a preliminary matter, we agree with Jui's contention that the trial court failed to address all seven departmental violations. In addition, the court's written decision incorrectly "sustained" the Town's decision to terminate Jui, and its accompanying order incorrectly "affirm[ed] the decision of the hearing officer in its entirety." See Ruroede, 214 N.J at 344 (holding "[t]he Law Division's actions [a]re limited to affirming, reversing, or modifying the disciplinary conviction pursuant to N.J.S.A. 40A:14-150").

However, because the trial court conducted a de novo review here, which included a supplemental testimonial hearing, its mistaken references are inconsequential. Moreover, Jui advances no argument to support reversal of the remaining five convictions, focusing instead on truthfulness and fitness for duty. Accordingly, we confine our review to those convictions. See id. at 362-63 (holding "honesty, integrity, and truthfulness [are] essential traits for a law enforcement officer"). Not surprisingly, the driving force of Jui's appeal – at all levels of review – was reversal of his fitness-for-duty conviction, which carries the greater penalty of termination.

To support his argument that the record evidence refutes the trial court's credibility findings, Jui cites various statements of the responding officers and EMTs that he: "sounded distressed," "panicked," and "frantic"; seemed

"disoriented" and "shaken up"; and "appeared to be hyperventilating over the radio." Jui contends these accounts both undercut the court's finding that there was "no evidence" to corroborate Jui's statement that "he was disoriented from falling onto the ground" and demonstrate Jui did not have the intent to deceive when he made conflicting statements about the incident. We disagree.

Jui's trial testimony dispels his contentions and illuminates his state of mind at the scene:

> [JUI'S ATTORNEY]: Now, do you recall making a radio transmission after you fell to the ground?
>
> [JUI]: Yes, I did.
>
> [JUI'S ATTORNEY]: And what was your initial radio transmission?
>
> [JUI]: That I was struck by a vehicle, and I fell.
>
> [JUI'S ATTORNEY]: Okay. And was your transmission that you were struck by a vehicle, was that correct?
>
> [JUI]: No, it was not.
>
> [JUI'S ATTORNEY]: So, that was when you made your admission that you made a wrong transmission over the radio that night.
>
> [JUI]: Yes, I did.
>
> [JUI'S ATTORNEY]: Why didn't you correct that initial radio transmission?

> [JUI]: In hindsight I should have corrected my transmission, but I was not -- I was a little disoriented at the time, and I knew right after I transmitted, it was obvious to me that I should have corrected my transmission.
>
> [(Emphasis added).]

Even though Jui was aware his account to dispatch was false – "right after" it was transmitted – Jui did not correct his statement. That mindset undermines his contentions that he was disoriented and lacked the requisite intent to lie. Moreover, during his IA interview, Jui acknowledged his motivation for providing false statements about the incident's occurrence was his embarrassment that he slipped and fell, wishing instead "he [had] purposely tapped on the car instead of tripping over his own feet." Accordingly, we discern no reason to disturb the trial court's credibility determinations, which are supported by the record evidence. See Ruroede, 214 N.J. at 359.

Nor are we persuaded that the trial court's reliance on Dr. Rafanello's testimony was arbitrary. Jui claims Dr. Rafanello's opinion was "inherently flawed from its inception" because the Town did not provide Jui's commendations prior to her first report. Further, upon receipt of these "positive aspects involving Officer Jui's career," Dr. Rafanello discounted them, finding they did not counter Jui's negative reports. Jui maintains the court should have

given greater weight to the opinions of Drs. Cevasco and Sandrock. Again, we are unpersuaded.

The trial court not only considered the competing testimony of Drs. Rafanello and Sandrock during the administrative hearing, but also the "live" testimony of Drs. Rafanello and Cevasco during the Law Division trial. Thus, the court had the opportunity to assess the credibility of Dr. Rafanello, comparing it with her prior testimony and Jui's testimony. In doing so, the court noted the consistency in Dr. Rafanello's testimony during both hearings and her opinion was supported by her evaluation of Jui and the court's evaluation of Jui's testimony and demeanor. Given our limited standard of review, Phillips, 117 N.J. at 579, we are confident the record supports the court's findings, Ruroede, 214 N.J. at 359.

Affirmed.